NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 KA 0430

STATE OF LOUISIANA

VERSUS

BILLIE GLEND RAWSON, JR.

Judgment Rendered: SEP 15 2017

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 529796

The Honorable William J. Burris, Judge Presiding

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Mary Constance Hanes
New Orleans, Louisiana

Counsel for Defendant/Appellant
Billie Glend Rawson, Jr.

Warren L. Montgomery
District Attorney
Matthew Caplan
Assistant District Attorney
Covington, Louisiana

Counsel for Plaintiff/Appellee
State of Louisiana

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BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.

THERIOT, J.

Billie Glend Rawson, Jr. ("Defendant") was charged by grand jury indictment with second degree murder of his father, Billie G. Rawson, Sr. ("Mr. Rawson"), in violation of La. R.S. 14:30.1. He pled not guilty and waived his right to a trial by jury. Following a bench trial, Defendant was found guilty as charged. Defendant filed a Motion for New Trial and a Motion for Post Verdict Judgment of Acquittal, both of which were denied. He was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. Defendant filed a Motion to Reconsider Sentence, which was denied. Defendant now appeals, designating two assignments of error. First, Defendant argues that the evidence against him was insufficient to support the conviction for second degree murder. Second, Defendant argues that his mandatory life sentence was excessive.

FACTS

On October 22, 2012, Defendant went to Mr. Rawson's house in Pearl River, Louisiana. Defendant did not have a good relationship with Mr. Rawson. During this visit, Defendant's conversation with Mr. Rawson became heated, resulting in Defendant punching and kicking Mr. Rawson and, in one instance, hitting him in the head with a flashlight. Several hours later and into the early hours of October 23, while Mr. Rawson was sitting on the couch in his living room, Defendant either threw a large kitchen knife at Mr. Rawson or stabbed him in his left thigh. The knife was removed from Mr. Rawson's leg, leaving a knife wound about two inches wide and two inches deep. The knife perforated Mr. Rawson's left femoral artery and as a result, he bled out and died within minutes. After the incident, Defendant left Mr. Rawson's house and drove to Mississippi. While driving, Defendant called some family members and told them that he had killed Mr. Rawson. Defendant was arrested in Mississippi the same day. Upon arrest, Defendant was interviewed by a St. Tammany Parish Sheriff's Office

detective. Two days later, Defendant was interviewed again in St. Tammany Parish.

Defendant's nephew, Kyle Rawson ("Kyle"), testified at trial that Mr. Rawson, his grandfather, was an alcoholic. According to Kyle, Mr. Rawson began "drinking his life away" after his wife died. Kyle further testified that Mr. Rawson was in poor physical condition and that it was difficult for him to walk to the front porch and go outside. Additionally, Kyle testified that several months prior to Mr. Rawson's death, Defendant had been living with his brother, Kyle's father. Kyle testified that during this time, Defendant stated on multiple occasions that he would kill his father (Mr. Rawson).

Defendant testified at trial. According to Defendant's version of events, when he went to Mr. Rawson's house to talk to him, they began arguing. Defendant alleged that during this argument, Mr. Rawson retrieved a knife from under the couch cushion and moved toward the defendant. In response, Defendant hit Mr. Rawson in the head with a flashlight, took the knife out of Mr. Rawson's hand, and placed it in the kitchen.

A few hours after this altercation, Defendant and Mr. Rawson began arguing in the kitchen. Defendant alleged that Mr. Rawson had picked up a knife off the stove and moved toward Defendant. Defendant then struck Mr. Rawson, causing him to drop the knife. At this point, Mr. Rawson went into the living room and sat down on the couch. When Defendant picked the dropped knife up off the floor in the kitchen, he saw Mr. Rawson raise his right arm. Defendant thought Mr. Rawson might have a knife in that raised hand, so Defendant, reflexively, threw the knife in his hand at Mr. Rawson and struck him in the leg. Defendant further testified that he did not intend to hurt or kill Mr. Rawson.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, Defendant argues that the evidence against him was insufficient to support the conviction for second degree murder. Specifically, Defendant contends that he is guilty of manslaughter because of the presence of the mitigating factors of sudden passion or heat of blood at the time of the killing. (Defendant makes no assertion that he killed Mr. Rawson in self-defense).

