NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2018 KA 1586

STATE OF LOUISIANA

VERSUS

MARGARET CAMAILLE STOCKSTILL

Judgment rendered JUL 03 2019

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On Appeal from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 589076 Div. "D"

The Honorable Peter J. Garcia, Judge Presiding

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BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

McDonald, J. concurs.

HOLDRIDGE, J.

The defendant, Margaret Camaille Stockstill, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. She pled not guilty. After a trial by jury, she was found guilty as charged. The trial court denied the defendant's motion for new trial and motion for post-verdict judgment of acquittal. She 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, the alleged violation of her right of confrontation, and to the admission of testimony on the victim's state of mind. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On April 14, 2017, after 10:00 p.m., officers of the St. Tammany Parish Sheriff's Office (STPSO) responded to the scene of a shooting at a residence located in Folsom. One of the residents, Kristin Copeland, witnessed the defendant, her longtime friend, shoot Cody Couch (Couch), Copeland's fiancé.[1] According to Copeland, the defendant arrived at her home that day while Couch was still at work. When Couch arrived home, they agreed to "hang out and play cards and drink a little bit," so the defendant allowed Couch to borrow her vehicle to go purchase playing cards and alcoholic beverages. After Couch returned with the items, Copeland became upset because Couch wanted to go to a bar with his friends instead of staying home with Copeland and the defendant. Despite Copeland's pleas for him to stay home, Couch left to go to the bar.

While Couch was gone, Copeland consumed alcohol, complained to the defendant about Couch's conduct, and repeatedly attempted to contact Couch. Copeland became even more irate, as she could hear music in the background

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[1] Couch was also the father of Copeland's infant, who was in the bedroom at the time of the shooting.

whenever Couch would answer her calls. Copeland went out to her storage shed, set some clothing on fire, and told him during one of their phone calls that she had set his belongings on fire.[2] Copeland also told Couch that he could not stay at the house that night, instructing him to stay at his mother's house. She packed a bag of Couch's belongings, placed it on the porch, and locked the front door.

Later, when Couch arrived home, he began banging on the front door, which was still locked. Copeland attempted to lock the back door, but when she got to the kitchen, Couch was already inside. Copeland told Couch to leave but he refused. Copeland pushed Couch towards the living room. He stumbled, as he too had been drinking that night. Eventually, they all ended up in the living room, as the altercation intensified and became physical.[3] The defendant ultimately retrieved her gun from her purse and fired at Couch, shooting him in the abdomen. Copeland dialed 911 and attempted to assist Couch, as the defendant went outside to talk to the 911 dispatcher.[4] Couch died from the single gunshot to the abdomen.

The day after the shooting, the police conducted interviews of Copeland and the defendant, and the defendant was re-interviewed days later. During her police interview, Copeland indicated that Couch refused to leave, and that the altercation

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[2] Copeland specifically testified that she set some of her deceased mother's clothing on fire and that in addition to telling Couch that it was his clothes that were burning, she attempted to send him a text message with a photograph of the burning clothes attached. However, STPSO Officer Steve Arroyo, an expert witness in digital media forensics, testified that cell phone extractions showed that while Copeland sent the photograph, Couch's phone did not receive the photograph.

[3] At some point before the defendant pulled the gun out, she set her cell phone in a recording mode and left it in her purse. The cell phone captured mainly audio and limited video footage as the altercation between the three individuals continued. During the cell phone recording, Copeland and the defendant can be heard yelling at Couch, as Copeland repeatedly tells him to leave, and Couch complains of his clothing being burned. The heated verbal exchanges lead to what sounds like a physical altercation occurring near the recording device, but the voices eventually fade, as the altercation continues. The individuals can be heard claiming that they were being hit, but also denying that they were hitting anyone. The defendant's image appeared just before the recording ends, and the defendant told Couch, "I got your ass. I got your ass."

[4] During the 911 call, the defendant, in part, stated that Couch left and went to the bar and came back drunk. The defendant further stated that Copeland told Couch to leave and locked the door, and that Couch busted through the door and started attacking Copeland. As the defendant further reported, Couch then jumped on the defendant and she shot him. The defendant then specified that she shot Couch in the lower right abdomen, adding that he grabbed the gun, and that he "wouldn't stop hittin' on her."

involved yelling and shoving, which led the defendant to pull her gun out of her purse. In Copeland's estimation, Couch was standing about one foot away from the defendant when the defendant fired the gun, striking Couch. Copeland denied that Couch ever threatened to kill anyone, punched or hit her, advanced towards the defendant, or reached for the gun before it was fired.[5]

After being advised of her **Miranda**[6] rights at the time of both interviews, the defendant maintained that she was protecting herself, Copeland, and the infant present at the time of the shooting. The defendant described a string of violent acts by Couch, contending that he slammed Copeland down on the coffee table, tried to set the sofa on fire while the defendant was sitting on it, repeatedly struck Copeland and the defendant, threatened to kill them several times, and had an object[7] in his hand when the defendant pulled the gun out. The defendant further claimed that Couch was five or six feet away from her when she pulled the gun out. According to the defendant, Couch repeatedly dared her to shoot him as he walked towards her, grabbed her throat, grabbed the barrel of the gun, and pressed the gun against his stomach just before she shot him.

