NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

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2018 KA 0479

STATE OF LOUISIANA

VERSUS

JEREMY S. JONES

JUDGMENT RENDERED: NOV 02 2018

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Appealed from the 21st Judicial District Court
In and for the Parish of Tangipahoa • State of Louisiana
Docket Number 1600983 • Division F

The Honorable Elizabeth P. Wolfe, Judge Presiding

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

WELCH, J.

The State of Louisiana charged the defendant, Jeremy S. Jones, by bill of information on April 25, 2016, with attempted second degree murder, a violation of La. R.S. 14:30.1 and La. R.S. 14:27. The defendant pled not guilty. After a trial by jury, the defendant was unanimously found guilty as charged on October 5, 2017. The defendant filed for partial judgment of acquittal, which was denied after a hearing. The trial court imposed a term of 10 years imprisonment at hard labor without parole, probation, or suspension of sentence. The defendant now timely appeals, largely challenging the sufficiency of the evidence used to convict him. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On September 30, 2015, the defendant and his girlfriend, Nakeisha Stevenson ("Nakeisha"), along with their two infant children, went to the Ponchatoula home of her mother, Margie Glass ("Margie"), to do laundry.[1] When they arrived, no one was present, but they found furniture and household goods on the porch. They later learned there had been an argument between Margie and her 17-year-old son, ByQuan Glass ("ByQuan"), and his girlfriend, Chelsea Boudreaux ("Chelsea"). Margie had grown upset with ByQuan and Chelsea, and ordered them to move out of her house.

ByQuan and Chelsea soon arrived in a U-Haul truck with Margie's nephew (also Nakeisha and ByQuan's cousin) Lamont Stevenson ("Lamont/Victim"), as well as ByQuan and Chelsea's baby, who remained in the air-conditioned passenger compartment of the U-Haul. ByQuan and Chelsea initially mistakenly thought that the defendant and Nakeisha were responsible for the removal of their furniture, but the matter was clarified after a brief exchange of words. However,

[1] On appeal, defense counsel initially identifies Nakeisha Stevenson as the defendant's wife, but later refers to her as his girlfriend. The latter status is borne out by the testimony of other witnesses. Moreover, in the transcript her name is spelled "Nekeisha," but we choose the spelling used by defendant's brief on appeal.

during their preliminary interaction, Lamont told the defendant not to "budge in" on what Lamont considered a family matter.

Margie returned home, and the original dispute between her and ByQuan re-ignited. Responding to Margie pushing a dresser off the porch, Chelsea tossed new diapers at (or near) Margie. Nakeisha then physically confronted Chelsea in defense of Margie. ByQuan grabbed Chelsea, and Lamont grabbed Nakeisha in an attempt to separate them. The defendant ordered Lamont to release Nakeisha, leading to the physical confrontation at issue here.

During the altercation between Lamont and the defendant, Lamont threw the first punch, striking the defendant in the face under the left eye, which caused him to bleed. The defendant then ran inside the house and returned with a knife.[2] Seeing what he thought was a six-inch steak knife, ByQuan told Lamont to run, which Lamont attempted to do. Lamont slipped on some gravel and fell onto his back. The defendant then stabbed Lamont once in the chest, twice in the left leg, and once in the right knee.

As the fight between the women commenced, witness Chadwick Boudreaux ("Chadwick"), Chelsea's father, arrived after being called by ByQuan earlier in the day, and later by Chelsea during Margie's contentious return to the house. Chadwick described the scene he encountered upon his arrival as "chaos" with eleven or twelve people involved. Chadwick knew none of the parties involved other than ByQuan and his daughter.

After stabbing Lamont, the defendant placed his family in their car and drove away. Lamont told ByQuan and Chadwick that he wanted to get a gun with which to kill the defendant. Lamont had to be convinced to allow them to bring him to the hospital. However, testimony adduced at trial revealed that at no time

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[2] ByQuan testified that the defendant went back inside the house for approximately five to ten minutes after being struck in the face by Lamont. Chelsea testified the defendant went inside for "a quick second." Chadwick Boudreaux, Chelsea's father, testified it was "[t]hirty seconds. At – just thirty seconds. I mean, it was that fast." Lamont testified it was about thirty seconds.

prior to being stabbed was Lamont armed. Bleeding heavily in Chadwick's car, Lamont was ultimately transported to the hospital by Chadwick and ByQuan, where he remained for over a week.[3]

The chest puncture was the "most worrisome," according to trauma surgeon Dr. Marquinn Duke, who testified at trial. Dr. Duke treated Lamont on the day of the stabbing and explained that Lamont had a collapsed lung as a result of the attack. Dr. Duke described it as a "potentially lethal" wound requiring a partial rib resection to properly evaluate. Further, he concluded that Lamont had a high likelihood of death if he had not been treated in a hospital. Dr. Duke also described Lamont as "[v]ery lucky" as the wound stopped centimeters from his pericardium, which is immediately adjacent to the heart.

