NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 KA 1609

STATE OF LOUISIANA

VERSUS

FREDDY WELCH

Judgment rendered February 12, 2010.

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Appealed from the
32nd Judicial District Court
in and for the Parish of Terrebonne, Louisiana
Trial Court No. 494,006
Honorable Timothy C. Ellender, Judge

* * * * * *

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FREDDY WELCH

* * * * * *

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

PETTIGREW, J.

The defendant, Freddy Welch, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. He pled not guilty and, following a jury trial, was found guilty as charged. He filed a postverdict judgment of acquittal, which was denied. He was sentenced to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The defendant now appeals, designating one assignment of error. For the reasons that follow, we affirm the conviction and sentence.

FACTS

On June 9, 2006, at about 6:00 a.m., two unidentified men entered the home of Kenneth Garner, Jr., and his girlfriend, Teamaya Lewis, on Prince Collins Street in Houma, Louisiana. The two men walked into the bedroom where Garner, Lewis, and two of her young children were all sleeping in the same bed. According to Lewis, who testified at trial, she woke up to someone standing next to Garner yelling at him and wanting to know where the "work" (slang for drugs) was. Garner told the assailant to "chill out" and that he did not have "work" in the house. There was also another person standing next to Lewis on her side of the bed. Both men were armed with a gun and had their faces covered with black shirts. The person standing next to Garner had dreadlocks. Lewis was unable to tell if the person next to her had dreadlocks because his head was covered up. The person standing next to her was tall and skinny. The person standing next to Garner was "kind of big." Lewis testified the defendant had the same body type and the same dreadlocks as the person standing next to Garner. The man standing next to Lewis did not speak. Lewis did not recognize the voice of the person talking to Garner.[1]

The man standing next to Lewis placed a pillow over her head. Lewis tried to

[1] Shortly after testifying during her direct examination that she did not recognize the voice of the person talking to Garner, Lewis was asked, "Now, you did not recognize the voice of the person who shot Kenny-Boo [Garner]; am I correct?" Lewis responded, "Yes, sir, I did." There was no follow-up to this line of questioning so it is not clear whether Lewis misspoke or did recognize the voice.

reach the phone, but the man next to her grabbed it. The man on Garner's side then struck Garner with his gun and shot Garner. The two men ran out of the bedroom. Lewis jumped from the bed and ran toward the front door. As the two men were opening the front door, the man who shot Garner turned and fired another shot. The men fled and Lewis, who was not shot, ran to the utility room and lay on the floor. Garner died from his gunshot wound.

An investigation by the Houma Police Department produced three suspects involved in the murder of Garner, namely, Rodney Castle, Corey Stovall, also known as "Co-Black," and the defendant. According to Lewis, Stovall used to live with her and Garner. Stovall was told to leave after getting in an altercation in the neighborhood. At that point, Stovall did not have permission to enter their home. Lewis described Stovall as tall and skinny with long dreadlocks. Alice Wright, the defendant's mother, testified at trial that Stovall was tall and slender. The three suspects fled Louisiana shortly after Garner was killed. Stovall went to Houston, Texas. Stovall was killed in August 2006, about a year and one-half half prior to the defendant's trial. The defendant, whose family was in Houston after being displaced by Hurricane Katrina, went to Houston. Shortly thereafter, the defendant went to Phoenix, Arizona. Three days after the shooting, Castle spoke to the police and picked out Stovall in a photographic lineup. Castle was not arrested. He went to Detroit, Michigan. Castle returned to Houma and turned himself in. Detective Travis Theriot, with the Houma Police Department, questioned Castle, who implicated the defendant in the defendant's involvement with the murder of Garner. Castle also picked out the defendant in a photographic lineup. Detective Theriot went to Phoenix to pick up the defendant, who was using the alias, Terry Wright, and had been arrested on charges in Phoenix unrelated to the Garner murder. The defendant was extradited back to Terrebonne Parish, where he was questioned by Detective Theriot and Detective Kyle Faulk, with the Houma Police Department.

Castle, who was from Houma, testified at trial that he was questioned at two different times by Houma detectives. The first time he was questioned prior to his arrest, Castle stated he was with Stovall and "Ziggy." "Ziggy," a name made up by Castle,

referred to the defendant, but Castle did not name the defendant because he was afraid of him. Following his arrest, Castle gave another statement. At this time, Castle claimed he knew the defendant had been identified as a possible suspect, so he was more forthcoming with information, including the identity of "Ziggy," in his second statement. Castle was seventeen years old at the time Garner was killed. Stovall was twenty-five years old.