At trial, Copeland again described the physical aspect of the altercation as pushing and shoving among the three individuals. She indicated that Couch did not verbally threaten her or the defendant or arm himself with a knife on the night

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[5] On the night of the shooting, Copeland called the Couch family and the recorded telephone conversation was played at trial. During the conversation, Copeland stated that she and Couch argued before he left that night. She stated that when Couch came back the argument continued and there was pushing and shoving among her, Couch, and the defendant, but that Couch never hit anyone or raised his hands to strike anyone before the defendant shot him.

[6] **Miranda v. Arizona**, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966).

[7] While the defendant stated that Couch grabbed a knife during a confrontation with Copeland in the kitchen, she claimed that as to the moments before she shot him, he had either a bottle or some other unknown object.

in question. She consistently denied that Couch ever hit her or the defendant, or advanced towards the defendant before the defendant shot him.

SUFFICIENCY OF THE EVIDENCE

In combined arguments on assignments of error numbers one, two, and three, the defendant challenges the sufficiency of the evidence. In assignment of error number one, the defendant argues that the State failed to prove that she did not act in self-defense or in defense of another. As the defendant concedes, "[her] perceptions regarding the intensity of the fight--both in terms of duration and in terms of force used--may have been more extreme than the pictures would bear out." However, she contends that photographs did support her description of the fight that took place in the infant's room. She further contends that she did not know Couch well, that she had no way of knowing what he was capable of doing, and that she feared that he would use deadly force upon her and Copeland. Claiming that Couch picked up a spackling knife at one point, the defendant contends that Copeland downplayed the fight and the volatile nature of her relationship with Couch. She contends that she was justified in using deadly force to protect herself and Copeland from further attack.

In assignment of error number two, the defendant alternatively argues that the evidence, at best, supported a verdict of manslaughter. She relies on the above account of the incident, her claim that Couch was in an enraged and drunken condition when she shot him, and her contention that Copeland's infant was endangered during the incident. The defendant argues that the killing was committed in sudden passion and heat of blood, involving provocation by Couch sufficient to deprive the average person of his or her cool thought and calm reflection. The defendant concludes, viewing the evidence in the light most favorable to the prosecution, the jury could not have reasonably found that the mitigatory factors were not established by a preponderance of the evidence.

The defendant also argues that Copeland was not in a position to describe the defendant's perception of the physical altercation or Couch's intentions, and that Copeland's account of the incident was illogical, internally inconsistent, and inconsistent with the physical findings and audio recording. In arguing that Copeland could not recall the night's events with any degree of accuracy, the defendant notes that Copeland admitted that she was consuming alcohol that night. Thus, the defendant contends (in assignment of error number three) that the trial court erred in denying her motion for postverdict judgment of acquittal.

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 also La. C.Cr.P. art. 821(B); **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660; **State v. Jackson**, 2018-0261 (La. App. 1 Cir. 11/2/18), 265 So.3d 928, 933, writ denied, 2018-1969 (La. 4/22/19), 268 So.3d 304. 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. See **State v. Dyson**, 2016-1571 (La. App. 1 Cir. 6/2/17), 222 So.3d 220, 228, writ denied, 2017-1399 (La. 6/15/18), 257 So.3d 685.

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. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another

hypothesis which raises a reasonable doubt. **State v. Dyson**, 222 So.3d at 228; **State v. Morris**, 2009-0422 (La. App. 1 Cir. 9/11/09), 22 So.3d 1002, 1011.

Second degree murder is 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). 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 factfinder. **State v. Coleman**, 2017-1045 (La. App. 1 Cir. 4/13/18), 249 So.3d 872, 877, writ denied, 2018-0830 (La. 2/8/19), 263 So.3d 1155. Specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. See **State v. Maten**, 2004-1718 (La. App. 1 Cir. 3/24/05), 899 So.2d 711, 716, writ denied, 2005-1570 (La. 1/27/06), 922 So.2d 544; **State v. Henderson**, 99-1945 (La. App. 1 Cir. 6/23/00), 762 So.2d 747, 751, writ denied, 2000-2223 (La. 6/15/01), 793 So.2d 1235. Further, unless there is internal contradiction or irreconcilable conflict with the physical evidence, the testimony of a single witness, if believed by the factfinder, is sufficient to support a factual conclusion. **State v. Marshall**, 2004-3139 (La. 11/29/06), 943 So.2d 362, 369, cert. denied, 552 U.S. 905, 128 S.Ct. 239, 169 L.Ed.2d 179 (2007).

When a defendant claims self-defense in a homicide case, the State has the burden of establishing beyond a reasonable doubt that the defendant did not act in self-defense. **State v. Reed**, 2014-1980 (La. 9/7/16), 200 So.3d 291, 309, cert. denied, ___ U.S. ___, 137 S.Ct. 787, 197 L.Ed.2d 258 (2017). 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. La. R.S. 14:20(1); **Reed**, 200 So.3d at 309. It is justifiable to use force or violence or to kill in the defense of another person when it is reasonably apparent that the person attacked could have justifiably used such means himself, and when it is reasonably believed that such intervention is necessary to protect the other person. La. R.S. 14:22.