A conviction based on insufficient evidence cannot stand, because it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. To determine whether evidence is sufficient to uphold a conviction, the standard of review 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 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-09 (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 factfinder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001-2585 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

Second degree murder is defined as the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. La. R.S. 14:30.1(A)(1). "Guilty of manslaughter" is a proper responsive verdict for a charge of second degree murder. La. Code Crim. P. art. 814(A)(3). Louisiana Revised Statutes 14:31(A)(1) defines manslaughter as a homicide which would constitute 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 factfinder 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. The existence of "sudden passion" and "heat of blood" are not elements of the offense but, rather, are factors in the nature of mitigating circumstances that may reduce the grade of homicide. **State v. Maddox**, 522 So.2d 579, 582 (La. App. 1st Cir. 1988). Further, manslaughter requires the presence of specific intent to kill or inflict great bodily harm. See **State v. Hilburn**, 512 So.2d 497, 504 (La. App. 1st Cir. 1987), writ denied, 515 So.2d 444 (La. 1987).

Specific intent is the 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). Such state of mind can be formed in an instant. **State v. Cousan**, 94-2503 (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 the 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. 1st Cir. 1986).

In his brief, Defendant does not deny that he killed Mr. Rawson. According to Defendant, he was angry with Mr. Rawson, who had twice attempted to attack him with knives. Defendant alleges that he threw the knife at Mr. Rawson only after being provoked. Further, Defendant suggests that even an average person would have lost his self-control based on Mr. Rawson's acts of provocation. According to Defendant, Mr. Rawson, "in a state of total intoxication, tried twice to attack him with knives and he had to fight [Mr. Rawson] off." Defendant

further suggests that when he threw the knife at Mr. Rawson, he did so only because he reasonably interpreted Mr. Rawson's movements to be another threat. Specifically, "he believed that Mr. Rawson had obtained yet another knife and was about to throw it at him." (As noted, there is no self-defense claim before us).

In order to reduce a homicide to manslaughter, the defendant must establish by a preponderance of the evidence the mitigating factors of sudden passion or heat of blood. See **State ex rel. Lawrence v. Smith**, 571 So.2d 133, 136 (La. 1990); **State v. LeBoeuf**, 2006-0153 (La. App. 1 Cir. 9/15/06), 943 So.2d 1134, 1138, writ denied, 2006-2621 (La. 8/15/07), 961 So.2d 1158. See also **Patterson v. New York**, 432 U.S. 197, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977). Further, the killing committed in sudden passion or heat of blood must be immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Thus, the evidence at the defendant's trial must have been sufficient to establish that the provocation was such that it would have deprived an average person of his self-control and cool reflection.

On the same day that Defendant killed Mr. Rawson, he was interviewed in Mississippi by Detective Daniel Buckner with the St. Tammany Parish Sheriff's Office. This interview was videotaped. Two days later, Defendant was interviewed in St. Tammany Parish by Detective Randy Loumiet with the St. Tammany Parish Sheriff's Office. This interview was recorded in an audio recording. Additionally, almost four years later, Defendant testified at trial about the events that preceded Mr. Rawson's death. While there are inconsistencies among Defendant's three versions of events, the following is clear: Defendant had been released from LSU Bogalusa Medical Center several days before he killed Mr. Rawson; Defendant had great resentment and anger toward Mr. Rawson; and Defendant either threw a knife at Mr. Rawson or stabbed him directly in the thigh with the knife.

