

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 KA 1022

STATE OF LOUISIANA

VERSUS

CHRISTOPHER LEE HORTON

Judgment rendered December 23, 2015.

Appealed from the
16th Judicial District Court
in and for the Parish of St. Mary, Louisiana
Trial Court No. 2007-174615
Honorable Paul J. deMahy, Judge

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ATTORNEYS FOR
STATE OF LOUISIANA

ATTORNEY FOR
DEFENDANT-APPELLANT
CHRISTOPHER LEE HORTON

BEFORE: PETTIGREW, HIGGINBOTHAM, AND CRAIN, JJ.

PETTIGREW, J.

The defendant, Christopher Lee Horton, was charged by grand jury indictment with first degree murder, a violation of La. R.S. 14:30, and pled not guilty.¹ The trial court appointed a sanity commission, and the defendant was ultimately found competent to stand trial. After a trial by jury, the defendant was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, assigning error to the sufficiency of the evidence in support of the verdict. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On September 3, 2007, Detective Beau Martin of the St. Mary Parish Sheriff's Office (SMPSO) was dispatched to Wilson's Boat Landing in the Patterson area regarding a vehicle that was engulfed in flames. When Detective Martin arrived, the vehicle was completely burned. Detective Martin used the license plate number and VIN of the vehicle to obtain the owner's address and ultimately determined that the vehicle belonged to Adam Horton (the victim), the defendant's brother. Detective Martin made contact with Clark Horton, the father of the victim and the defendant. The detective learned that the victim had been unreachable for a few hours. Subsequently, the police went to the victim's residence at 537 Little Pine Way in the Bayou Vista area (located 6.2 miles from Wilson's Boat Landing) and discovered him lying face down in a puddle of blood in a bedroom that was in a state of disarray. Detective Gary Driskell of SMPSO was dispatched to the victim's residence to investigate a possible homicide. Detective Driskell noted that the victim was bound with electrical cords that had been cut from small appliances. The victim's arms and ankles were bound with cords, and cords were further wrapped around his head, across the bridge of his nose, and over his eyes. The victim's driver's license and debit card PIN documentation with the number ripped off were among

¹ The State did not seek the death penalty.

the evidentiary items recovered from his residence. The bedroom where the victim's body was located was the only room with the sign of a struggle. The victim's wallet was not found. Detective Driskell took photographs, dusted for prints, and recovered evidence. The coroner who arrived on the scene determined that the deceased victim had expired within the past twenty-four hours. The victim had an apparent stab wound in the left side of his chest.

About three weeks before the incident in question, Jimmy Wright moved in with the defendant and his wife Earline Horton, Wright's half-sister, in their mobile home in Berwick. According to Wright, on September 2, 2007, after lunchtime, he and the defendant travelled in the defendant's vehicle to visit the defendant's brother, the victim. At the time, Wright was armed with a .22 revolver. They parked at a nearby glass shop and walked to the victim's trailer park. The defendant waited behind the shed while Wright knocked on the victim's door. It was sprinkling outside at the time and when the victim answered his door, Wright asked if he could come in. Wright had been to the victim's residence before, but they had never personally met.

As the victim indicated that Wright could enter, the defendant walked up and entered with Wright. The victim and the defendant initially began conversing. As the defendant stood by the front door, the victim was sitting on the sofa, and Wright was standing behind the kitchen counter. The victim told the defendant that he needed to get some rest before work that night and would talk to him later. The defendant shut the victim's door, walked to the kitchen counter and retrieved Wright's revolver, pointed the gun at the victim, and told the victim to get on the floor. When the victim saw the gun, he ran down the hallway towards the back door. Wright chased the victim down the hall and pinned him in a corner in the back bedroom. At that point, the defendant stabbed the victim in the chest with a knife that belonged to Wright. After the victim stopped breathing, the defendant and Wright tied him up with electrical cords, and ransacked the house. Just before they left the residence, Wright took a wad of cash that was located on the counter by the front door and the victim's car keys.