However, La. R.S. 14:21 provides that a person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless the person withdraws from the conflict in good faith and in such a manner that the person's adversary knows or should know that the person desires to withdraw from and discontinue the conflict. For appellate purposes, viewing the evidence in the light most favorable to the prosecution, the standard of review of a claim of self-defense is whether a rational trier of fact could find beyond a reasonable doubt that the homicide was not committed in self-defense or the defense of others. See **State v. Trosclair**, 2009-2002 (La. App. 1 Cir. 4/1/10), 2010 WL 1253375 (unpublished), writ denied, 2010-0974 (La. 11/24/10), 50 So.3d 825; **State v. Lilly**, 552 So.2d 1036, 1039 (La. App. 1 Cir. 1989).

Louisiana Revised Statute 14:31(A)(1) defines manslaughter as a homicide which would be either first degree murder 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. "Sudden passion" and "heat of blood" are not elements of the offense of manslaughter; rather, they are mitigatory factors in the nature of a defense which exhibit a degree of culpability less than that present when the homicide is committed without them. The State does not bear the burden of proving the absence of these mitigatory factors. A defendant who establishes by a

preponderance of the evidence that he acted in a "sudden passion" or "heat of blood" is entitled to a manslaughter verdict. In reviewing the claim, the court must determine, viewing the evidence in the light most favorable to the prosecution, if a rational trier of fact could have found the mitigatory factors were not established by a preponderance of the evidence. **Morris**, 22 So.3d at 1009.

Copeland denied that her relationship with Couch was volatile, denied that Couch had ever hit her, and denied ever telling the defendant that Couch had hit her. On the night in question, before Couch left to purchase the cards and drinks, the defendant removed her firearm from her vehicle and put it in her purse. As to the altercation that occurred when Couch returned from the bar, Copeland testified, "Cody never raised a hand in a [sic] attacking way. If Cody -- it was a defensive way, because I was pushing him towards the door telling him to leave." Copeland testified, "Cody started yelling at Maggie, and I told him not to yell at her." She further testified, "And then she [the defendant] started putting down, I guess, on his manhood, because I was crying, and she was saying things like, you feel like a man now, you know." Copeland repeatedly denied that Couch ever hit her or the defendant on the night in question. However, toward the end of the altercation Copeland grabbed a taser (one of the two tasers that she kept in her home), "maybe to give him some incentive to just get his shit and go...." He "bear hugged" Copeland, warning her if she attempted to tase him, she would be tased as well. At that point, they both fell onto the living room floor, knocking glass items off of the coffee table. The baby started crying, and the defendant followed Couch and Copeland as they went to the bedroom to check on the infant.

According to Copeland, once they entered the bedroom, she was "shoved" from behind as she attempted to pick up the baby, and she and Couch fell. When Copeland fell, she hit the crib, causing it to break. Copeland denied that Couch pushed her, noting that after both she and Couch fell, she looked up and saw the

defendant leaning over a chest and hitting Couch. Couch got up and shoved the defendant off of him, and the defendant fell over a piece of furniture. As Couch walked back to the living room, the defendant followed him. Copeland followed them and continued to ask Couch to leave, telling him that she did not want to call the police and have him taken to jail. Copeland noted that the defendant was upset at this point because Couch had pushed her. Copeland then noticed that the defendant had a gun. She testified, "Cody was in front of the door. Maggie was between us. Cody said some smart ass thing, because that was Cody. [']What are you going to do, shoot me?['] She did." Copeland denied seeing Couch advance towards the defendant or grab the gun before the defendant pulled the trigger.

After a portion of the 911 call was played at trial, Copeland again denied that Couch ever hit or punched the defendant. Copeland could not recall how she got the scratches on her neck, which were depicted in the photographs taken by the police at the time of her statement, but denied that Couch ever choked, scratched, or cut her. She noted that throughout the night they had fallen several times, due to being drunk, shoving each other, and tripping over items. She explained that any older injuries on her body could have been incurred during yard work or similar chores. She denied that either she or the defendant had any reason to fear for their lives on the night in question. Copeland confirmed that Couch sometimes kept a "putty knife" around the house, noting that he needed it as a work tool. However, she denied that he armed himself with such a knife or cutting tool on the night in question.

Copeland's police statement was largely consistent with her trial testimony. When specifically asked if Couch ever put his hands on her, she stated that there was some shoving between the three of them. As to the moments leading to the shooting, Copeland stated:

> So now at this point everyone is tussled, we go into the living room and we're both telling Cody to leave. Cody is refusing to leave. Well Cody gets into Maggie's-- what I really remember to the point-- he gets into Maggie's face and says ["]this is my house, I'm not leaving.["] Maggie then reaches into her purse, where I knew she had her freaking gun. She pulls out the gun and she points it at him and Cody's like, ["]what are you [g]oing to do["]-- like being a smart ass, egging her on and she shot him.

