NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 KA 0675

STATE OF LOUISIANA

VERSUS

MATTHEW ALLEN

Judgment Rendered: NOV 09 2015

* * * * *

On Appeal from the
32nd Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Trial Court No. 663,583

Honorable Timothy C. Ellender, Judge Presiding

* * * * *

Joseph L. Waitz, Jr.
District Attorney
J. Christopher Erny
Assistant District Attorney
Houma, LA

Attorneys for Appellee,
State of Louisiana

Roshell Jones
Lafayette, LA

Attorney for Defendant-Appellant,
Matthew Allen

* * * * *

BEFORE: PETTIGREW, HIGGINBOTHAM, AND CRAIN, JJ.

HIGGINBOTHAM, J.

The defendant, Matthew Allen, was charged by grand jury indictment with second degree murder, a violation of Louisiana Revised Statutes 14:30.1. He entered a plea of not guilty and proceeded to jury trial. During trial, the defendant moved for a mistrial, which was denied. Following trial, the defendant was found guilty as charged. He was then sentenced to a term of life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. On appeal, the defendant challenges the sufficiency of the evidence in support of his conviction and the district court's denial of his motion for mistrial.

FACTS

On June 28, 2013, the Terrebonne Parish Sheriff's Office responded to a report of a shooting on Williams Street in Houma, Louisiana. Officers observed a vehicle that appeared to have been involved in a crash, as well as a trail of blood. The vehicle, which was facing Highway 315, still had keys inside and its passenger door was open. Another vehicle, later determined to belong to Sandra Scott, was located at the scene. Large blood stains were on Scott's vehicle, appearing as though someone either leaned on or ran across the vehicle. Officers followed the trail of blood down the street and around a house, and they found the victim, Dicarie James, lying in the front yard. The victim looked up at the officers and told them that he was dying and needed help. When asked if he knew who shot him, the victim stated, "Matthew Allen" twice. When asked a second time, the victim again stated, "Matthew Allen."

Terrebonne Parish Sheriff's Office Detective Terry Daigre arrived sometime after 11:55 p.m. He learned that a bystander, Shaquille Lamark, reported that he saw someone flee from the scene. Based on that information, information from other

officers, and the victim's remark, the defendant was developed as a person of interest.

After being located, the defendant and his girlfriend, Ronycia Jackson, were transported to the Terrebonne Parish Sheriff's Office and interviewed. The defendant and Jackson originally told officers that they were at the defendant's mother's house all day, then went to his sister's house until the defendant's mother called him to come home. Later, Jackson began crying and stated that she did not tell the truth about what happened because she did not want her baby's daddy, the defendant, to go to jail.

Jackson then changed her account of the events occurring that night and testified accordingly at trial. According to Jackson's testimony at trial, the victim came by the house where she and the defendant were staying and picked them up. The defendant got into the front passenger seat, and she got into the backseat. They drove to Bayou Dularge, where the victim sold some drugs. After the drug deal, the three drove back to Williams Street and the victim began heading toward the highway. Before they reached the highway, the defendant told the victim to park the car and pulled out a gun, which Jackson testified was a revolver. The defendant shot the victim around five times, and the victim hit the ground. Right after the shooting, the defendant stated, "[t]hat b**** a** n***** shouldn't have robbed me." Jackson exited the vehicle and went to her friend's house, and that friend, Shemeka VanBuren, brought her back to Stovall where the defendant's sister lived. When she arrived, the defendant was already at his sister's house.

Officers questioned VanBuren, Jackson's friend who drove her to the defendant's sister's house. The information provided by VanBuren was consistent with that of Jackson. In addition to the information provided by Jackson and VanBuren, Lamark told officers that he saw someone fleeing from the scene, and the defendant's cousin, Miranda Riley, testified that she drove the defendant from

the area. At trial, Riley testified that the defendant knocked on her door after 11:00 p.m. and asked for a ride to town on the night the victim was shot. Riley noticed that the defendant had a grocery bag, but did not ask what it contained. She brought the defendant to Stovall, which is where his sister lived. Riley claimed that the two looked around for weed, but could not find any, so they decided to return home. When they returned to the Dularge area, they saw many police officers.