Deputy Alec Zebrick of the Tangipahoa Parish Sheriff's Office testified that he saw a vehicle driving slowly by the scene later that day, which matched the description of the vehicle seen fleeing the scene. After confirming the license plate, Deputy Zebrick pulled the defendant over. The defendant was then **Mirandized** and arrested.[4]

The defendant gave a recorded statement to police, in which he admitted to stabbing Lamont with Lamont's knife, and that he only did so after he saw a gun and was trapped under Lamont in the yard. This was generally consistent with his initial story told to police after being arrested, wherein the defendant stated he was being chased by an armed assailant who punched him first. In that version, the assailant tripped, fell, and dropped a knife. The defendant admitted to police that

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[3] In Chadwick's words, "I've never seen someone bleed so fast that their blood ain't even turning red. It was still purple coming out that man." Chadwick described the knife as an eleven-inch serrated butcher knife.

[4] Prior to any questioning, the person must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly, and intelligently. **Miranda v. Arizona**, 384 U.S. 436, 444-45, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966).

he picked up the knife and stabbed the assailant every time the assailant punched him.

Against counsel's advice, the defendant testified at trial. The defendant claimed Lamont was immediately aggressive with him, alleging that the defendant had put the furniture on the porch. Once the fight between Nakeisha and Chelsea began, the defendant stated he immediately tried to leave to protect his children. The defendant testified that "[a]ll of the sudden," Lamont was "on top of" him, trying to strike and kick him. It was then that the defendant stabbed Lamont, "just to get him off." The defendant stated he left the scene to tend to his cut, only returning in order to "press charges for some kind of justice." On cross-examination, the defendant conceded he was blinded by the punch and therefore inaccurate with his stabbings.

ASSIGNMENT OF ERROR 1: SUFFICIENCY OF THE EVIDENCE

SELF-DEFENSE

The defendant asserts that the State failed to present evidence beyond a reasonable doubt he did not act in self-defense when he repeatedly stabbed Lamont Stevenson, while Lamont laid on his back following a failed attempt to flee. The defendant claimed that he was only at Margie's house to do laundry, had no part in the argument between Margie and ByQuan, and only got involved when Nakeisha and Chelsea began to fight. The defendant notes that Lamont threw the first punch and that the chaos at the scene caused him to fear for his and his family's safety.

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, 573 (1979). See La. C.Cr.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.

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). 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. An appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Taylor**, 97-2261 (La. App. 1st 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 that 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).

A homicide is justifiable when committed in self-defense by one who 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. La. R.S. 14:20(A)(1). In a non-homicide case where justification is asserted, a dual inquiry is employed: an objective inquiry into whether the force was reasonable under the

circumstances; and, a subjective inquiry into whether defendant believed that force was apparently necessary. See La. R.S. 14:19; **State v. Freeman**, 427 So.2d 1161, 1163 (La. 1983) (citing **State v. Ford**, 368 So.2d 1074 (La. 1979)); **State v. Guinn**, 319 So.2d 407, 408 (La. 1975).