After his arrest, at the defendant's request, a fellow inmate, John Lyons, executed a handwritten statement that detailed the defendant's account of the stabbing. In the statement, the defendant indicated that he stabbed the victim just after he caught his wife, the victim, and Wright engaging in sex acts in the victim's back bedroom. Subsequently, according to the statement, the defendant waited outside of a nearby glass shop while Wright tied up the victim and attempted to make the scene look like a robbery occurred. The statement further indicates that Wright drove the victim's vehicle to the boat landing and set it on fire.

Dr. Susan Garcia performed the autopsy of the victim and testified that he sustained a single, one-inch wide stab wound to his left chest. She noted that the sharp-force injury went through the victim's skin, through his ribs and the intercostal space, through the lung, and ended up in the heart. She noted that in her experience, such a wound was typically fatal and would cause rapid bleeding. The stabbing injured the base of the victim's pulmonary artery and caused him to bleed to death.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that he did not have the ability to form the criminal intent to kill his brother absent sufficient provocation. Thus, the defendant argues that the appropriate verdict in this case was manslaughter due to the presence of provocation that caused him to lose self-control. The defendant claims that Wright was the one who supervised the operation and suggested that they take the victim's car, laptop, and debit card to establish an inference that the victim had been robbed. The defendant describes Earline as an opportunist who led her young, mentally challenged husband into committing a haunting act. The defendant concludes that Wright was motivated by the chance of receiving a lesser sentence by assisting the State and that Earline was motivated by greed. The defendant notes that at trial he did not dispute his responsibility for the victim's death, but did dispute that he deserved a conviction of first degree murder given his limited educational and mental abilities. The defendant contends that while there were credibility issues with the statement executed by John Lyons, Lyons did not have an ulterior motive to lie. Finally, the defendant

concludes that the State did not prove its case beyond a reasonable doubt and that the trial court erred in accepting the jury's guilty verdict.

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 standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See La. Code Crim. P. art. 821(B); **State v. Ordodi**, 2006-0207, p. 10 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-1309 (La. 1988). The **Jackson** standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001-2585, p. 5 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

First degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of one of a list of enumerated felonies, including aggravated burglary and armed robbery. See La. R.S. 14:30(A)(1). Armed robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon. La. R.S. 14:64(A). Aggravated burglary is defined in pertinent part by La. R.S. 14:60 as the unauthorized entering of any inhabited dwelling where a person is present, with the intent to commit a felony or any theft therein, if the offender is armed with a dangerous weapon. The State bears the burden of proving those elements, along with the burden to prove the identity of the defendant as the perpetrator. **State v. Draughn**, 2005-1825, p. 8 (La. 1/17/07), 950 So.2d 583, 593, cert. denied, 552 U.S. 1012, 128 S.Ct. 537, 169 L.Ed.2d 377 (2007). Specific intent is that state of mind that 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). Such state of mind can be formed in an instant. **State v. Cousan**, 94-2503, p. 13 (La. 11/25/96), 684 So.2d 382, 390. Specific intent need not be proven as a fact, but may be inferred from the circumstances of the transaction and the actions of defendant. **State v. Graham**, 420 So.2d 1126, 1127 (La. 1982). The existence of specific intent is an ultimate legal conclusion to be resolved by the trier of fact. **State v. McCue**, 484 So.2d 889, 892 (La. App. 1 Cir. 1986). Stabbing the victim with a knife supports an inference of specific intent to kill. See **State v. Hartman**, 388 So.2d 688, 694 (La. 1980). While the defendant does not challenge the elements of the offense, he does argue that due to provocation and his mental and educational limitations, he should have been found guilty of manslaughter and should not have been convicted of first degree murder.

