NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2011-KA-1497**
VERSUS	*	**COURT OF APPEAL**
WILLIE BEASLEY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 485-040, SECTION "B"
Honorable Lynda Van Davis, Judge

* * * * * *

Charles R. Jones
Chief Judge

* * * * * *

(Court composed of Chief Judge Charles R. Jones, Judge James F. McKay, III, and Judge Joy Cossich Lobrano)

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AFFIRMED

SEP. 26, 2012

The Appellant, Willie Beasley, appeals his conviction and life sentence for the offense of second degree murder. Finding that the district court did not err, we affirm the judgment.

Beasley was charged by grand jury indictment with one count of second degree murder, in violation of La. R.S. 14:30.1. He entered a plea of not guilty, and motions were set. A motion to suppress the evidence, statement, and identification commenced in June 2009. After several continuances, Beasley's case was re-allotted twice, and in October 2010, the district court denied his suppression motions. In March 2011, at the conclusion of a three-day trial, a jury found Beasley guilty as charged, and he was sentenced by the court to life imprisonment without benefit of parole, probation, or suspension of sentence. The court also granted Beasley's motion for appeal, and this timely appeal followed.

Darrell Scott was shot and killed on the morning of February 16, 2009, while standing outside the door to his apartment building at 8302 Jeannette Street, in New Orleans. An autopsy revealed that Mr. Scott sustained two gunshot wounds, one to his left upper chest that passed through his heart and lodged in his spinal column, and the other to his groin and buttocks which passed through the nerves

and muscles in the back of his right leg. At trial, Dr. Cynthia Gardner, the forensic pathologist who performed Mr. Scott's autopsy, testified that the injuries to his heart resulted in massive blood loss, which would have affected his ability to breathe, while the second wound would have affected his ability to move. Dr. Gardner estimated that death occurred within minutes of the shooting. She also stated that due to the lack of gunpowder residue, Mr. Scott was shot from a distance of more than two feet. She testified that a drug screen tested negative, but Mr. Scott's blood alcohol level was .251, more than three times the legal limit. Dr. Gardner stated that the victim would have been impaired, but she could not guess at what state he would be functioning because she did not know his alcohol history. She also indicated, in response to defense questioning, that Mr. Scott had tattoos, including one that read "Mad Dog."

Ms. Erica Scott testified that she was Mr. Scott's sister, and he was forty-five years old and living on Jeannette Street at the time of his death. She testified that she spoke with him at approximately 10:45 a.m. on the morning of the murder, and he did not sound mad or upset. On cross-examination, Ms. Scott admitted that her brother drank, but she testified that he had stopped drinking after going through rehabilitation. She testified that she did not know why his blood alcohol level was so high at his death. She identified a photograph of Mr. Scott that was taken the same year that he died.

Detective Nathan McGeehee testified that at approximately 11:00 a.m., on the morning of the murder, he was notified of a shooting at 8303 Jeannette Street. He further testified that other officers were on the scene by the time he arrived, and the victim had been taken to the hospital, where he was pronounced dead. Det. McGeehee identified various photographs depicting the scene of the shooting. He

testified that he saw two shell casings and a hat that were laying at the front door where Mr. Scott had been shot. He testified that after speaking with people on the scene, he went to the shed of the house across the street from the shooting. He testified that inside the shed was a washroom, where he found a bag containing a gun.

Ms. Danette Atkinson was Mr. Scott's girlfriend. She admitted having prior convictions for theft from six years earlier, and possession of cocaine from sixteen years earlier. She testified that she met Mr. Scott while they were both at Odyssey House, and she moved in with him at his residence after she was released from the program, which she testified was approximately three weeks before his murder. She identified the defendant Willie Beasley, whom she knew as "Youngster" and who also lived in the neighborhood. She testified that she usually saw Beasley in the neighborhood every day, but she denied seeing Beasley arguing or communicating with Mr. Scott during Mr. Scott's stay in the neighborhood. She identified photographs taken from the upstairs apartment that she shared with Mr. Scott, one of which depicted a window that overlooked the street, and she testified that Mr. Scott spent a lot of time looking out the window.