The officers who reported to the scene, Sergeant Allison Champagne of the STPSO Crime Lab and STPSO Detective Timothy Crabtree, noted that there were no signs of forced entry to the home. In the living room, the items on the bookcase appeared to be undisturbed, there were no broken lamps, and there was no sign of a scuffle in the kitchen area. The police confirmed that the baby crib was damaged. The police did not locate or recover a knife. Detective Crabtree noted that the photographic evidence, including crime scene photographs and photographs of the defendant, was not consistent with the type of struggle that was described by the defendant in her statement.

Deputy Suzanne Melara of the STPSO Crime Lab responded to the St. Tammany Parish Hospital to take photographs of Couch. Along with the gunshot wounds, Couch had bruises on his body. Dr. Michael DeFatta of the St. Tammany Parish Coroner's Office testified that Couch suffered a gunshot wound to his left lower abdomen. There was soot around the entrance wound, indicative of a close range (twelve inches or less) gunshot wound. Dr. DeFatta opined that Couch's gunshot wound was not a contact wound based on the periphery of the soot, the lack of seared edges, and the condition of the shirt (which had a small entry area as opposed to being split apart) that Couch was wearing at the time of the shooting. Couch had several abrasions on his face, neck, and back and bruising on the back

of his hands and scrotum. The injuries to Couch's hands were consistent with or could have been caused from him punching a person or object.[8]

Deputy Melara and STPSO Detective Jared Lunsford also photographed the defendant at the Law Enforcement Center on the night of the incident, and noted that she did not have any significant visible injuries.[9] Doris Hoffpauir of the St. Tammany Parish Coroner's Office, an expert in forensic DNA analysis, testified that some of the DNA results from the revolver used in this case were inconclusive. However, Couch was excluded from specified profiles removed from the barrel of the gun. DNA profiles from scrapings under both the defendant's and Copeland's fingernails were consistent with Couch's DNA profile. While one sample from Couch's fingernail scrapings was inconclusive, the defendant and Copeland were excluded as donors from another sample. Detective Crabtree confirmed that the defendant, Couch, and Copeland did not have any gunshot residue on their hands.

Detective Crabtree conducted the interviews of the defendant. The defendant told him that she had lupus, but he noted that her ability to move around did not seem to be limited. The defendant claimed that prior to the shooting, Couch gained entry by kicking the back door. As to the physical nature of the altercation between Copeland and Couch, the defendant initially stated, "You know, I didn't see him punch, like a man punch, you know what I mean. But he was grabbing her hair and hitting her like that. And hitting her-- I guess slapping her and slinging her into shit." She then added, "I just know at one point I did see

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[8] Couch's blood alcohol level was .223 and he had marijuana in his system. The autopsy protocol report further indicated that Couch was 73 inches tall (6 feet 1 inch) and weighed 158 pounds.

[9] Deputy Melara noted a small injury to the knuckle next to defendant's pinky finger and Detective Lunsford noted discoloration on the left side of the defendant's neck. Dr. DeFatta reviewed the photographs and noted discolorations and small superficial abrasions on the defendant's arm, thigh, and knee.

him punch her in the face." She stated that Couch repeatedly told her and Copeland that he was going to kill them. She further claimed that Couch "slung" her and Copeland around the house and pushed her in the chest. According to the defendant, while in the kitchen Copeland picked up a taser, Couch grabbed a knife, and Copeland tased Couch. The defendant stated that when the altercation proceeded to the baby's bedroom, "it got really bad," further claiming that Couch threw Copeland on the crib. The defendant then grabbed Couch and, according to the defendant, Couch "back slapped or backhanded" the defendant at that point, and began punching her in the head and neck.

The defendant further described approximately four minutes of "solid fighting" that included Couch throwing her against the wall and slamming Copeland and her onto the floor before she ran to her purse to get her phone to call 911. When she was looking for her phone, she saw her gun and removed it from her purse, and placed it behind the television. The defendant claimed that after a few more minutes of scuffling, she grabbed the gun from behind the television and told Couch to stop, or she would shoot him. According to the defendant, Couch was about five feet away from her when she first pointed the gun at him. As she took steps backward, Couch continued to walk towards her. The defendant further stated, "And I don't even-- he had something in his hand, a bottle or something...." She subsequently stated that Couch indicated that he had a gun, stating "he said, I got one too, I got one in my pocket .... And he said he had one in his truck .... [B]ut he reached like back behind his pocket and I thought he was going to pull out a gun...." She repeatedly told Couch to stop, as he dared her to shoot him and grabbed her throat. She stated that she pushed Couch back, adding, "I said, ['']that's enough, stop.['] And then that's when it-- when it happened." She claimed that while she planned to shoot Couch in the leg, he pressed the barrel of the gun against his abdomen and she shot him.