The Louisiana Supreme Court has recognized that statutory law does not address the burden of proof for defenses. **State v. Cheatwood**, 458 So.2d 907 (La. 1984). Though this court has yet to affirmatively rule on the issue, three of its sister appellate courts have ruled that when self-defense or the defense of another is claimed by a defendant in a non-homicide case, the defendant has the burden of proof by a preponderance of the evidence that his actions were in self-defense or in defense of others. See **State v. Barron**, 51,491 (La. App. 2nd Cir. 8/9/17), 243 So.3d 1178, 1186, writ denied, 2017-1529 (La. 6/1/18), 243 So.3d 1063; **State v. Bannister**, 2011-602 (La. App. 5th Cir. 2/14/12), 88 So.3d 628, 635, writ denied, 2012-0628 (La. 6/15/12), 90 So.3d 1060; **State v. McBride**, 2000-00422 (La. App. 3rd Cir. 11/15/00), 773 So.2d 849, 853, writ denied, 2001-0294 (La. 2/8/02), 807 So.2d 858. The Fourth Circuit remains uncommitted. **State v. Canales**, 2014-0663 (La. App. 4th Cir. 12/10/14), 156 So.3d 1183, 1191, writ denied, 2015-0048 (La. 11/6/15), 180 So.3d 306; **State in Interest of A.W.**, 2013-1198 (La. App. 4th Cir. 3/13/14), 137 So.3d 728, 730-31; contra **State v. Byrd**, 2012-0556 (La. App. 4th Cir. 6/5/13), 119 So.3d 801, 804, writ denied, 2013-1589 (La. 1/27/14), 130 So.3d 957. In the instant case, however, we need not decide who has the burden of proving (or disproving) self-defense, because under either standard, the evidence sufficiently established that the defendant did not act in self-defense. **Taylor**, 721 So.2d at 931.

The testimony adduced at trial revealed that the defendant voluntarily entered the fray between Nakeisha and Chelsea. After doing so, though he was punched in the face by Lamont, the defendant removed himself from the

confrontation for at least thirty seconds, if not five to ten minutes. During this time, the defendant entered the house, searched for and located a knife, returned outside, found Lamont, and proceeded to repeatedly stab Lamont after he unsuccessfully tried to run away. Lamont was no longer a threat to the defendant, and the defendant had to chase Lamont to continue the interaction after having left Nakeisha "unguarded" in the intervening period. The defendant presented no testimony there was any credible threat from Lamont to Nakeisha, the defendant's infant children, or anyone else. Other witnesses testified that Lamont had resumed helping to load the U-Haul and was unarmed the entire time he was at Margie's house. The defendant fails to show the jury acted irrationally when it found the testimony of Lamont, ByQuan, Chelsea, and Chadwick more credible than his own vague version of events, which was inconsistent with the other evidence presented at trial. In a light most favorable to the prosecution, the jury had sufficient evidence to believe Lamont was no longer a threat and that the defendant's use of force was not reasonable under the circumstances.

SPECIFIC INTENT

Next, the defendant argues that he was "reacting to the chaos and high emotion," and only stabbed Lamont in an attempt to make him leave the defendant and Nakeisha alone. The defendant asserts there was "no targeting of the blows to lethal areas," and "no plan to hurt Lamont."

Louisiana Revised Statutes 14:30.1(A)(1) defines second degree murder, in pertinent part, as "the killing of a human being: [w]hen the offender has a specific intent to kill or to inflict great bodily harm[.]" To sustain a conviction for attempted second degree murder, the State must prove that the defendant: (1) intended to kill the victim; and (2) committed an overt act tending toward the accomplishment of the victim's death. See La. R.S. 14:27; La. R.S. 14:30.1. To convict the defendant of attempted second degree murder, the State must prove

beyond a reasonable doubt that he had the specific intent to kill. See **State v. Franklin**, 95-1876 (La. 1/14/97), 686 So.2d 38, 42. 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). Specific criminal intent does not have to be proven as fact, but may be inferred from the circumstances and actions of defendant. **State v. Boyer**, 406 So.2d 143, 150 (La. 1981). Under all circumstances shown, an intent to kill might be reasonably inferred from the intentional use of a deadly weapon, such as a knife, to produce injuries involving serious risk of death. **State v. Butler**, 322 So.2d 189, 194 (La. 1975). Additionally, specific intent to kill may be inferred when the defendant stabs a victim, especially when those wounds are to the heart or chest. See **State v. Brunet**, 95-0340 (La. App. 1st Cir. 4/30/96), 674 So.2d 344, 348, writ denied, 96-1406 (La. 11/1/96), 681 So.2d 1258 (conviction sustained by evidence that the defendant argued with the victim before attacking her with six-inch long knife and stabbing her in the lower right side of back as she was bent over, causing a wound that protruded into the chest area and punctured a lung); **State v. Tauzier**, 569 So.2d 14, 17 (La. App. 4th Cir. 1990) (conviction supported by evidence that the defendant stabbed the victim in the heart after fighting with one of the victim's companions and threatening to kill two others); **State v. Dean**, 528 So.2d 679, 683 (La. App. 2nd Cir. 1988) (conviction upheld where the victim was stabbed in back with 3-4" long blade, and its removal resulted in loss of "quite a bit of blood."); **State v. Scoby**, 536 So.2d 615, 621 (La. App. 1st Cir. 1988), writ denied, 540 So.2d 339 (La. 1989) (evidence that the defendant stabbed the victim with a butcher knife while the victim was lying on the ground, pursued the victim as he attempted to flee, and that the victim suffered injuries requiring medical attention and a stay in the hospital was sufficient to support the attempted second degree murder verdict). Finally, flight and attempt to