Ms. Atkinson testified that she left the apartment early on the morning of the murder, but she returned around 10:30 a.m. She testified that Mr. Scott was talking on the phone and appeared to be in a good mood, which she attributed to the fact that he was soon going to the dentist to get his new teeth. She testified that Mr. Scott left the apartment around 11:00 a.m., while she stayed upstairs watching television. She testified that she almost immediately heard two gunshots, and she looked out the window and saw Beasley running into the alley of the house across the street, holding a gun in his hand. She insisted that she heard no arguing before

the gunshots, and when she went downstairs, she found Mr. Scott on the ground outside the door, and his keys were still in the door's keyhole. She testified that she grabbed Mr. Scott's cellphone out of his pocket and made the 911 call.[1] She testified that she took Mr. Scott's keys out of the door. She testified that Mr. Scott was having trouble breathing and could not talk. She further testified that she was hysterical when the police arrived, but she pointed out where she had seen Beasley go after the shooting. She testified that she later viewed a lineup at the Homicide Office from which she chose Beasley's photo.

On cross-examination, Ms. Atkinson admitted that she did not know if Mr. Scott and Beasley knew each other. She admitted that she had an open prostitution case in which she had been found incompetent to proceed, but she testified that she was really depressed on the day that she was found incompetent to proceed. She insisted, however, that she had regained her competency by the time of Beasley's trial. She denied having anything to drink on the morning of the shooting, nor did she see Mr. Scott drinking anything that morning, but she admitted that they had continued drinking after completing rehab. She denied that either of them used drugs. She testified that she had probably given a statement to the police, but she denied telling the detective that Mr. Scott and Beasley were arguing on the morning of the shooting. On redirect, Ms. Atkinson reiterated that she saw Beasley running away after the shooting.

After the jury viewed the scene, the State called Detective Dacinda Barnes, who investigated the shooting. She testified that the victim had been taken from the scene by the time she was directed there, but she observed a black baseball cap and two spent casings on the ground adjacent to the steps at 8302 Jeannette Street. Det.

[1] After authentication by the custodian, the State played the 911 tape of the murder.

Barnes testified that Ms. Atkinson had been taken to the Homicide Office. She further testified that Beasley had been detained at 8301 Jeannette Street, along with two females and another male. Det. Barnes advised Beasley of his rights and that he was under investigation for a homicide. She testified that Beasley indicated that he understood his rights, but he insisted that he had been asleep inside the residence at the time of the shooting and did not know anything about it. Det. Barnes testified that she also spoke with the women in the house, and that she obtained a search warrant for the house, but a search of the house itself revealed no evidence. She testified that the warrant was re-executed after she reviewed a video of statements that Beasley made to his mother while he was being detained in the back seat of a police unit. In this video, played for the jury and made an exhibit in this case, Beasley told his mother, among other things, that the only gun he had "around" the area was one that the police did not find and that was hidden in the shed or garage, all the way in the bottom of something that is unintelligible.[2] Det. Barnes testified that during the second search, officers went to a dryer inside the shed of the residence where Beasley had told his mother that he had hidden a gun, and they recovered the weapon. Det. Barnes testified that the gun matched casings taken from the scene and was found to be the murder weapon.

Det. Barnes testified that after finding the gun, she spoke with Beasley again. She testified that she re-advised him of his rights, explaining them from a waiver form that he signed after indicating that he understood his rights. She

[2] In the video, Beasley also mentioned that he told the police that he was asleep at the time of the shooting and that it "always" was his story. He explained to his mother that he did not do anything and that there were two or three other guys with dreadlocks in the neighborhood who looked like him. He stated that a gun was found in the yard that was not his. He also told his mother that the victim used crack cocaine, drank, and fussed with others in the neighborhood. He then stated that an officer was trying to read his lips.

testified that she then took a formal statement from Beasley, as well as one from his mother. The State then played Beasley's statement for the jury.

In his statement, which was taken on the evening of the shooting, Det. Barnes again advised Beasley of his rights, which he indicated he understood. He stated that he had been staying with his girlfriend's grandfather, who lived across the street from the victim. He stated that two days earlier, the victim asked him if he had any drugs, and when Beasley told him that he did not sell drugs, the victim "went off" on him. Beasley stated that he argued back with the victim and then walked away. Beasley indicated that he passed the victim's residence often on his way to a store, and the victim often stood outside his residence, calling him names and telling Beasley that he had a gun. Beasley stated that he felt threatened by the victim, who had pulled a gun on him two or three days prior to the shooting.