In his first interview, Defendant informed Detective Buckner that he had recently been released from LSU Bogalusa Medical Center for treatment of depression and other mental issues. When Detective Buckner asked Defendant what happened when he got released, Defendant replied that he "went and did the world a favor." When asked to explain, Defendant stated, "I exterminated the worst piece of s--t that I ever met in my f---ing life." Defendant also stated that he shot Mr. Rawson with a rifle. Mr. Rawson was never shot.

In his second interview, two days later, Defendant told Detective Loumiet that Mr. Rawson was a pervert and that he had physically abused Defendant as a child. Defendant further said he had smoked methamphetamine less than an hour before he got to Mr. Rawson's house and that when he reached Mr. Rawson's house, Mr. Rawson was drunk. According to Defendant, Mr. Rawson answered the door naked and wearing a wig. Defendant later admitted that Mr. Rawson was dressed when he came to the door and that Mr. Rawson was naked only when he had gotten into the bathtub, after Defendant had hit him in the head with his flashlight. Defendant said that he had found the wig in a back bedroom and placed it on Mr. Rawson's head.

In this interview, the events were not described as they unfolded or in a linear fashion. Defendant stated that at some point early on during the visit, Mr. Rawson tried to stab him with a small paring knife, but that Defendant was able to get the knife away from him. Later, they began arguing and Defendant punched Mr. Rawson and kicked him in his head and face. Defendant further claimed that Mr. Rawson got off the floor, sat in a chair (or on the couch), and asked Defendant to put him out of his misery. While Mr. Rawson was sitting on the couch, Defendant took a knife off the coffee table and threw it at Mr. Rawson, hitting him in the leg. According to Defendant, there was too much blood and he knew that he

had hit a main artery. As Mr. Rawson sat on the couch, bleeding out, Defendant stayed at the house for "an hour or so."

At trial, Defendant testified that he had a rough childhood, that Mr. Rawson was abusive and beat him and his siblings, and that Mr. Rawson sexually abused him when he was eight years old. Defendant further alleged that on the day Mr. Rawson was killed, and as Defendant approached Mr. Rawson's house, Mr. Rawson was standing in the doorway wearing a wig, and was naked and masturbating. When Defendant went inside, Mr. Rawson got dressed.

Regarding how Mr. Rawson came to be stabbed, Defendant testified that Mr. Rawson was drunk when Defendant went to his house. Defendant sat down and talked to Mr. Rawson for about an hour. At some point, they started bickering, so Defendant got up, went outside to his van, and grabbed a flashlight. Defendant further testified that he then walked around the yard for at "least an hour" to cool down.

Defendant went back inside and noticed that Mr. Rawson had consumed more alcohol. The two began arguing again and Mr. Rawson reached between the couch cushions, produced a knife, and went toward the defendant. Defendant hit Mr. Rawson on the forehead with his flashlight, and then took the knife (and another knife found on the coffee table) away from Mr. Rawson. Defendant gave Mr. Rawson a towel for his bleeding head, went to his (Defendant's) bedroom, and retrieved methamphetamine. At this point, Defendant went back outside and consumed the methamphetamine. He remained outside for at least two hours.

Defendant went back inside and found Mr. Rawson in the bathtub, naked. When Defendant tried to bring Mr. Rawson to his bedroom, Mr. Rawson refused to lay down and stumbled into the kitchen towards the stove. When Mr. Rawson turned from the stove, he had a knife in his hand and moved toward the defendant. Defendant hit Mr. Rawson and he dropped the knife. Defendant then proceeded to

hit and kick Mr. Rawson to ensure that he was incapacitated. Mr. Rawson got up from the floor and sat on the couch in the living room. When Defendant went to pick up the knife that Mr. Rawson had dropped, he turned and saw Mr. Rawson, who was still sitting on the couch, raise his right arm all the way back. Defendant thought Mr. Rawson might have had another knife, so Defendant threw the knife he had in his hand at Mr. Rawson, striking Mr. Rawson in his left upper thigh. Defendant did not remove the knife from Mr. Rawson's leg.