Manslaughter is a homicide that would either be 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 cool reflection and self-control. See La. R.S. 14:31(A)(1). The elements of sudden passion and heat of blood are mitigatory factors in the nature of a defense, and when such factors are established by a preponderance of the evidence, a verdict for murder is inappropriate. Provocation and time for cooling are questions for the jury to be determined under the standard of the average or ordinary person, one with ordinary self-control. If a man unreasonably permits his impulse and passion to obscure his judgment, he will be fully responsible for the consequences of his act. **State v. Leger**, 2005-0011, pp. 92-93 (La. 7/10/06), 936 So.2d 108, 170-171, cert. denied, 549 U.S. 1221, 127 S.Ct. 1279, 167 L.Ed.2d 100 (2007) (citing Reporter's Comment to La. R.S. 14:31).

Wright testified that on the day in question, the defendant told him they were going to his brother's trailer because he wanted to reconcile with him. Although he had the victim's arm twisted behind his back and had him trapped in a corner at the time, Wright testified that he was trying to calm the victim down when the defendant suddenly stabbed the victim. The knife used by the defendant to stab the victim was identified by Wright as belonging to him. Wright's stepmother had given it to him, and he kept it in his

duffle bag. Wright testified that he was surprised by the stabbing, as he was not expecting the defendant to stab the victim. Wright confirmed that the victim had not made any threatening moves or brandished any weapon. After the stabbing, the victim began questioning the defendant as to why he was attacking him. Wright recalled the defendant telling the victim, "Just die. Shut up and die." Wright stated that he and the defendant tried to make the scene look like a robbery occurred, but could not recall who had the idea to do so.

Wright stated that after the incident, they proceeded back to the defendant's trailer and changed clothing, noting that they had blood on their clothing. Wright indicated that they disposed of the clothes outside of the residence of an acquaintance (Brooke Barker). At that point, Earline and Alexandra Sedgewick (the defendant's childhood friend) were with Wright and the defendant. They then went to the boat landing near Patterson and threw the knife in the bayou. Wright testified that after they disposed of the knife, the defendant wanted to try to use the debit card that he took from the victim's residence. Wright also identified items that he purchased at Wal-Mart and confirmed that they may have gone to Wal-Mart more than once that night. Wright recalled that they went to Morgan City that night because the defendant wanted to use an ATM machine. Wright further identified photographs of the defendant using the ATM machine to retrieve some of the victim's money and of him standing near the machine and at the nearby Waffle House. After they went to a convenience store and bought items, Wright cut up the debit card and they disposed of it. Sedgewick (who also testified at the trial) recalled that it was Wright who threw the knife in the bayou. She further recalled that Earline got out of the car with the defendant when they went to use the ATM in Morgan City.

Wright and the defendant went back to the victim's residence to remove his security camera and to get the victim's vehicle. They then drove the victim's vehicle out to the same location where they disposed of the knife at the boat landing and ransacked and torched the vehicle. Wright could not recall who threw the knife in the bayou, but stated that it was his idea to torch the vehicle. Before torching the vehicle, they stole a laptop and some money that was located in the vehicle. Later that same day, after

disposing of the security camera taken from the victim's residence, Wright and the defendant were arrested, and Wright gave several statements to the police.

Detective Jimmy Broussard of SMP SO conducted a search of the residence of Earline, the defendant, and Wright, located on Burchfield in Berwick, 1.6 miles from the victim's residence. A stained bed sheet, silver revolver, an antique pistol revolver, and the defendant and Earline's vehicle were taken into evidence. The back cover of a pink cell phone and an inside-out camouflage glove were located at the Oregon Street Boat Landing, about 3 miles from the defendant's residence. A portable security camera system was discovered in a white trash bag in a dumpster behind the donut shop on Brashear Avenue in Morgan City. Additionally, Agent Daniel Weidenboerner assisted in the investigation by performing a dive search and was able to retrieve the knife that had been thrown into the bayou at Wilson's Boat Landing.²