Beasley stated that on the morning of the shooting, the victim again yelled at him, insinuating that he was going to kill or harm Beasley. Beasley stated that it looked to him like the victim was going to try to attack him, and Beasley pulled his own gun and shot the victim twice. He stated that he then left the scene and went around the corner; he denied walking down the alleyway next to his residence. He first stated that he hid the gun in the yard, but then he stated that he hid it in the dryer in the shed. He admitted that he and the victim did not engage in a physical altercation before the shooting, but he nonetheless felt threatened because of the way that the victim was talking to him, and also because the victim had pulled the gun on him a few days prior to the shooting. He stated that the victim's actions made him worried for not only his safety, but also that of his girlfriend and his young daughter. He stated that it looked to him like the victim was going to try to get his gun from inside his residence.

Beasley stated that he often saw people drive up to the victim's house, and he figured that the victim was involved in drug sales. Beasley stated that the victim also tried to get him to sell drugs for him and also asked Beasley where he could get drugs. Beasley stated that the victim also yelled at everyone in the neighborhood, and the victim had fights with a few people. Beasley then agreed that his statement was not the product of any promises, coercion, or force.

On cross-examination, after the State played Beasley's statement for the jury, Det. Barnes testified that she did not remember Ms. Atkinson telling her that Mr. Scott and Beasley argued on the morning of the shooting. After being shown the affidavit for the search warrant for the residence where Beasley lived, which stated that a witness said that "they" looked outside and saw the shooter arguing with the victim, Det. Barnes responded that she did not prepare the affidavit. She also testified that she did not remember any other witness telling her about witnessing an argument between the two men. The defense attorney also presented Det. Barnes with her testimony from a pretrial suppression hearing, where she was asked if anywhere in the affidavit Ms. Atkinson indicated that there was an argument between the two men, and Det. Barnes responded at that time yes, but Ms. Atkinson said that she did not hear the nature of the argument.

Det. Barnes testified that Beasley told her that he walked around the corner to get to the back of the house where he was staying, not down the alleyway as Ms. Atkinson told her, and officers found the gun where he said he had hidden it. She testified that Beasley told her that he was afraid of the victim because the victim had recently pulled a gun on him, and it looked like the victim was going to try to get his gun.

On redirect and after being shown Ms. Atkinson's statement, Det. Barnes testified that Ms. Atkinson made no mention of hearing any argument before hearing the gunshots. She testified that no weapons were found on the victim or in the area where he was laying.

The parties stipulated that the gun seized from the shed fired the shots that killed the victim.

The defense re-called Ms. Atkinson, who testified that she was living at Odyssey House because of an alcohol addiction. She testified that she did not know why Mr. Scott was living at the Odyssey House. The defense then rested, and the State did not call any witnesses in rebuttal.

Our review of the record reveals no patent errors.

On appeal, Beasley raises two (2) assignments of error:

> 1. The district court erred in excluding evidence of the victim's prior attempted murder conviction.
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> 2. The State failed to present sufficient evidence to uphold the conviction.

By his second assignment of error, Beasley contends that the evidence adduced at trial did not support the jury's verdict. [3] Specifically, he argues that the evidence did not show that he had the specific intent to kill or inflict great bodily harm on the victim. He further asserts that the evidence did not show beyond a reasonable doubt that he did not shoot the victim in self-defense.

In reviewing a claim of insufficiency of evidence, courts must apply the standard set forth in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979): the court must determine whether the evidence, viewed in the light most favorable to

[3] When the sufficiency of evidence is raised on appeal, it should be considered before any other assignments of error. See State v. Hearold, 603 So. 2d 731, 734 (La. 1992).

the prosecution, "was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt." State v. Captville, 448 So. 2d 676, 678 (La. 1984). See also State v. Brown, 2003-0897 (La. 4/12/05), 907 So. 2d 1; State v. Batiste, 2006-0875 (La. App. 4 Cir. 12/20/06), 947 So. 2d 810; State v. Sykes, 2004-1199 (La. App. 4 Cir. 3/9/05), 900 So. 2d 156. In addition, when the State uses circumstantial evidence to prove the elements of the offense, "La. R.S. 15:438 requires that 'assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence.'" State v. Neal, 2000-0674, p. 9 (La. 6/29/01), 796 So. 2d 649, 657. See also Brown; Batiste; Sykes.