Viewing the evidence in the light most favorable to the prosecution, even if it could be found that the defendant was not the aggressor, any rational trier of fact could find beyond a reasonable doubt that she did not act in self-defense or defense of others. The recording captured by the defendant's cell phone revealed that the defendant and Copeland were repeatedly telling Couch to leave and were apparently angered by Couch's refusal to abide by their commands. The recording further reflects that while Copeland repeatedly asked Couch not to yell at the defendant, Couch was not actually yelling, but instead had an overall calm tone. The defendant's claims that Couch threatened to get or pull out a gun, that he had an object, and that he approached her just before she pulled the trigger were inconsistent with Copeland's testimony. While the defendant claimed that Couch pressed the gun against his abdomen, the trial testimony showed that Couch's wound was not a contact wound, but was instead a close-range gunshot wound. Moreover, Couch's DNA was not found on the barrel of the gun. Thus, we conclude that the jury did not irrationally reject the defendant's claim of self-defense and defense of others.

Further, we find rational triers of fact might well have concluded that the defendant was not sufficiently provoked to deprive her of self-control and cool reflection. While a tussle may have taken place, Copeland's version of the incident, the photographs taken of the defendant, and the scene of the shooting did not support the defendant's account of a lengthy violent fight before the shooting. Also, the defendant's account of the altercation was increasingly exaggerated, as she added violent acts by Couch that were not initially stated. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the mitigatory factors were not established by a preponderance of the evidence.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. **Coleman**, 249 So.3d at 878. We cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **Ordodi**, 946 So.2d at 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the factfinder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the trier of fact. See **State v. Mire**, 2014-2295 (La. 1/27/16), 269 So.3d 698, 703 (per curiam); **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). After a thorough review of the record, viewing the evidence in the light most favorable to the prosecution, we are convinced that a rational trier of fact could find that the State proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of second degree murder. Thus, the trial court correctly denied the motion for post-verdict judgment of acquittal. Assignments of error numbers one, two, and three lack merit.

RIGHT OF CONFRONTATION

In assignment of error number four, the defendant argues that the trial court infringed upon her right to confrontation by restricting her right to present critical impeachment evidence. She first notes that the trial court would not allow the defense to question Copeland about an incident where Couch allegedly left her and their child on the side of a road. She argues that the proposed line of questioning should have been permitted in order to impeach Copeland's testimony that Couch would never harm her. Secondly, the defendant contends that the trial court erred in not allowing the defense to introduce evidence of prior instances of physical conflicts involving Couch. She argues that the evidence would have impeached Copeland, as she denied that she and Couch had a history of fights or that she at one point tried to give her in-laws custody of their child. Finally, the defendant

argues that the trial court erred in not permitting the jury to learn that the State refused charges in a case involving Copeland stabbing a man, with whom she was romantically involved, within months of the instant offense. The defendant claims that Copeland was the aggressor in the stabbing incident, had been drinking at the time, and has a history of domestic violence. The defendant contends that the evidence was relevant to show that Copeland was motivated to cooperate with the State in this case. The defendant argues that the trial court's violation of her right of confrontation was not harmless, as it allowed the State to discredit her claim that she reasonably feared that she and her friend were in grave danger.

A criminal defendant has the constitutional right to present a defense pursuant to United States Constitution Amendments VI and XIV and Louisiana Constitution Article 1, Section 16. Evidentiary rules may not supersede the fundamental right to present a defense. See U.S. Const. amend. VI; La. Const. art. I, § 16; **State v. Van Winkle**, 94-0947 (La. 6/30/95), 658 So.2d 198, 202. However, constitutional guarantees do not assure the defendant the right to the admissibility of any type of evidence; only that which is deemed trustworthy and has probative value can be admitted. See **State v. Governor**, 331 So.2d 443, 449 (La. 1976); **State v. Delmore**, 2016-1614 (La. App. 1 Cir. 6/2/17), 2017 WL 2399363 (unpublished), writ denied, 2017-1304 (La. 3/2/18), 269 So.3d 706.

Thus, while hearsay[10] should generally be excluded, if it is reliable and trustworthy and its exclusion would interfere with the defendant's constitutional right to present a defense, it should be admitted. See La. C.E. art. 802; **State v. Rubin**, 2015-1753 (La. 11/6/15), 183 So.3d 490, 491 (per curiam); **State v.**

[10] Hearsay is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted. La. C.E. art. 801(C).

Gremillion, 542 So.2d 1074, 1078 (La. 1989). Although relevant[11], evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403. Ultimately, questions of relevancy and admissibility of evidence are discretion calls for the trial court. Such determinations regarding relevancy and admissibility should not be overturned absent a clear abuse of discretion. See **State v. Morgan**, 2012-2060 (La. App. 1 Cir. 6/7/13), 119 So.3d 817, 829.

With regard to the scope of confrontation of witnesses, the trial court has the discretionary power to control the extent of the examination of witnesses as long as the court does not deprive the defendant of his right to effective cross-examination. **State v. Hawkins**, 96-0766 (La. 1/14/97), 688 So.2d 473, 479. A witness cannot be cross-examined as to a fact which is collateral or irrelevant to the issue at hand merely for the purpose of contradiction or impeachment. **State v. Jackson**, 2000-1573 (La. 12/07/01), 800 So.2d 854, 857.