Despite the different versions of what occurred that day, it is clear that Defendant remained at Mr. Rawson's house, despite the several arguments and physical encounters with Mr. Rawson. Defendant admitted that he went outside twice to calm down; once for an hour and once for two hours. Defendant could have left Mr. Rawson's house at any time, but instead chose to stay and continue to engage with Mr. Rawson. It is also clear from Defendant's three versions of the events that there was no single precipitating event that caused Defendant to lose control and stab Mr. Rawson; that is, there were no facts to suggest that the stabbing was committed in sudden passion or heat of blood, which was immediately caused by provocation and sufficient to deprive an average person of his self-control and cool reflection. Further, according to Defendant's two interviews, it appeared that at some point Defendant simply got tired of arguing with Mr. Rawson and stabbed him.

In Defendant's version at trial, there seems to have been no provocation at all at the time of the stabbing, other than, as suggested by Defendant, Mr. Rawson raising his arm above his head while sitting on the couch several feet away from the defendant. As noted previously, while no self-defense claim was raised, Defendant's testimony at trial suggested he threw the knife at Mr. Rawson as an act of self-defense.

Louisiana jurisprudence has been consistent in its treatment of the scenario where a victim/aggressor is disarmed. The appellate courts have found repeatedly that during such encounters, where the defendant disarms the victim/aggressor and then kills him or where the defendant uses the victim's/aggressor's own weapon against him to kill or injure him, the defendant becomes the aggressor and loses the right to claim self-defense. See **State v. Bates**, 95-1513 (La. App. 1 Cir. 11/8/96), 683 So.2d 1370, 1375-77; **State v. Pittman**, 93-0892 (La. App. 1 Cir. 4/8/94), 636 So.2d 299, 302-03; **State v. Smith**, 490 So.2d 365, 369-70 (La. App. 1st Cir. 1986), writ denied, 494 So.2d 324 (La. 1986); **State v. Patton**, 479 So.2d 625, 626-27 (La. App. 1st Cir. 1985). See also **State v. Mackens**, 35,350 (La. App. 2 Cir. 12/28/01), 803 So.2d 454, 460-61, writ denied, 2002-0413 (La. 1/24/03), 836 So.2d 37; **State v. Jenkins**, 98-1603 (La. App. 4 Cir. 12/29/99), 750 So.2d 366, 376-77, writ denied, 2000-0556 (La. 11/13/00), 773 So.2d 157; **State v. Stevenson**, 514 So.2d 651, 655 (La. App. 2nd Cir. 1987), writ denied, 519 So.2d 141 (La. 1988).

Moreover, the trial court may have determined Defendant did not reasonably believe he was in imminent danger of losing his life or receiving great bodily harm when he threw the knife at (or stabbed) Mr. Rawson and did not act reasonably under the circumstances. See **State v. Loston**, 2003-0977 (La. App. 1 Cir. 2/23/04), 874 So.2d 197, 205, writ denied, 2004-0792 (La. 9/24/04), 882 So.2d 1167.

In any event, Defendant did not establish the mitigating factors of sudden passion or heat of blood during the stabbing of Mr. Rawson. Just prior to the stabbing, it appears that Defendant beat up Mr. Rawson to the point where Mr. Rawson was lying on the kitchen floor. Defendant told Mr. Rawson to get up and go sit down, and Mr. Rawson complied. At this moment, under any of the three versions, Mr. Rawson had done nothing to physically provoke Defendant. Even if