In the matter *sub judice*, Beasley was convicted of second degree murder, which is defined by La. R.S. 14:30.1 in pertinent part as: "the killing of a human being: (1) When the offender has a specific intent to kill or inflict great bodily harm". Beasley does not dispute that he shot the victim, but he maintains that he did so in self-defense.

This Court discussed self-defense in State v. McClain, 1995-2546, pp. 8-9 (La. App. 4 Cir. 12/11/96), 685 So. 2d 590, 594:

> A homicide is justifiable if committed by one in defense of himself when he reasonably believes that he is in imminent danger of being killed or receiving great bodily harm and that the homicide is necessary to save himself from that danger. La. R.S. 14:20(1). When a defendant claims self-defense, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. State v. Lynch, 436 So.2d 567 (La. 1983); State v. Brumfield, 93-2404 (La. App. 4th Cir. 6/15/94), 639 So.2d 312. Regarding self-defense, it is necessary to consider whether the defendant had a reasonable belief that he was in imminent danger of losing his life or receiving great bodily harm and whether the killing was necessary, under the circumstances, to save the defendant from that danger. State v. Dozier, 553

> So.2d 911 (La. App. 4th Cir.1989), writ denied 558 So.2d 568 (La. 1990). Although there is no unqualified duty to retreat, the possibility of escape is a factor in determining whether or not the defendant had a reasonable belief that deadly force was necessary to avoid the danger. Id.

See also State v. Ray, 2010-1126 (La. App. 4 Cir. 6/29/11), 70 So. 3d 998; State v. Sartain, 2008-0266 (La. App. 4 Cir. 12/30/08), 2 So. 3d 1132.

Here, the victim sustained two gunshot wounds, one through the upper chest and one through the groin. The forensic pathologist testified that the shots were fired from more than two feet away from the victim, due to the lack of stippling. Beasley acknowledges that he shot the victim, but he insists that the evidence is insufficient to support his conviction because the State did not prove that he had the intent to kill or inflict great bodily harm on the victim. However, the fact that he shot the victim in the chest and the abdomen shows the intent to at least cause the victim great bodily harm. See State v. Newman, 2003-1721 (La. App. 4 Cir. 7/7/04), 879 So. 2d 870. Yet Beasley argues that the State did not disprove that he shot the victim in self-defense. In support thereof, he points to his statement to the police, wherein he stated that he and the victim had argued a few days prior to the shooting, at which time the victim had pulled a gun on him. He had also said that the victim became enraged because Beasley would not sell drugs to or for him, that the victim yelled at everyone in the neighborhood, and that he feared for the safety of his girlfriend and his young daughter. He insisted that he and the victim argued just prior to the shooting, and he first stated that he shot the victim because the victim looked like he was going to pull his gun on him. Beasley later said in the same statement, however, that he shot the victim because he believed that the victim was going to get his gun from inside his house.

By contrast, Ms. Atkinson testified that the victim left the apartment, and almost immediately she heard the gunshots. She denied hearing any argument between the victim and anyone else prior to the shooting, and she testified that the victim's keys were still in the door when she went downstairs immediately after hearing the gunshots and seeing Beasley running away with the gun in his hand. Although the jury was aware that at least the affidavit for the search warrant for Beasley's residence mentioned that a witness heard an argument prior to the shooting, Ms. Atkinson steadfastly denied that she heard any argument.

Beasley asserts that Ms. Atkinson's testimony was not credible. He points to the fact that Ms. Atkinson had been found incompetent to proceed in an unrelated case at some point prior to trial in this case, and he argues that for this reason her testimony was untrustworthy. However, Ms. Atkinson explained that at the time she was found incompetent, she was very depressed. She insisted that she had regained her competency by the time of Beasley's trial and fully understood the judicial proceedings at that time. While Beasley argues that depression would not constitute incompetency to testify, there is no indication that he tried to bar her testimony on the ground that she was incompetent to testify at his trial.

Beasley also points to Ms. Atkinson's testimony that she did not see the victim drinking on the morning of the shooting, and that the victim was in a good mood because he was going to the dentist to get new teeth. He posits that it was implausible that the victim would have a blood alcohol level of 0.251 if he was intending to go to the dentist. He also references Ms. Atkinson's testimony that he sold crack cocaine in the neighborhood, and he points out that her testimony on this point is suspect because she admitted that she had a cocaine addiction.