The report from the autopsy conducted on the victim was introduced at trial. According to the report, the cause of death was a thoracoabdominal gunshot wound. The victim suffered two thoracoabdominal gunshot wounds as well as a gunshot wound in his left upper thigh. Projectiles were recovered from the defendant's body and determined to have been fired from a .22 caliber weapon. Officers searched the area, but were unable to locate the murder weapon.

After changing his story and claiming that he shot the victim in self-defense, the defendant was placed under arrest.

ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, the defendant argues that the evidence was insufficient to support his conviction of second degree murder. The defendant does not deny killing the victim, but argues that he was acting in self-defense. He claims that there was no evidence that he had specific intent to kill.

The constitutional standard for testing the sufficiency of the evidence, as enunciated in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime beyond a reasonable doubt. See La. Code Crim. P. art. 821B. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states, in part, "assuming every fact to be proved that the evidence tends to prove, in order to convict," every reasonable

hypothesis of innocence is excluded. La. R.S. 15:438; **State v. Wright**, 98-0601 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157 & 2000-0895 (La. 11/17/00), 773 So.2d 732.

The crime of second degree murder, in pertinent part, "is the killing of a human being: (1)[w]hen the offender has a specific intent to kill or to inflict great bodily harm[.]" La. R.S. 14:30.1A(1). Specific criminal intent is that "state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act." La. R.S. 14:10(1). Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. Specific intent may be proven by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Buchanon**, 95-0625 (La. App. 1st Cir. 5/10/96), 673 So.2d 663, 665, writ denied, 96-1411 (La. 12/6/96), 684 So.2d 923. It has long been recognized that specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. **State v. Hoffman**, 98-3118 (La. 4/11/00), 768 So.2d 542, 585, opinion supplemented by, 2000-1609 (La. 6/14/00), 768 So.2d 592 (per curiam), cert. denied, 531 U.S. 946, 121 S.Ct. 345, 148 L.Ed.2d 277 (2000).

When a defendant in a homicide prosecution claims self-defense, the State must prove beyond a reasonable doubt that the homicide was not committed in self-defense. **State v. Williams**, 2001-0944 (La. App. 1st Cir. 12/28/01), 804 So.2d 932, 939, writ denied, 2002-0399 (La. 2/14/03), 836 So.2d 135. Louisiana Revised Statutes section 14:20A(1) provides that a homicide is justifiable 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. For appellate purposes, the standard of review for a claim

of self-defense is whether a rational trier of fact, after viewing the evidence in the light most favorable to the prosecution, could find beyond a reasonable doubt that the homicide was not committed in self-defense. **Williams**, 804 So.2d at 939.

The defendant did not testify at trial, but his audio/video recorded statement was played for the jury. According to the defendant, his "life was on the line." He claimed that while he and Jackson were walking to the store, the victim "sweet talked" them into his car. He stated that someone had told him the victim planned to kill him. However, despite his first instinct to walk away, he decided to get into the car, as did Jackson, when the victim asked whether he wanted to roll a blunt.

The defendant claimed that once inside of the car, Jackson, who was pregnant at the time, sat in the middle of the front seat between him and the victim. The defendant said that the victim held a gun to Jackson's head and was going to pull the trigger, so he grabbed and twisted the victim's wrist. When he did so, the gun fell onto the victim's lap. According to the defendant, the victim then reached for something else, but the defendant was unaware what happened after that point because he "flashed out." The defendant explained that after the gun fell on the victim's lap, "I take the gun that fell in his lap . . . what I'm saying is self-defense, huh? It's self-defense, I'm telling you, cause he [sic] could of shot me and my girl."