According to Castle's testimony, he had known Stovall for a long time because they grew up in the same place. At midnight, about six hours prior to the shooting, Stovall and the defendant picked up Castle, who was staying at his aunt's house. This was the first time Castle had ever seen the defendant. They drove to someone's house and bought some Ecstasy pills. Castle was then dropped off. At about 3:00 or 4:00 a.m., Stovall and the defendant picked up Castle again from his aunt's house. The defendant and Stovall made plans to commit a robbery. The defendant had a gun and threatened Castle with it. The defendant put the gun in Castle's side and told him they were "about to go on a lick." They went to Richard Brown's house on Ashlawn Street to rob Brown. They exited the car, but did not rob Brown. Instead, they got back in the car. The defendant told Castle to drive, which he did. They stopped on Harris Street, which is a cross street to Prince Collins Street. Stovall and the defendant exited the car, and Castle remained in the car. A short time later, Castle heard one or two gunshots. Castle then observed Stovall and the defendant running toward him. Castle began to pull away. The defendant pointed his gun at Castle and told him to stop. Castle drove a little farther down the street, then pulled over, put the car in park, and jumped from the car. Castle ran and hid behind a trailer before hearing the car leave.

The defendant's statement to the detectives was recorded. The audio of the statement was played for the jury and introduced into evidence at trial. During the initial part of his statement, the defendant denied ever being in Houma. After further questioning, the defendant admitted he drove to Houma with Stovall. When asked about the incident, the defendant initially stated that Stovall and Castle went into Garner's house and that he (defendant) stayed in the car. After the shooting, Stovall ran back to the car,

but Castle never got back in the car. After further questioning, the defendant admitted that he (defendant) and Stovall talked in the car about robbing someone. Stovall and the defendant entered Garner's house, and Castle stayed in the car. Stovall entered through a side window and opened the front door through which the defendant entered. Stovall had a gun and a shirt tied around his face. The defendant stated he had a hat on. Stovall and the defendant entered the bedroom. The defendant stood on the left side of the bed. Stovall asked Garner where the drugs were. Stovall and Garner began wrestling. The defendant ran and then heard a gunshot. The defendant insisted throughout the questioning that he did not shoot Garner and he did not have a gun. When asked if there was anything he left out that he needed to tell the detectives, the defendant stated he was guilty of "accessory to the robbery" because he knew the robbery was going to take place. He also stated that he was guilty of going there and "jacking the little dude out the coke," and that he "was supposed to be a damn watchman."

The defendant testified at trial. According to his testimony, he grew up in New Orleans. He found out in 2002 or 2003 that he had lupus. He and his family evacuated to Houston when Hurricane Katrina struck New Orleans. The defendant's girlfriend, Craigshonda Lunkins, and the two children they had together, evacuated to Dallas. Sometime later, Lunkins and her children moved back to New Orleans. The defendant met Stovall, another evacuee, in Houston. The defendant wanted to go to New Orleans to see Lunkins, who was pregnant with his child, but his car was in the shop. Stovall's girlfriend had a rental car from Texas. Stovall told the defendant he would give him a ride to New Orleans. As they[2] drove east on I-10, Stovall told the defendant he had to make a quick stop in Houma to see a girl. The defendant had never been to Houma. Stovall spent the night at Castle's mother's house, and the defendant spent the night at Castle's aunt's house. The next day, they drove around Houma. Stovall made several stops and met with various people. At about 2:00 a.m. the following morning, they stopped at Wal-

[2] Only Stovall and the defendant took the trip.

Mart and bought several items, including flashlights and tie wraps. The items were purchased with the defendant's FEMA credit card. At about 5:00 a.m. they picked up Castle, and Stovall drove to the street near Garner's house. Stovall said he was going to get some cocaine. Stovall and Castle got out of the car, and the defendant stayed in the car. Shortly thereafter, the defendant saw three people running - Castle, Stovall, and "another guy." Castle ran down the street and did not return to the car. Stovall got in the car, and the defendant drove away. They then drove to New Orleans and bought a bag of marijuana. The defendant had no idea what had occurred. The defendant realized something was wrong only when Stovall told him about what had transpired.