Despite these factors, the jury found Ms. Atkinson's testimony credible, including her assertion that the shooting occurred within a minute of the victim's departure from the apartment and that she did not hear any argument between the victim and anyone else between the time the victim left the apartment and when he was shot. A fact finder's credibility determination is entitled to great weight and should not be disturbed unless it is contrary to the evidence. State v. Johnson, 2009-0259, p. 7 (La. App. 4 Cir. 9/16/09), 22 So. 3d 205, 210[4]; State v. Huckabay, 2000-1082 (La. App. 4 Cir. 2/6/02), 809 So. 2d 1093. The latter situation is not present here. The jurors were aware of prior cocaine abuse by Ms. Atkinson and her incompetency finding, but they found her testimony concerning the shooting more credible than the version of the shooting that was presented through the statement to the police by Beasley. Such a finding was not contrary to the evidence presented. Counter to the argument presented by Beasley, the evidence presented by the State, through the testimony of Ms. Atkinson, disproved Beasley's defense that he shot the victim in self-defense. Thus, the jury could find beyond a reasonable doubt that Beasley was guilty of second degree murder. This assignment of error has no merit.

By his remaining assignment of error, Beasley contends that the district court erred by not allowing him to present evidence of the victim's prior conviction for attempted murder. He asserts that the district court should have allowed him to introduce the certified copy of the victim's prior conviction and ten-year sentence for attempted murder in order to show the violent character of the victim, and to support his contention that he shot the victim in self-defense. He points out that the victim had an extensive criminal background, while he had none, and evidence of

[4] Writ den. 2009-2263 (La. 4/16/10), 31 So. 3d 1054.

the victim's prior conviction for attempted murder was relevant to show that the victim was violent. He asserts that this information was essential to his claim of self-defense to show his state of mind when he shot the victim.

The trial transcript indicates that on the first day of trial, defense counsel sought a continuance because he had just learned that the victim had recently been released from Angola prison. Counsel noted that he was unaware of how many convictions the victim had because the State had not produced his rap sheet. When the prosecutor stated that it was the State's policy not to turn over a witness' rap sheet until he testified, the court pointed out that the victim, who was dead, would not be testifying, and it ordered the State to produce the victim's rap sheet. Defense counsel renewed his motion for a continuance, noting that he might still need extra time depending upon what was in the rap sheet. The court denied the motion, noting that if counsel was trying to show the victim's reputation for violence, he could have already discovered this by interviewing people in the neighborhood. The court also noted that this was the first time that it had heard that the State had not provided the victim's rap sheet. Counsel then re-urged his motion for a continuance, asserting that he wanted to go to Angola to get a certified penitentiary pack, which indicated that the victim had just been released from Angola for an attempted murder. Counsel noted that he wanted to investigate this issue, possibly calling defense witnesses. The court offered to issue any instanter subpoenas, but counsel noted he did not know who these witnesses would be. The court denied the motion.

On the second day of trial, during the cross-examination of the victim's sister, Ms. Scott, defense counsel sought to introduce exhibit D-1, a Bureau of Identification photograph of the victim. During a bench conference that followed

the State's objection to this exhibit, the court noted that the jury was already aware that the victim had just been released from jail at the time of the shooting. The court allowed the defense to show the photograph, but it ruled that the portion of the exhibit that included the victim's rap sheet information would need to be covered unless the defense called the custodian of the record to authenticate it.

Later on the same day, during his cross-examination of Det. Barnes, counsel asked her if she had run the victim's rap sheet. At a conference in chambers following the State's objection, the court acknowledged that counsel was attempting to show the victim's dangerous character, but it noted that the officer would not know of the victim's reputation in the community. Defense counsel noted that Beasley's statement made allegations of the victim's propensity for violence and that Beasley was afraid of him. The court replied that counsel needed to call Beasley or others in the community who would know of the victim's reputation. Counsel noted that he did not intend to call Beasley, and the court ruled that he could not question Det. Barnes, who had no knowledge about the victim's prior criminal record or about the content of his rap sheet.

Finally, on the third day of trial, at a bench conference, defense counsel noted his objection to the court's refusal to allow him to introduce evidence of the victim's prior conviction, and he proffered a certified copy of the victim's conviction for attempted second degree murder, and his rap sheet showing arrests for battery and purse snatching.