The defendant later stated that the victim was attempting to put the gun to his head, and he picked it up after it fell onto the victim's lap. The defendant again claimed that at that point, he "flashed out." When asked whether that meant that he shot the victim, the defendant responded, "Flashed out. You could say that but, but he was trying to kill me." The defendant further stated that he did not know how many times he shot the victim or what kind of gun was used, but he thought it was a pistol. After he "flashed out," the next thing that the defendant stated that he remembered was waking up at his sister's house.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given is not subject to appellate review. Thus, an appellate court will not reweigh the evidence or overturn a fact finder's determination of guilt. **Williams**, 804 So.2d at 939.

The guilty verdict in this case indicates that the jury rejected the defendant's claim that he shot the victim in self-defense and had no specific intent to kill the victim. Moreover, the defendant's actions in failing to report the shooting and fleeing from the scene are not consistent with a theory of self-defense. See **State v. Emanuel-Dunn**, 2003-0550 (La. App. 1st Cir. 11/7/03), 868 So.2d 75, 80, writ denied, 2004-0339 (La. 6/25/04), 876 So.2d 829; **State v. Wallace**, 612 So.2d 183, 191 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1253 (La. 1993). Flight following an offense reasonably raises the inference of a "guilty mind." **State v. Captville**, 448 So.2d 676, 680 n.4 (La. 1984).

A rational juror could have found that the State established beyond a reasonable doubt that the defendant did not act in self-defense. Thus, we find no error in the jury's rejection of the defendant's claim of self-defense. Accordingly, 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 trier of fact. See **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). We are convinced that any rational trier of fact, viewing the evidence presented at trial in the light most

favorable to the State, could have found the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis, all of the elements of second degree murder. Accordingly, this assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBERS TWO AND THREE

In his second and third assignments of error, the defendant contends that the district court erred in denying his motion for mistrial after Jackson's refusal to testify. Specifically, the defendant contends that the district court's "threat to sentence [Jackson] with six months [in the] parish jail for every hour she refused to testify" was an excessive and erroneous sentence. He further claims that the district court erred in failing to grant his motion for mistrial because the State failed to disclose its "promise to negate [Jackson's] six month contempt sentence in exchange for her testimony[.]"

A mistrial shall be ordered, and in a jury case the jury dismissed, when prejudicial conduct in or outside the courtroom makes it impossible for the defendant to obtain a fair trial. La. Code Crim. P. art. 775. Mistrial is a drastic remedy that should be granted only when the defendant suffers such substantial prejudice that he has been deprived of any reasonable expectation of a fair trial. **State v. Berry**, 95-1610 (La. App. 1st Cir. 11/8/96), 684 So.2d 439, 449, writ denied, 97-0278 (La. 10/10/97), 703 So.2d 603. The determination of whether a mistrial should be granted is within the sound discretion of the district court, and the denial of a motion for mistrial will not be disturbed on appeal absent an abuse of that discretion. **State v. Lynch**, 94-0543 (La. App. 1st Cir. 5/5/95), 655 So.2d 470, 477, writ denied, 95-1441 (La. 11/13/95), 662 So.2d 466.

In the instant case, during direct examination, Jackson stated her name and that she had met the prosecutor about a month prior to trial. When asked how she met the prosecutor, Jackson responded, "I can't do this. I can't." The district court judge stated, "Ma'am, you are going to have to answer the questions or I will have

to hold you in contempt of court; and sentence you to . . . six (6) months in the Parish Jail." Jackson stated that she did not care, she could not "do this[,]" and "get me from out of here." The prosecutor attempted to begin questioning Jackson again, and she answered. However, defense counsel objected, arguing that Jackson did not want to participate. The court overruled the objection.