Attacking Credibility

A party may attack the credibility of a witness by examining him concerning any matter having a reasonable tendency to disprove the truthfulness of his testimony. La. C.E. art. 607(C). Generally, only offenses for which the witness has been convicted are admissible upon the issue of his credibility, and no inquiry is permitted into matters for which there has only been an arrest, the issuance of an arrest warrant, an indictment, a prosecution, or an acquittal. La. C.E. art. 609.1(B). Thus, particular acts, vices, or courses of conduct of a witness may not be inquired into or proved by extrinsic evidence for the purpose of attacking his character for truthfulness, other than conviction of crime as provided in article 609.1 or as

[11] Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La. C.E. art. 401.

constitutionally required. See La. C.E. art. 608(B). However, extrinsic evidence to show a witness's bias, interest, corruption, or defect of capacity is admissible to attack the credibility of the witness. La. C.E. art. 607(D)(1). A witness's bias or interest may arise from arrests or pending criminal charges, or the prospect of prosecution, even when he has made no agreements with the State regarding his conduct. **State v. Vale**, 95-1230 (La. 1/26/96), 666 So.2d 1070, 1072 (per curiam).

In general, extrinsic evidence contradicting a witness's testimony is admissible when offered solely to attack the credibility of a witness. La. C.E. art. 607(D)(2). Such evidence is admissible after the proponent has first fairly directed the witness' attention to the statement, act, or matter alleged, and the witness has been given the opportunity to admit the fact and has failed distinctly to do so. La. C.E. art. 613. Once the foundation is sufficient for extrinsic evidence, the statement is subject to the balancing test of La. C.E. art. 607(D)(2), which requires the court to determine whether its probative value is "substantially outweighed by the risks of undue consumption of time, confusion of the issues, or unfair prejudice." **State v. Juniors**, 2003-2425 (La. 6/29/05), 915 So.2d 291, 330, cert. denied, 547 U.S. 1115, 126 S.Ct. 1940, 164 L.Ed.2d 669 (2006). The admissibility of evidence under La. C.E. art. 607 is subject to the balancing standard of La. C.E. art. 403. **Morgan**, 119 So.3d at 829.

As noted, the defendant first contends that the trial court abused its discretion in sustaining the State's objection on the grounds of relevancy after the defense attorney asked Copeland if Couch ever put her and her baby out of the car on the side of the road. However, the defense failed to proffer Copeland's response. Only matters contained in the record can be reviewed on appeal. **State v. Lavy**, 2013-1025 (La. App. 1 Cir. 3/11/14), 142 So.3d 1000, 1007), writ denied, 2014-0644 (La. 10/31/14), 152 So.3d 150. To preserve the right to appeal a trial court's ruling that excludes evidence, the defendant must make the substance of the

evidence known to the trial court. La. C.E. art. 103(A)(2). Because the defendant failed to make a proffer, she is barred procedurally from advancing this argument on appeal.

Moreover, even assuming that Copeland would have confirmed the occurrence of such an incident, the evidence would not make any issue in this case more or less probable than it would be without it. Thus, the evidence was not relevant. There is no indication that the proposed testimony regarding the incident would have had a reasonable tendency of disproving Copeland's account of the instant offense or the accuracy of her testimony. We also note that on cross-examination the defense attorney was allowed to ask Copeland if she and Couch had volatile arguments in the past that included pushing and screaming, and Copeland denied such a history. Thus, the jury was presented testimony by Copeland regarding the nature of her relationship with Couch. We find that the record supports the trial court's determination that the additional proposed testimony had little probative value. Accordingly, we find no abuse of discretion in this regard.

Character Evidence

Evidence of a person's character generally is not admissible to prove that the person acted in conformity with his or her character on a particular occasion. La. C.E. art. 404(A). However, there are specific exceptions to this general rule. **Id.** Relevant here is the exception with respect to evidence of the dangerous character of the victim of a crime. See La. C.E. art. 404(A)(2). Such evidence is admissible when the accused offers evidence of a hostile demonstration or an overt act on the part of the victim at the time of the offense charged. **Id.** Thus, in order to introduce any evidence regarding Couch's character, it had to first be shown that Couch made some hostile demonstration or committed an overt act against the accused at the time of the offense charged.

The term "overt act," as used in connection with prosecutions where the plea of self-defense is involved, means any act of the victim that manifests to the mind of a reasonable person a present intention on his part to kill or do great bodily harm. **State v. Loston**, 2003-0977 (La. App. 1 Cir. 2/23/04), 874 So.2d 197, 206, writ denied, 2004-0792 (La. 9/24/04), 882 So.2d 1167. To meet the "overt act" requirement of article 404, this court has held the defendant must introduce "appreciable evidence" in the record relevantly tending to establish the overt act. **State v. Miles**, 98-2396 (La. App. 1 Cir. 6/25/99), 739 So.2d 901, 906, writ denied, 99-2249 (La. 1/28/00), 753 So.2d 231; **State v. Brooks**, 98-1151 (La. App. 1 Cir. 4/15/99), 734 So.2d 1232, 1237, writ denied, 99-1462 (La. 11/12/99), 749 So.2d 651. Once the defense has introduced such appreciable evidence, the trial court cannot exercise its discretion to infringe on the fact-determining function of the jury by disbelieving this defense testimony and denying the accused a defense permitted him by law. **Miles**, 739 So.2d at 906.