The Louisiana Supreme Court discussed a defendant's right to present a defense in State v. Van Winkle, 1994-0947, pp. 5-6 (La. 6/30/95), 658 So. 2d 198, 201-202:

> A criminal defendant has the constitutional right to present a defense. Due process affords the defendant the right of full confrontation and cross examination of the State's witnesses. It is difficult to imagine rights more inextricably linked to our concept of a fair trial.
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> * * *
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> Evidentiary rules may not supersede the fundamental right to present a defense. (Citations omitted).

See also Sartain, 2008-0266 (La. App. 4 Cir. 12/30/08), 2 So. 3d 1132; State v. Stukes, 2005-0892 (La. App. 4 Cir. 10/25/06), 944 So. 2d 679.

In Stukes, this Court found that the district court did not err by disallowing the defendant to call his wife to the stand to testify as to what the defendant told her when he arrived home after leaving a bar where he shot two men. The defendant acknowledged shooting the men, but he insisted that he only did so because one of the men pulled a gun on him. According to one of the victims, his female companion, and a disinterested witness, after arguing with one of the victims, the defendant went to a nearby car and retrieved the gun that he used in the shooting. In contradiction to the State's witnesses who testified that the victims were unarmed, one defense witness testified that she heard the defendant say prior to the shooting: "If you're going to shoot me, shoot me," and that she saw the man with whom the defendant was arguing reach under his shirt for a silver object. After conviction, the defendant filed a motion for new trial, alleging that the court's failure to allow the defendant's wife's testimony denied him a right to present his defense by showing his reasons for disposing of the gun and his clothing after the shooting. The district court granted the new trial, but our Court reversed, noting that the defendant's wife's testimony would have been merely cumulative to his testimony. In support of this finding, this court discussed earlier cases:

In State v. Cosey, 1997-2020 (La. 11/28/00), 779 So.2d 675, the defendant was charged with the rape and murder of a twelve-year-old girl. A man who lived across the street from the scene of the crime implicated the defendant. The trial court refused to allow the defendant to introduce evidence of the man's history of violent criminal behavior and the fact that the man killed himself after murdering his baby and the baby's mother in order to show that man could have committed the crime. The Court upheld the trial court's ruling, noting that the man's prior crimes were not similar to the present one and that the defendant was able to show that the man made obscene phone calls to the victim's mother. In addition, the defendant was able to question police officers about their failure to investigate the man, even though he lied to the police, gave them false leads, and was seen with the defendant on the night of the murder, although there was no evidence to tie him to the crime scene.

* * *

In State v. Short, 1994-0233 (La. App. 4 Cir. 5/16/95), 655 So.2d 790, the defendant was charged with the aggravated rape of his stepdaughter. He wanted to present evidence to show: (1) that his wife was having an affair and was spending his paychecks while he was offshore; (2) that the victim liked the new boyfriend better than she liked him; and (3) that several other men, including the new boyfriend, had access to the victim. The defense was not allowed to delve into these matters, and the defendant was convicted. On appeal, this court rejected his claim that he was denied the right to present a defense. The court noted the defendant was allowed to question the victim concerning her bias against him, including her wish that the defendant and her mother were not married and her wish to live elsewhere. In addition, the defendant was allowed to testify that the victim had made a similar accusation against her mother's former husband, and he was allowed to establish the existence of her mother's boyfriend at the time of the alleged rape.

In State v. Judge, 1999-1109 (La. App. 3 Cir. 3/1/00), 758 So. 2d 313, the defendant was accused of sexual battery. The trial court refused to allow the defense to present evidence that the victim had told a police officer that she had been raped a few years earlier, but she had not reported the crime. The defendant

> proffered the victim's testimony, wherein she testified an ex-boyfriend had raped her a few years earlier, but she did not tell anyone until much later that it had happened. On appeal, the defendant contended the trial court erred by not allowing this evidence to be presented to the jury. The appellate court found no error.[5]

State v. Stukes, 2005-0892 at pp. 16-20, 944 So. 2d at 689-690.