Jackson continued answering the prosecutor's questions, establishing that she was the defendant's girlfriend, was pregnant with his child at one point, and planned to start a family with him. She began explaining the events surrounding the shooting, and the prosecutor asked whether at some point in time, the defendant pulled out a gun and shot the victim. Before Jackson responded, defense counsel objected to the leading nature of the question. The following colloquy then occurred:

> [Prosecutor]: Judge, she is an adverse witness, clearly.
>
> [Defense counsel]: It's still inappropriate.
>
> [Jackson]: How the (inaudible) -
>
> [Court]: What?
>
> [Defense counsel]: I didn't hear it, Judge?
>
> [Jackson]: Man, f*** you straight up. Get me from out of here. Get me the f*** -
>
> [Defense counsel]: I ask that she be appointed counsel to talk to, Judge, at this point if the Court is considering holding her in Contempt –
>
> [Jackson]: Just get me the f*** out of here -
>
> [Court]: Denied. All right, you are either going to answer the questions or I am going to hold you in contempt.
>
> [Jackson]: Man, hold me in contempt - get me from out of here, for real - get me -
>
> [Court]: Are you going to answer the questions?
>
> [Jackson]: No, get me from out of here. I am not answering -
>
> [Court]: The witness -

[Jackson]: Get me from out of here - for real - get me six (6) months, whatever - get me from out of here.

[Prosecutor]: That would be six (6) months per question, right?

[Jackson]: I don't care! Get me from out of here.

[Court]: She is held in Contempt of Court, sentenced to serve six (6) months in the Parish Jail, and will continue to be held in Contempt for every hour she does not answer the questions. Think about it, ma'am.

[Defense counsel]: For the record, Judge we respectfully object to the Court's ruling and ask, again, that she be appointed counsel since the Court is considering jail time.

[Court]: Absolutely denied. You are not her lawyer; and you have no standing to make that objection.

[Defense counsel]: Just make it for the record. Thank you, Your Honor.

[Court]: Okay, you are welcome.

Jackson was then handcuffed and escorted from the courtroom.

"A contempt of court is an act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority. Contempts of court are of two kinds, direct and constructive." La. Code Crim. P. art. 20. A direct contempt of court is one committed in the immediate view and presence of the court and of which it has personal knowledge. A direct contempt includes the refusal of a witness to answer a nonincriminating question when ordered to do so by the court. It also may include contumacious, insolent, or disorderly behavior toward the judge or an attorney or other officer of the court. La. Code Crim. P. art. 21(4). A court may punish a person adjudged guilty of contempt of court in connection with a criminal proceeding by a fine of not more than five hundred dollars, or by imprisonment for not more than six months, or both. La. Code Crim. P. art. 25B.

Contrary to the defendant's assertion, the district court did not sentence Jackson to "six months in the parish jail for every hour she refused to testify."

Rather, the court stated that Jackson was "sentenced to serve six (6) months in the Parish Jail, and will continue to be held in contempt for every hour she does not answer the questions." The sentence imposed by the district court was not excessive or erroneous.

After Jackson was handcuffed and escorted from the courtroom, there was a meeting in chambers. The prosecutor stated that he would talk to the witness to see if he could calm her down and get her to change her mind. Defense counsel objected to the prosecutor approaching the witness. While defense counsel was talking to the defendant, the prosecutor talked to Jackson. Defense counsel argued that after the prosecutor talked to the witness, "all of a sudden, she has changed her mind and claims that she wants to testify and there was some concern about intimidation by some of [the defendant's] family members[.]"

The district court conducted an *in camera* interview of Jackson outside of the jury's presence. Jackson told the district court judge that she was afraid to testify because the defendant's brother threatened her and told her that "he got the hit over [her] head." She claimed that she refused to testify earlier because she saw the defendant's brother in the courtroom. Defense counsel had an opportunity to examine Jackson during the interview and asked:

> [Defense counsel]: You had testified earlier today that you didn't want to testify and sometime after that you talked to [the prosecutor]; right?
>
> [Jackson]: Yes.
>
> [Defense counsel]: When you talked to the [the prosecutor], you changed your mind about testifying; what did he tell you to make you change your mind?
>
> [Jackson]: He didn't tell me nothing.
>
> [Defense counsel]: Huh?
>
> [Jackson]: He didn't tell me nothing.
>
> [Defense counsel]: If he did not tell you anything, why did you change your mind, then?