Moreover, even where a proper foundation is laid, the admissibility of a victim's character trait depends on the purpose for which the evidence is offered. **Loston**, 874 So.2d at 206. Once evidence of an overt act on the part of the victim has been presented, evidence of threats and of the victim's dangerous character is admissible for two distinct purposes: (1) to show the defendant's reasonable apprehension of danger which would justify the conduct; and (2) to help determine who was the aggressor in the conflict. **Id.** Only evidence of general reputation and not specific acts is admissible in order to show who the aggressor was in the conflict. **Id.** Evidence of prior specific acts of the victim against a third party is inadmissible for this purpose. **Id.** When evidence of a victim's dangerous character is offered to explain defendant's reasonable apprehension of danger, evidence of specific acts may be introduced to show the accused's state of mind

only if it is shown that the accused knew of the victim's reputation at the time of the offense. **Loston**, 874 So.2d at 206-07.

Herein, the defendant additionally contends that the trial court impermissibly restricted the defense counsel's attempt to elicit testimony from Detective Crabtree about four specific incidents involving Couch. At the outset, we note that there is no indication that any of the incidents involved "physical conflicts" as the defendant asserts on appeal. Detective Crabtree's police report in part references four incidents involving Couch: (1) a documented 911 call by Couch's father, on December 7, 2016, reporting a verbal disagreement between Couch and Copeland in which Copeland stated that she no longer wanted their one-month-old baby; (2) an incident report by Copeland, on February 4, 2017, of a medical emergency as Couch, who had a history of drug abuse, was found unresponsive in his vehicle (it was noted that Couch recovered after being administered Narcan); (3) an incident report, on July 16, 2015, involving Couch contacting his ex-girlfriend in violation of a protective order issued due to unwanted visits by the defendant; and (4) a documented arrest of Couch, on February 13, 2014, for disturbing the peace by public intoxication and refusing to leave a Covington hotel. We note that the trial court actually ruled admissible the most recent incident, in February of 2017, involving Couch being discovered unresponsive in his vehicle. The trial court ruled that the remaining incidents were not admissible "in the form" presented.

Regarding the defendant's argument that such testimony would have impeached Copeland, we find that such testimony would not be admissible for that purpose. As stated herein, a distinct foundation must be laid before evidence contradicting a witness's testimony is admissible to impeach a witness's credibility. Specifically, a witness's attention must be fairly directed to the matter alleged and he must be given an opportunity to admit the fact and has failed distinctly to do so. See La. C.E. art. 613. Thus, as the defendant attempted to

present the testimony at issue while cross-examining Detective Crabtree, not Copeland, the proper foundation was not laid for the impeachment of Copeland.

Moreover, a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. La. C.E. art. 602. Detective Crabtree's report references other incident reports and documents. There is no indication that Detective Crabtree had any personal knowledge of the extraneous incidents. The defendant cites no authority for the proposition that it was error for the trial court to sustain an objection to Detective Crabtree testifying to the hearsay information contained in a police report referencing other documents that were not written by the detective, in connection with incidents in which he was not involved.

Regarding the defendant's argument that evidence of the four incidents was relevant to show that lethal force was reasonable in this case, as noted, there is no indication that the incidents consisted of physical conflicts. Thus, even assuming the proper foundation was laid, the incidents were not relevant to show that lethal force was warranted in this case. Moreover, even where a proper foundation is laid, only evidence of general reputation, and not specific acts, is admissible in order to show who the aggressor was in the conflict. See **Loston**, 874 So.2d at 206. Herein, there was no showing that the defendant had any knowledge of Couch's general reputation at the time of the offense. Therefore, the evidence at issue was not admissible to show that lethal force was reasonable in this case.

Finally, the defendant contends that the trial court did not allow the defense to present extrinsic evidence to show that Copeland was motivated to cooperate with the State in hopes of receiving favorable treatment regarding an extraneous incident. However, the record reflects that after the State cross-examined Copeland, the trial court ruled that the defendant was permitted to question Copeland about her arrest (without divulging the details of the arrest) after the

instant offense, and whether or not she was offered anything by the State in that regard. The defense attorney did not object to the trial court's ruling. Further, when the prosecutor noted that she would initiate the question in order to avoid the appearance of "hiding something[,]" the defense attorney stated, "That's fine with me." When the State questioned Copeland in this regard, she admitted to the arrest, but denied being offered anything for her cooperation in this case. The defense attorney did not request a re-cross examination or further question Copeland in this regard when she was recalled during the defense's case-in-chief. Thus, the defendant's argument on appeal that the trial court did not allow the jury to hear testimony about Copeland's prior arrest is meritless.[12]

Considering all of the above, the defendant has failed to show any abuse of discretion in trial court's evidentiary rulings made during the cross examinations of Copeland and Detective Crabtree. Accordingly, we find no violation of the defendant's constitutional right to present a defense in this case. Thus, assignment of error number four is without merit.