Here, Beasley sought to introduce evidence of the victim's prior conviction for attempted murder and his rap sheet pursuant to La. C.E. art. 404A, which provides in pertinent part:

> **A. Character evidence generally.** Evidence of a person's character or a trait of his character, such as a moral quality, is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:
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> * * *
>
> (**2) Character of victim.** (a) Except as provided in Article 412 [not applicable here], evidence of a pertinent trait of character, such as a moral quality, of the victim of the crime offered by an accused, or by the prosecution to rebut the character evidence; provided that in the absence of evidence of a hostile demonstration or an overt act on the part of the victim at the time of the offense charged, evidence of his dangerous character is not admissible . . .[6]

This Court discussed the use of character evidence with respect to the victim of a crime in State v. Williams, 1996-1587, pp. 7-8 (La. App. 4 Cir. 4/16/97), 693 So. 2d 249, 253-254:

> When a defendant pleads self-defense, evidence of the victim's dangerous character or of threats against the defendant is relevant to show the victim was the aggressor and that the defendant's fear of danger was

[5] See also State v. Washington, 1999-1111 (La. App. 4 Cir. 3/21/01), 788 So. 2d 477, where this court found that the trial court did not err in granting a motion in limine prohibiting the defense from questioning the arresting officer about allegations made in a newspaper article concerning misconduct by the officer for which he had not been charged.

[6] The remainder of 404(A)(2), dealing with prior acts against a defendant in a domestic setting, is not applicable to the facts of this case.

> reasonable. State v. Edwards, 420 So. 2d 663, 669 (La.1982); State v. Montz, 1992-2073 (La. App. 4th Cir. 2/11/94), 632 So.2d 822, 824-825, writ denied, 1994-0605 (La. 6/3/94), 637 So.2d 499.
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> For such evidence to be admissible, the defendant must first produce evidence that at the time of the incident the victim made a hostile demonstration or committed an overt act against him of such character that would have created in the mind of a reasonable person the fear that he was in the immediate danger of losing his life or suffering great bodily harm. State v. Gantt, 616 So.2d 1300, 1304 (La. App. 2nd Cir.1993), writ denied, 623 So.2d 1302 (La. 1993). An overt act is any act which manifests to the mind of a reasonable person a present intention to kill or inflict great bodily harm. *Edwards*, *supra* at 669.
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> Once evidence of an overt act is established, evidence of the victim's threats to the defendant and of the victim's dangerous character are admissible: (1) to show the defendant's reasonable apprehension of danger justifying his conduct and (2) to help determine who was the aggressor. Edwards, supra at 670.
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> If the purpose is to show the defendant's reasonable apprehension of danger, it must be shown that the defendant knew of the victim's prior threats or reputation. Edwards, supra, at 670; State v. Eishtadt, 531 So.2d 1133, 1135 (La. App. 4 Cir.1988). Once this knowledge is established, evidence of the victim's character, both general reputation and specific threats or acts of violence against the defendant are admissible. Edwards, supra, at 670.
>
> If the purpose is to show that the victim was the aggressor, there is no requirement that the defendant know of the victim's prior acts or reputation. Eishtadt, supra at 1135.

See also State v. Williams, 1999-1581 (La. App. 4 Cir. 6/14/00), 766 So. 2d 579. And see Sartain, where this Court found that the district court did not err by refusing to allow the defendant to introduce evidence that the victim shot him two years before the murder because the only evidence of this shooting was the

defendant's own self-serving testimony, and because other testimony brought out this fact for the jury.

Here, the only ruling of the district court to which Beasley now assigns error was the refusal of the court to allow the introduction of the victim's prior attempted murder conviction and his rap sheet. Beasley's statement, which was played for the jury, set forth evidence of prior threats to him by the victim, evidence of which was admissible. Nonetheless, the fact of Mr. Scott's prior attempted murder conviction and his prior arrests were not admissible under art. 404A, because there was no showing that Beasley knew of the prior conviction and arrests. As per the cases cited above, this evidence would only be admissible to show a basis for Beasley's fear of the victim, and if he did not know of the prior conviction or arrests of the victim, they could not be grounds for his fear. The defense presented no evidence that Beasley knew of the prior attempted murder conviction of the victim, as well as his arrests for battery and purse snatching at the time that he shot him. He made no mention of these convictions in his statement to the police, although he did mention his prior arguments with the victim and that the victim pulled a gun on him a few days before the shooting. Indeed, defense counsel admitted on the first day of trial that he had not received a rap sheet on the victim, and when he did receive it, he requested a continuance in order to investigate its contents. Without any showing that Beasley was aware of the victim's prior conviction and his arrests, evidence of these convictions was not admissible pursuant to art. 404A and its jurisprudence. Thus, the district court did not err by refusing to allow Beasley to introduce this evidence. This assignment of error has no merit.

DECREE

For the foregoing reasons, we affirm the conviction and sentence of Willie Beasley.

AFFIRMED