Mr. Rawson had been ranting or hectoring Defendant at this point, Defendant's stabbing and killing Mr. Rawson would have constituted second degree murder. Mere words or gestures, no matter how insulting, will not reduce a homicide from murder to manslaughter. **State v. Mitchell**, 39,202 (La. App. 2 Cir. 12/15/04), 889 So.2d 1257, 1263, writ denied, 2005-0132 (La. 4/29/05), 901 So.2d 1063. See **State v. Charles**, 2000-1611 (La. App. 3 Cir. 5/9/01), 787 So.2d 516, 519, writ denied, 2001-1554 (La. 4/19/02), 813 So.2d 420 (an argument alone will not be sufficient provocation to reduce murder charge to manslaughter). See also **State v. Tran**, 98-2812 (La. App. 1 Cir. 11/5/99), 743 So.2d 1275, 1292, writ denied, 99-3380 (La. 5/26/00), 762 So.2d 1101; **State v. Hamilton**, 99-523 (La. App. 3 Cir. 11/3/99), 747 So.2d 164, 169; **State v. Thorne**, 93-859 (La. App. 5 Cir. 2/23/94), 633 So.2d 773, 777-78; **State v. Quinn**, 526 So.2d 322, 323-24 (La. App. 4th Cir. 1988), writ denied, 538 So.2d 586 (La. 1989).

When a case involves circumstantial evidence, and the factfinder 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 which raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984). It is clear from the guilty verdict that the trial court rejected the theory that Defendant was so angry when he stabbed Mr. Rawson that he was deprived of his self-control and cool reflection; or that Defendant threw the knife at Mr. Rawson out of fear of being stabbed himself. Questions of provocation and time for cooling are for the factfinder to determine under the standard of the average or ordinary person 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 (La. 7/10/06), 936 So.2d 108, 171, cert. denied, 549 U.S. 1221, 127 S.Ct. 1279, 167 L.Ed.2d 100 (2007).

The trial court heard the testimony and viewed the evidence presented at trial and found the defendant guilty as charged. See **Captville**, 448 So.2d at 680. In the absence of internal contradiction or irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. **State v. Higgins**, 2003-1980 (La. 4/1/05), 898 So.2d 1219, 1226, cert. denied, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005). Moreover, the trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. 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 factfinder's determination of guilt. **State v. Taylor**, 97-2261 (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 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1st Cir. 1985).

The guilty verdict indicates the reasonable determination by the trial court that, for whatever reason he had, Defendant stabbed Mr. Rawson with either the specific intent to kill him or to inflict great bodily harm, and in the absence of the mitigating factors of manslaughter. When Defendant left Mr. Rawson's house before stabbing him, there was no reason for him to go back inside. He could have left. Instead, over a several-hour period, he chose to repeatedly insert himself into a noxious environment. After stabbing Mr. Rawson, Defendant rendered no aid to Mr. Rawson, nor did he seek help from anyone. Further, he did not call 911 or the police. Instead, he grabbed some items from the house, put them in his van, and drove to Mississippi. Flight and attempt to avoid apprehension indicate

consciousness of guilt, and therefore, are circumstances from which a factfinder may infer guilt. See **State v. Fuller**, 418 So.2d 591, 593 (La. 1982). The trial court's guilty verdict of second degree murder was necessarily a rejection of any of the responsive verdicts, including manslaughter. See Code Crim. P. art. 814(A)(3); **State v. Leon**, 93-2511 (La. 6/3/94), 638 So.2d 220, 222 (per curiam).

After a thorough review of the record, we find that the evidence supports the guilty 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 Defendant was guilty of the second degree murder of Billie G. Rawson, Sr. See **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, Defendant argues that his mandatory life sentence was excessive.

The Eighth Amendment to the United States Constitution and Article I, § 20, of the Louisiana Constitution prohibit the imposition of cruel or excessive punishment. Although a sentence falls within statutory limits, it may still be considered excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. **State v. Andrews**, 94-0842 (La. App. 1 Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as

excessive in the absence of a manifest abuse of discretion. **State v. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of La. Code of Crim. P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. **State v. Brown**, 2002-2231 (La. App. 1 Cir. 5/9/03), 849 So.2d 566, 569.

The articulation of the factual basis for a sentence is the goal of La. Code Crim. P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. Code Crim. P. art. 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The trial court should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. See **State v. Jones**, 398 So.2d 1049, 1051-52 (La. 1981). 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).