The defendant further testified at trial that he did not have a gun, and he never threatened Castle. He insisted that he did not go into Garner's house, and that Stovall and Castle made the plans to rob Garner. The defendant explained that he lied to the detectives during questioning because he was scared. When asked on direct examination why he told the detectives he was "close by" Garner's house, and that he had heard a female and a gunshot, the defendant responded, "Because they was asking the same question, and they was leading me, and I didn't want to stop [sic], or whatever; so I just agreed to say anything. I just said anything to get it over with. I told them things that I heard." When the defendant was asked on cross-examination if he told the detectives that he was guilty of going there and "jacking" Garner "out of that coke," the defendant responded:

> Yes, I only agreed what the Detectives said, I never used the word 'jacking' until he started stating about 'jacking[,]' the whole thing, the dude was persuading me what to say. I told you I was scared and I was confused and I thought I was going to be a witness, so I stated things that I knew about, and things that I was going along with the Detectives, from their testimony -- from the things that they said in there, if you go back.

When asked why he went to Arizona, the defendant stated he went to a hospital in Phoenix because he was stressed and needed to have his lupus treated. He also stated he went to Phoenix because he was scared and he was wanted. The defendant further testified that he did not turn himself in because he could not get a lawyer. He testified he did not want a State-appointed lawyer because "State[-]appointed lawyers are no good."

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the evidence was insufficient to support the conviction for second degree murder. Specifically, the defendant contends that his identity as one of the perpetrators was not established at trial.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See also La. Code Crim. P. art. 821(B); **State v. Ordodi**, 2006-0207, p. 10 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-1309 (La. 1988). The **Jackson v. Virginia** standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001-2585, pp. 4-5 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

At the time of the commission of the crime, La. R.S. 14:30.1 provided in pertinent part:

> A. Second degree murder is the killing of a human being:
>
> (1) When the offender has a specific intent to kill or to inflict great bodily harm; or
>
> (2)(a) When the offender is engaged in the perpetration or attempted perpetration of aggravated rape, forcible rape, aggravated arson, aggravated burglary, aggravated kidnapping, second degree kidnapping, aggravated escape, drive-by shooting, armed robbery, first degree robbery, or simple robbery, even though he has no intent to kill or to inflict great bodily harm.[3]

[3] The possible enumerated felonies at issue are aggravated burglary, armed robbery, and simple robbery, and the attempts of each of these crimes.

Louisiana Revised Statutes 14:27 provides in pertinent part:

> A. Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

Louisiana Revised Statutes 14:60 provides in pertinent part:

> Aggravated burglary is the unauthorized entering of any inhabited dwelling, or of any structure, water craft, or movable where a person is present, with the intent to commit a felony or any theft therein, if the offender,
>
> (1) Is armed with a dangerous weapon; or
> (2) After entering arms himself with a dangerous weapon; or
> (3) Commits a battery upon any person while in such place, or in entering or leaving such place.

Louisiana Revised Statutes 14:64 provides in pertinent part:

> A. Armed robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon.

Louisiana Revised Statutes 14:65 provides in pertinent part:

> A. Simple robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, but not armed with a dangerous weapon.

The parties to crimes are classified as principals and accessories after the fact. La. R.S. 14:23. Principals are all persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime. La. R.S. 14:24. Only those persons who knowingly participate in the planning or execution of a crime are principals. An individual may be convicted as a principal only for those crimes for which he personally has the requisite mental state. **State v. Pierre**, 93-0893 (La. 2/3/94), 631 So.2d 427, 428 (per curiam). The State may prove a defendant guilty by showing that he served as a principal to the crime by aiding and abetting another. **State v. Smith**, 513 So.2d 438, 444-445 (La. App. 2 Cir. 1987).

Armed robbery and simple robbery are general intent crimes. In general intent crimes, the criminal intent necessary to sustain a conviction is shown by the very doing of the acts which have been declared criminal. **State v. Payne**, 540 So.2d 520, 523-524 (La. App. 1 Cir.), writ denied, 546 So.2d 169 (La. 1989). The intent required by the burglary statutes is specific intent. The actor must specifically intend to accomplish certain prescribed criminal consequences. **State v. Lockhart**, 438 So.2d 1089, 1090 n.4 (La. 1983). Thus, aggravated burglary is a specific intent crime.