State witness John Lyons testified that he met the defendant at a local club in Bayou Vista and that he knew him from often seeing him in the area. In March 2008, Lyons and the defendant were incarcerated together, and the defendant asked Lyons to write a statement for him about the incident in question. Since the defendant had trouble reading and writing, Lyons agreed. The defendant told Lyons that his brother (the victim) dated his wife Earline before they were married, and that after he started dating Earline, his relationship with his brother became strained. The defendant further indicated that at the time of the offense, he was suspicious that his brother and Earline were having an affair. He went to his brother's trailer (the front door was unlocked), walked to the back bedroom, and peeked through the door and saw his wife, the victim, and Wright having sex. After peeking through the bedroom door, the defendant walked back to the living room. He picked up a knife that was sitting on the victim's coffee table, walked to the

² The use of the victim's funds and ATM transactions that night at Wal-Mart, the Waffle House, and a convenience store, was confirmed by the victim's bank records obtained from Patterson State Bank and recovered receipts.

bedroom, a fight ensued, and he stabbed the victim with the knife.³ After writing the statement for the defendant, Lyons gave the statement to the Sheriff's Office along with an oral statement.

Initially called as a witness by the State, Earline Horton (the defendant's wife) testified that she first began talking to the defendant in 2006, after he answered the phone when she once called to speak to the victim, who she had a friendship with at the time. She and the defendant became romantic and got married at the end of the year. Earline recalled the day in question, noting that she saw the defendant and Wright when they left and noticed a knife on the floor in a case after they returned. The defendant yelled at her when she picked it up and knocked it out of her hand. She also recalled going to Wilson's Boat Landing and noted that when the defendant and Wright exited the vehicle, they threw something in the water, but she did not see what it was. When they went to Wal-Mart, the defendant picked out a digital camera and gave her a bank card to use to pay for the camera. She did not recognize the card, noting that she had a Capital One credit card and she and the defendant shared a debit card. Earline testified that she swiped the card, did not see whose name was on it, but noted that it was from Patterson State Bank. She recalled the defendant and Wright talking about how they had "jacked a faggot" and hog-tied him to a chair and put a bowl under his face so that he would drown when he fell asleep. She further recalled that they used the ATM three times that night and obtained one hundred dollars each time. Earline did not ask the defendant about the card or the money and stated that she learned throughout the marriage not to ask the defendant questions.

Earline testified that she later found out about the victim's death when she discovered that the defendant had the victim's phone. After seeing and recognizing the victim's phone, a hot pink Razor phone, Earline questioned the defendant, and he stated

³ While the handwritten statement indicated that the defendant stabbed the victim after the fight ensued, Lyons testified that the scuffle began after the defendant stabbed the victim in the rib cage. Additionally, Lyons testified that Wright and the defendant later disposed of the victim's body, indicating that they put the victim's body in the victim's vehicle, drove it to the levee in Patterson at Wilson's Boat Landing, and set it on fire. However, the handwritten statement indicates that Wright tied the victim up, but does not state that the victim's body was placed in the vehicle before it was driven to the boat landing and set ablaze.

that he took the phone and that the victim was dead. When asked to describe the defendant's demeanor at the time, she stated that he was cold and did not initially give details. She later heard the defendant and Wright talking about the murder. Earline recalled that the defendant mentioned that the victim was happy to see him, and mentioned stabbing him. She noted that the defendant was "[a]lmost excited" and did not state why he stabbed the victim. Earline testified that the victim was bisexual and noted it was no secret that the defendant generally despised people who were not like him, including gay people, black people, and people of certain religious backgrounds.

Earline stated that she did not report the murder to the police because she was afraid of the defendant. She gave several conflicting statements to the police but was truthful after the defendant was arrested and no longer posed a threat, stating that by that point, "he couldn't get to me." She indicated that she ultimately pled guilty to accessory after the fact of first degree murder. Earline was recalled by the defense and denied having sex with the victim on the day in question or ever participating in any sex acts involving her brother, Wright. She testified that before she and the defendant got married, she became aware that the defendant and the victim would receive an inheritance due to their mother's death, and that they received it a couple of months after she and the defendant got married.