ADMISSION OF OPINION TESTIMONY BY A LAY WITNESS

In assignment of error number five, the defendant argues that the trial court abused its discretion in allowing State witness Brandon Tate, Couch's childhood friend, to testify regarding his interpretation of Couch's statements on the audio recording of the altercation. The defendant notes that Tate was not present during the incident and argues that he had no way of knowing what Couch was thinking or

[12] To the extent that the defendant challenges on appeal the trial court's limiting instruction, we note that the record indicates that defense counsel not only failed to object to the trial court's limiting instruction, but acquiesced by thanking the trial court when it ruled that the defense could question Copeland about her arrest without "getting into the details of the arrest." In order to preserve an issue for appellate review, a party must state an objection contemporaneously with the occurrence of the alleged error, as well as the grounds for the objection. La. C.Cr.P. art. 841(A). It is well established that a defendant is limited to the grounds for objection articulated at trial and a new basis for an objection may not be raised for the first time on appeal. See **State v. Holmes**, 2006-2988 (La. 12/2/08), 5 So.3d 42, 87-88, cert. denied, 558 U.S. 932, 130 S.Ct. 70, 175 L.Ed.2d 233 (2009).

how Couch typically treated women. The defendant argues that the testimony at issue did not meet the criteria of Louisiana Code of Evidence article 701, which governs the admission of opinion testimony of lay witnesses. Specifically, she argues that the testimony offered by Tate was not rationally based on his perceptions because there was no rational basis to believe that Tate would know exactly what Couch meant when he spoke. Further, the defendant argues that Tate's testimony was not helpful to the jury. In arguing that the testimony was irrelevant, the defendant contends that her reasonable belief based upon the information available to her was the issue at trial. The defendant concedes that the defense was able to impeach much of Tate's testimony by cross-examining him regarding a protective order against Couch secured by a prior girlfriend. She argues that the jury was nevertheless permitted to entertain improper testimony that was outside of the realm of Tate's knowledge. The defendant argues that the admission of the testimony by Tate, along with the trial court's denial of her opportunity to develop critical impeachment evidence, resulted in the denial of her right to present a defense.[13]

Louisiana Code of Evidence article 701 permits non-expert testimony in the form of opinions or inferences that are rationally based on the perception of the witness and helpful to a clear understanding of his testimony or the determination of a fact in issue. The general rule is that a lay witness is permitted to draw reasonable inferences from his or her personal observations. If the testimony constitutes a natural inference from what was observed, there is no prohibition against it as the opinion of a non-expert exists as long as the lay witness states the

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[13] We note that in its reply brief, the State, in part, argues that the defendant failed to preserve this issue for appeal as the objection to Tate's testimony was on the grounds of relevancy only. We note that in objecting, the defense attorney specifically stated, "I'm confused as to the relevancy of this, playing this tape to a witness who wasn't there that night. Just trying to figure out why we're doing this." As the defendant raised the issue of the witness's perception, noting

observed facts as well. **State v. Casey**, 99-0023 (La. 1/26/00), 775 So.2d 1022, 1033, cert. denied, 531 U.S. 840, 121 S.Ct. 104, 148 L.Ed.2d 62 (2000). A reviewing court must ask two pertinent questions to determine whether the trial court properly allowed lay opinion testimony: (1) was the testimony speculative opinion evidence or simply a recitation of or inferences from fact based upon the witness's observations; and (2) if erroneously admitted, was the testimony so prejudicial to the defense as to constitute reversible error. **Id.**

If the reviewing court determines that lay opinion testimony was improperly admitted, it must then proceed to the next question: whether that testimony was so prejudicial to the defense as to constitute reversible error. Erroneous admission of evidence requires reversal only where there is a reasonable possibility that the evidence might have contributed to the verdict. **Chapman v. California**, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967). Stated somewhat differently, the inquiry is whether the reviewing court may conclude that the error was harmless beyond a reasonable doubt, that is, whether the guilty verdict actually rendered was unattributable to the error. **State v. Casey**, 775 So.2d at 1033.

Herein, State witness Tate initially identified Couch's voice when the State began to replay the recording captured by the defendant's cell phone during the minutes leading to the shooting. Further, Tate agreed as to what was being stated when the prosecutor repeated certain statements by Couch, and provided his opinion as to whether Couch sounded calm or enraged during certain points of the recording. Thus, Tate was allowed to listen to the same recording that the jury heard and draw reasonable inferences from the recording itself and his knowledge of Couch's general tone and behavior. From our review of the record, we find that the trial court abused its discretion in admitting the lay opinion testimony by Tate regarding Couch's dialect and demeanor. However, we find that the error was

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that he was not present during the altercation, we find that the issue was adequately preserved.

harmless beyond a reasonable doubt, as the jury had the opportunity to hear Couch's voice and assess the evidence to draw its own conclusion. See La. C.Cr.P. art. 921; **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993); **State v. LeBlanc**, 2005-0885 (La. App. 1 Cir. 2/10/06), 928 So.2d 599, 604. Thus, assignment of error number five lacks merit.

CONCLUSION

For these reasons, the conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.

See La. C.E. art. 701.