Specific intent is the state of mind that exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Such state of mind can be formed in an instant. **State v. Cousan**, 94-2503, p. 13 (La. 11/25/96), 684 So.2d 382, 390. Specific intent need not be proven as a fact, but may be inferred from the circumstances of the transaction and the actions of defendant. **State v. Graham**, 420 So.2d 1126, 1127 (La. 1982). General criminal intent is present when the circumstances indicate the defendant must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. La. R.S. 14:10(2).

In his brief, the defendant suggests several reasons why the evidence was insufficient to convict him of second degree murder. He argues the "most exculpatory testimony" was that of Lewis when she described the person who shot Garner as "kind of big." According to the defendant, since trial testimony established that he weighed less than 200 pounds at the time Garner was murdered, the person described by Lewis as "kind of big" could not have been the defendant. Also, Castle testified at trial that when he met the defendant in 2006, the defendant was much smaller then than he was at trial.

The defendant testified that on the day Garner was murdered, he weighed 190 pounds. Detective Theriot testified the defendant's driver's license indicated he weighed 195 pounds. A medical history record from the Terrebonne Parish Criminal Justice Complex indicated the defendant was 5 feet 11 inches tall and 215 pounds. Lewis testified that the shooter had wide shoulders, was not fat, and was bigger than

Garner. Garner's autopsy report indicates Garner weighed 130 pounds. The relative term of "kind of big" affords little certainty in establishing the size of Garner's killer. A reasonable person could readily find that a person who is 5 feet 11 inches tall and 195 pounds is "kind of big." Such a description by Lewis seems even more fitting given that the shooter weighed over 60 pounds more than her boyfriend. Castle's testimony regarding the size difference of the defendant between the day of the shooting and the trial also, like Lewis's testimony, provides no exculpatory value. At trial, the defendant testified that the last time he was weighed at the hospital, he was 263 pounds. The defendant stated, "I gained weight since I been incarcerated, the whole year, all you can do is lay up, eat every day, and eat snacks every day; you gonna gain a lot of weight."

The defendant also argues in his brief that Garner told the person who shot him, "Jeezy, chill out; Jeezy," according to Lewis's testimony. Therefore, since the defendant's name was not Jeezy, the person who shot Garner was not the defendant. Lewis testified that most of the people nicknamed "Jeezy" are named John, and that she knew two people named John. Detective Theriot testified that he was not that familiar with the term "Jeezy," but that he believed it meant "my brother, or something like that." The evidence, thus, indicated that before he was shot, Garner was referring to someone he did not know personally or to someone he may have thought was John. Under either scenario, the defendant could still have been the shooter or the other person in the bedroom who did not fire the weapon.

The defendant further argues in his brief there was no physical evidence, such as fingerprints or DNA, to connect him to the crime. Also, Lewis was unable to identify the defendant as one of the people in her bedroom when Garner was shot. According to the defendant, he was convicted "solely on the self-serving testimony of Rodney Castle, a co-defendant who was offered a plea bargain, and whose statements to the police were conflicting and impeached at trial." The defendant suggests Castle was impeached when he denied Stovall ever stayed with his mother. However, Castle's mother testified that Stovall did stay at her house from time to time.

Castle testified at trial that the State had offered to reduce his charge to manslaughter, but that he had not been sentenced yet. In Louisiana, an accomplice is qualified to testify against a co-perpetrator even if the State offers him inducements to testify. The inducements would merely affect the witness's credibility. Additionally, a conviction may be sustained on the uncorroborated testimony of a purported accomplice, although the jury should be instructed to treat the testimony with great caution. When the accomplice's testimony is materially corroborated by other evidence, such language is not required. An accomplice's testimony is materially corroborated "if there is evidence that confirms material points in an accomplice's tale, and confirms the defendant's identity and some relationship to the situation." **State v. Castleberry**, 98-1388, p. 13 (La. 4/13/99), 758 So.2d 749, 761, cert. denied, 528 U.S. 893, 120 S.Ct. 220, 145 L.Ed.2d 185 (1999) (quoting **State v. Schaffner**, 398 So.2d 1032, 1035 (La. 1981)); **State v. Hughes**, 2005-0992, p. 6 (La. 11/29/06), 943 So.2d 1047, 1051.

When the key issue is the defendant's identity as the perpetrator, rather than whether the crime was committed, the State is required to negate any reasonable probability of misidentification. Positive identification by only one witness is sufficient to support a conviction. It is the fact finder who weighs the respective credibilities of the witnesses, and this court will generally not second-guess those determinations. **Hughes**, 2005-0992 at 5-6, 943 So.2d at 1051.