avoid apprehension indicate consciousness of guilt, and therefore, are circumstances from which a juror may infer guilt. **State v. Fuller**, 418 So.2d 591, 593 (La. 1982); **State v. Verrett**, 2013-0632 (La. App. 1st Cir. 12/27/13) 2013 WL 6858335, at *3 (unpublished), writ denied, 2014-0168 (La. 6/20/14), 141 So.3d 808.

Testimony at trial revealed the defendant chased after Lamont, and first stabbed him in the chest, before stabbing him in the legs. Dr. Duke testified Lamont lost a large amount of blood. This observation was corroborated by testimony from the eyewitnesses who said they saw Lamont "gushing" blood. The photos entered into evidence show large blood stains in the vehicle. Dr. Duke further explained the chest wound was "centimeters away" from Lamont's heart, that the wound collapsed a lung, and that Lamont was lucky and that it was highly likely he would have died without medical intervention. The defendant admitted he fled the scene, and in his own words, returned only in order to "seek justice." It should be noted that Deputy Zebrick testified he observed the defendant drive by the scene slowly, where it appeared he observed the police and then drove away. Finally, in his testimony, the defendant claimed he was blinded and was unable to ensure accuracy with his knife blows, thus rendering his instant claim of "no targeting" unlikely.

ATTEMPTED MANSLAUGHTER

In his last sufficiency claim, the defendant alleges he was provoked by Lamont, that the chaos and high emotion were caused by Margie, and that the situation escalated without an opportunity for the defendant's blood to cool.

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. 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 by defendant, a verdict for second degree murder is inappropriate. See La. R.S. 14:31; **State v. Lombard**, 486 So.2d 106, 110-11 (La. 1986); **State v. Tompkins**, 403 So.2d 644, 648 (La. 1981); **State v. Lutcher**, 96-2378 (La. App. 1st Cir. 9/19/97), 700 So.2d 961, 974, writ denied, 97-2537 (La. 2/6/98), 709 So.2d 731 (a defendant who establishes by a preponderance of the evidence that he acted in "sudden passion" or "heat of blood" is entitled to a manslaughter verdict). 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. See Reporter's Comment--1950 to La. R.S. 14:31; **State v. Mayfield**, 186 La. 318, 322-23, 172 So. 171 (1937).

Jurisprudence demonstrates that rational jurors may find manslaughter mitigation absent under circumstances in which defendant leaves a heated argument and returns later armed with the intent to attack the victim. **State v. Allen**, 94-1941 (La. App. 1st Cir. 11/9/95), 664 So.2d 1264, 1273, writ denied, 95-2946 (La. 3/15/96), 669 So.2d 433 (evidence sufficient for second degree murder conviction where 10-15 minutes elapsed between the fight and the shooting, which was a sufficient cooling off period); **State v. Stewart**, 26,168 (La. App. 2nd Cir. 8/17/94), 641 So.2d 1086, 1090-91, writ denied, 94-2363 (La. 1/13/95), 648 So.2d 1337 (30-minute period between a second and a third fatal visit by the defendant to the victim's home provided "ample time" for the defendant's blood to cool); **State v. Clark**, 93-2090 (La. App. 4th Cir. 5/17/94), 637 So.2d 1140, 1142-43 (where the defendant left the scene to retrieve a weapon after an argument that had occurred between the defendant and the victim several minutes before shooting did not support finding of "sudden passion" or "heat of blood"); **State v. McCray**, 621 So.2d 94, 97-98 (La. App. 2nd Cir. 1993) (the time it took the defendant to stop