Kenneth Boyne, the uncle of both the defendant and the victim, was called as a witness by the defense. He noted that the brothers' relationship changed just before the defendant married Earline and that the defendant became more aggressive. However, Boyne testified that Earline was the dominant person in the marriage. Boyne further testified that the victim no longer wanted to associate with Earline. The Saturday before the victim's death, he and Boyne had a conversation wherein Boyne told him he could live rent free on a piece of his property and asked the victim if he had enough money to move. The victim noted that he had \$24,000.00 of inheritance money in the bank, but stated that he did not want to move and was content where he was living.

Clark Horton, father of both the defendant and the victim, was the final witness called by the defense. Mr. Horton noted that while the victim was smart, the defendant

started off in normal classes but was transferred to special education and never learned to read or write. Mr. Horton disapproved of the defendant's marriage, noting that the defendant had an inheritance and that the defendant could be easily taken advantage of due to his mental way. He stated that the defendant and Earline briefly lived with him when they first got married, and Earline was manipulative and controlling at the time.

As the sole rebuttal witness, the State called SMP SO Detective Robert Smith, who took a statement from Mr. Horton outside of the victim's residence. Detective Smith confirmed that Mr. Horton indicated that the defendant and the victim were estranged and did not get along with each other before the victim's death.

When a case involves circumstantial evidence and the jury 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. 1 Cir.), writ denied, 514 So.2d 126 (La. 1987). As the trier of fact, a jury is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Taylor**, 97-2261, pp. 5-6 (La. App. 1 Cir. 9/25/98), 721 So.2d 929, 932. We are constitutionally precluded from acting as a thirteenth juror in assessing what weight to give evidence in criminal cases. See **State v. Mitchell**, 99-3342, p. 8 (La. 10/17/00), 772 So.2d 78, 83. Moreover, even if the record contains some evidence that conflicts with the testimony accepted by a trier of fact, such evidence does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1 Cir. 1985).

It is the defendant's burden to establish by a preponderance of the evidence the mitigating factors of sudden passion or heat of blood to reduce a homicide to manslaughter. See **State v. LeBoeuf**, 2006-0153, p. 5 (La. App. 1 Cir. 9/15/06), 943

So.2d 1134, 1138, writ denied, 2006-2621 (La. 8/15/07), 961 So.2d 1158. The jury was free to infer from the evidence the existence of the mitigating factors to lessen the defendant's culpability from first degree murder down to manslaughter. However, the jury reasonably concluded that the defendant did not meet his burden of proving that he killed the victim while acting in sudden passion or heat of blood. The bulk of the evidence negated the defendant's argument that he was provoked by the victim. Moreover, the defendant's actions after the stabbing were inconsistent with a theory of manslaughter.⁴ After a thorough review of the record, we find that the evidence supports the jury's verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of first degree murder. See State v. Calloway, 2007-2306, pp. 1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). We find no merit in the sole assignment of error.

CONVICTION AND SENTENCE AFFIRMED.

⁴ We note that the defendant does not contend that he was legally insane at the time of the offense, i.e., incapable of distinguishing between right and wrong with respect to the conduct in question because of a mental disease or defect. See La. R.S. 14:14. Also, there was no evidence presented at trial which would indicate that the defendant was incapable of distinguishing between right and wrong at the time of the offense. We note that the Louisiana Supreme Court has held that a mental defect or disorder short of legal insanity cannot serve to negate specific intent and reduce the degree of the crime. State v. Deboe, 552 So.2d 355, 366 (La. 1989), cert. denied, 498 U.S. 881, 111 S.Ct. 215, 112 L.Ed.2d 174 (1990).