* * *

[Jackson]: Because his family wasn't here; that's why.

[Defense counsel]: Okay, so if the family is outside the courtroom, then you are okay about testifying?

[Jackson]: Uh-huh.

The court stated that it would exclude the defendant's brother from the courtroom. Defense counsel moved for mistrial, arguing that if Jackson was allowed to testify, because of her behavior and "sudden change of mind," it would be "unduly prejudicial" to the defendant. The district court denied the motion for mistrial, noting that the jury could decide the veracity of and reasons for testifying given by Jackson.

During defense counsel's cross-examination of Jackson, the witness explained that she talked to the prosecutor after her refusal to testify and that after talking to him, she changed her mind and decided to testify. Defense counsel asked, "Why did you change your mind?" Jackson responded, "I don't want to do no six (6) months; that's why." She clarified that she had not been charged with anything relating to this murder and she did not want to stay in jail. Defense counsel asked Jackson what kind of deal she made with the prosecutor, and Jackson responded that she had made no deal at all. Jackson stated, however, that after she finished testifying that day, she would not have to serve the six month sentence imposed by the district court.

On redirect examination, Jackson clarified that she was currently in jail because of a material witness warrant issued by the prosecutor but that she was also serving time due to her probation being revoked on another case and, even if the material witness warrant were revoked, she would not get out of jail. At the conclusion of her testimony, the court stated, "I had held you in Contempt earlier. I am now going to lift that Contempt, since you agreed to testify."

The defendant argues that the State had an obligation to disclose "any and all deals or promises that were made to [Jackson] in exchange for her testimony[,]" and that "the promise to negate [Jackson's] six month contempt sentence in exchange for her testimony was required to be disclosed by the State[.]" The defendant submits that the State was required to disclose this alleged promise under **Brady v. Maryland**, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and **Giglio v. United States**, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).

The rule established in **Brady** is that upon request, the State must produce evidence that is favorable to the accused where it is material to guilt or punishment. **Brady**, 373 U.S. at 87, 83 S.Ct. at 1196-97; see also **State v. Bright**, 2002-2793 (La. 5/25/04), 875 So.2d 37, 41. Failure to do so violates a defendant's due process rights. **Bright**, 875 So.2d at 41. The **Brady** rule applies to both exculpatory and impeachment evidence, including evidence that impeaches the testimony of a witness when the reliability or credibility of that witness may determine guilt or innocence. **United States v. Bagley**, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481 (1985); **Bright**, 875 So.2d at 41; **State v. Knapper**, 579 So.2d 956, 959 (La. 1991). "A **Brady** violation occurs when the 'evidentiary suppression undermines confidence in the outcome of the trial.'" **State v. Garcia**, 2009-1578 (La. 11/16/12), 108 So.3d 1, 37, cert denied, __U.S. __, 133 S.Ct. 2863, 186 L.Ed.2d 926 (2013) (quoting **Kyles v. Whitley**, 514 U.S. 419, 434, 115 S.Ct. 1555, 1566, 131 L.Ed.2d 490 (1995)).

Contrary to the defendant's assertion, the record does not establish that the prosecutor made a deal with Jackson in order to obtain her testimony. Jackson stated multiple times that the only reason she refused to testify was out of fear of the defendant's brother being in the courtroom due to threats he made toward her. According to Jackson, she changed her mind and was willing to testify because the defendant's family was outside of the courtroom. Although she also stated that she

was testifying because she did not want to serve the six months, she testified that the prosecutor did not tell her anything that caused her to change her mind and that she made no deal "at all" with him. Thus, based on our review of the record, there is no indication that Jackson "was promised by the prosecutor that she would not have to do six months in jail if she cooperated and testified[,]" and, thus, there was no "deal" for the State to disclose. Accordingly, the district court did not abuse its discretion in denying the defendant's motion for mistrial.

These assignments of error have no merit.

CONVICTION AND SENTENCE AFFIRMED.