beating his ex-girlfriend and go to another room to get his gun was an "ample" period to allow his blood to cool); **State v. Ebarb**, 558 So.2d 765, 768 (La. App. 3rd Cir. 1990) (when "at least fifteen minutes" passed between the argument and the shooting, the evidence supported murder verdict); **State v. Willis**, 552 So.2d 39, 44-45 (La. App. 3rd Cir. 1989), writ denied, 560 So.2d 20 (La. 1990) (the evidence supported a murder verdict when "approximately thirty minutes elapsed between the confrontation ... and the ultimate shooting"); **State v. Navarre**, 498 So.2d 249, 253 (La. App. 1st Cir. 1986) (where the defendant left the scene to retrieve a weapon after an argument occurred between the defendant and the victim several minutes before the shooting, the evidence did not support a finding of "sudden passion" or "heat of blood").

The testimony produced at trial consistently indicated there was a delay of between thirty seconds and ten minutes where the defendant was removed from the situation, retrieved a knife from a house in which he did not live, and returned outside to stab the victim who, by that time, had resumed helping ByQuan move out of Margie's house. Moreover, the jury could rationally conclude that the single punch would not constitute sufficient provocation to deprive the average person of self-control and cool reflection, even had there been a state of "high emotion" as alleged by the defendant. See **State v. Reed**, 2011-0507 (La. App 5th Cir. 2/14/12), 88 So.3d 601, 606, writ denied, 2012-0644 (La. 9/14/12), 978 So.3d 1014 ("The State's evidence shows that defendant was not being attacked just prior to or at the time of the shootings, and that an average person's blood would have cooled between the time the fistfight ended and the time defendant shot the victims.").

As with the prior two sufficiency claims, in reviewing the evidence, the jury's determinations were not irrational under the facts and circumstances presented to them. See **State v. Ordodi**, 946 So.2d at 662.

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 the defendant was guilty of attempted second degree murder. 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 2: ERRONEOUS JURY INSTRUCTION

Though not raised at trial, the defendant on appeal raises an integrated claim the jury instructions were deficient. Specifically, the instruction at issue was:

> Thus, in order to convict the defendant of attempted second degree murder, you must find that the defendant had a specific intent to commit the crime of second degree murder and that the defendant did or omitted an act for the purposes of intending directly toward the commission of the crime of second degree murder.

Missing from the instruction is language requiring proof beyond a reasonable doubt of a specific intent to kill (rather than merely cause great bodily harm) in order for a guilty verdict for attempted second degree murder to be reached. The defendant argues that this permitted the jury to find the defendant guilty as charged with a lesser level of harm than is required.

While there was no contemporaneous objection at trial, issues regarding an instructional error should still be evaluated to ensure due process. **State v. Cavazos**, 610 So.2d 127, 128 (La. 1992) (*per curiam*) (substantial probability that jurors may have convicted the defendant under the incorrect definition of a crime justifies setting aside the conviction on due process grounds even in the absence of a contemporaneous objection). Instructional errors are nevertheless subject to harmless-error analysis. See **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993) (pertinent question is whether the jury based its verdict in this case on the instructional error); **Pope v. Illinois**, 481 U.S. 497,

501-04, 107 S.Ct. 1918, 1921-23, 95 L.Ed.2d 439 (1987) (an invalid instruction on the elements of the offense is harmless if the evidence is otherwise sufficient to support the jury's verdict, and the jury would have reached same result if it had never heard erroneous charge); **State v. Howard**, 98-0064 (La. 4/23/99), 751 So.2d 783, 805, cert. denied, 528 U.S. 974, 120 S.Ct. 420, 145 L.Ed.2d 328 (1999) (trial court's arguably erroneous recitation of penalties for underlying felonies to first degree murder did not constitute reversible error, given the evidence presented at trial supporting defendant's guilt); **State v. Hongo**, 96-2060 (La. 12/2/97), 706 So.2d 419, 421 (instruction on the elements of an offense is harmless if the evidence is otherwise sufficient to support the jury's verdict, and the jury would have reached the same result if it had never heard the erroneous instruction). As noted above, the jury was presented ample evidence to support the finding that the defendant had the specific intent to kill Lamont after leaving to arm himself and chasing and stabbing a defenseless victim in the chest, puncturing a lung, and causing severe blood loss. This assignment of error is without merit.

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

CONVICTION AND SENTENCE AFFIRMED.