For Defendant's second degree murder conviction, the trial court imposed the mandatory life sentence at hard labor. See La. R.S. 14:30.1(B). Defendant argues in brief that the trial court abused its discretion in denying his request to deviate downward from the mandatory life sentence. Defendant contends that his case is unusual because he was a victim of Mr. Rawson's abuse for his entire childhood. According to Defendant, when the trial judge sentenced him and stated that he had "sympathy" for him, this meant the trial judge must have believed his "circumstances were unusual in some sense."

In **State v. Dorthey**, 623 So.2d 1276, 1280-81 (La. 1993), the Louisiana Supreme Court opined that if a trial court were to find that the punishment mandated by La. R.S. 15:529.1 makes no "measurable contribution to acceptable goals of punishment" or that the sentence amounted to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime", it has the option, indeed the duty, to reduce such sentence to one that would not be constitutionally excessive. In **State v. Johnson**, 97-1906 (La. 3/4/98), 709 So.2d 672, 676-77, the Louisiana Supreme Court reexamined the issue of when **Dorthey** permits a downward departure from the mandatory minimum sentences in the Habitual Offender Law. While both **Dorthey** and **Johnson** involve the mandatory minimum sentences imposed under the Habitual Offender Law, the Louisiana Supreme Court has held that the sentencing review principles espoused in **Dorthey** are not restricted in application to the penalties provided by La. R.S. 15:529.1. See **State v. Fobbs**, 99-1024 (La. 9/24/99), 744 So.2d 1274 (per curiam); **State v. Collins**, 2009-1617 (La. App. 1 Cir. 2/12/10), 35 So.3d 1103, 1108, writ denied, 2010-0606 (La. 10/8/10), 46 So.3d 1265.

There is no need for the trial court to justify a sentence under La. Code Crim. P. art. 894.1 when it is legally required to impose that sentence. As such, the failure to articulate reasons as set forth in Article 894.1 when imposing a mandatory life sentence is not an error; articulating such reasons or factors would be an exercise in futility since the court has no discretion. **State v. Felder**, 2000-2887 (La. App. 1 Cir. 9/28/01), 809 So.2d 360, 371, writ denied, 2001-3027 (La. 10/25/02), 827 So.2d 1173. See **State v. Ditcharo**, 98-1374 (La. App. 5 Cir. 7/27/99); 739 So.2d 957, 972, writ denied, 99-2551 (La. 2/18/00), 754 So.2d 964; **State v. Jones**, 31,613 (La. App. 2 Cir. 4/1/99), 733 So.2d 127, 146, writ denied,

99-1185 (La. 10/1/99), 748 So.2d 434; **State v. Williams**, 445 So.2d 1264, 1269 (La. App. 3rd Cir. 1984), writ denied, 449 So.2d 1346 (La. 1984).

Mandatory sentences have been repeatedly upheld as constitutional and consistent with the federal and state constitutional provisions prohibiting cruel, unusual, or excessive punishment. See **State v. Jones**, 46,758-59 (La. App. 2 Cir. 12/14/11), 81 So.3d 236, 249, writ denied, 2012-0147 (La. 5/4/12), 88 So.3d 462. To rebut the presumption that the mandatory minimum sentence is constitutional, the defendant must clearly and convincingly show that he is exceptional, which means that because of unusual circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case. **Johnson**, 709 So.2d at 676.

There are no circumstances in this case that would justify a downward departure from the mandatory sentence under La. R.S. 14:30.1(B). The record before us clearly established an adequate factual basis for the sentence imposed. While we do not disagree that what occurred here was unusual, Defendant has not proven by clear and convincing evidence that he is exceptional such that a mandatory life sentence would not be meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case. See **Johnson**, 709 So.2d at 676. Accordingly, no downward departure from the presumptively constitutional mandatory life sentence is warranted. The sentence imposed is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive.

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.