The identification of the defendant as one of the persons in the bedroom when Garner was shot was corroborated by the testimony of Castle and, to some extent, by Lewis's testimony. Lewis testified that the defendant's dreadlocks and body size were similar to those of the person who shot Garner. Also, the defendant's own words placed him at the scene of the shooting. In his statement to Detectives Theriot and Faulk, the defendant admitted making plans with Stovall to go to Garner's house and take his drugs. The defendant admitted being in the bedroom at the time Stovall allegedly shot Garner. The defendant denied in both his statement and at trial that he was the person who shot Garner. However, under La. R.S. 14:30.1(A)(2)(a) (now 14:30.1(A)(2)), it is irrelevant whether the defendant shot Garner or even if he knew

Stovall was going to kill Garner. As an aider and abettor or as someone who counseled or procured Stovall to rob or burglarize[4] Garner, the defendant was a principal to the crimes committed by Stovall. One need not possess specific intent to kill or inflict great bodily harm to be a principal to second degree felony murder. **State v. Hill**, 98-1087, p. 9 (La. App. 5 Cir. 8/31/99), 742 So.2d 690, 696, writ denied, 99-2848 (La. 3/24/00), 758 So.2d 147.[5]

In **State v. Bennett**, 454 So.2d 1165, 1183-1184 (La. App. 1 Cir.), writ denied, 460 So.2d 604 (La. 1984), the defendant and Shug Bell[6] went to a 7-Eleven store. Bell pulled a gun and robbed the clerk. When the defendant saw a deputy drive up and enter the store, the defendant walked out of the store. The defendant ran about 100 feet from the store and hid in some bushes. Bell stayed in the store and shot and killed the deputy and the store clerk.

In affirming the defendant's convictions of two counts of second degree murder, this court stated:

> [T]he evidence shows that [the victims] were killed during the course of an armed robbery, and Bennett is guilty of second degree murder even though he may not have had an intent to kill or inflict great bodily harm. Because Bennett was a principal (La. R.S. 14:24) and a coconspirator (La. R.S. 15:455) with Bell in the commission of the armed robbery, he was responsible for Bell's acts of killing [the victims] during the perpetration of the robbery and is guilty of the second degree murders of those men.

Bennett, 454 So.2d at 1184.

When a case involves circumstantial evidence, and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984). The

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[4] Stovall's and the defendant's taking of things of value, i.e., drugs, from Garner's home after killing him while armed with a gun fits easily within the definition of either armed robbery or aggravated burglary. Even if the defendant was not armed, his actions would have constituted simple robbery.

[5] See also **State v. Mims**, 39,757, p. 11 (La. App. 2 Cir. 6/29/05), 907 So.2d 237, 244, where the court stated: "A principal to an armed robbery in which the victim is fatally shot by another may be convicted of second degree murder."

[6] Shug Bell was tried and convicted of two counts of first degree murder. **State v. Bell**, 477 So.2d 759, 762 (La. App. 1 Cir. 1985), writ denied, 481 So.2d 629 (La. 1986).

defendant states in his brief that a "reasonable hypothesis of innocence is that someone named ["Jeezy"] and who was bigger than the defendant was on June 9, 2006 committed this crime."

It is obvious from the finding of guilt that the jury concluded that the testimony of Lewis and Castle, as well as the inculpatory statement made by the defendant, was credible and reliable enough to establish the defendant's guilt. In finding the defendant guilty, it is clear the jury rejected the defendant's hypothesis of innocence, namely that Stovall and some other unknown person were in the bedroom when Garner was shot. While arguably the evidence at trial did not establish beyond a reasonable doubt that the defendant was the actual shooter, the evidence clearly established beyond a reasonable doubt that the defendant was a principal to the murder of Garner. The defendant's actions following the shooting of Garner are particularly telling in their implication of guilt. Instead of going to see his pregnant girlfriend as he maintained in his testimony was always his intention, the defendant and Stovall, after the shooting, drove to the housing project on Claiborne Avenue in New Orleans and bought a bag of marijuana. After returning to Houston, the defendant made no effort to contact the police. Instead, the defendant fled to Arizona and changed his name. When the defendant was arrested and the Houma detectives first began questioning him about the incident, the defendant denied ever being in Houma.

A finding of purposeful misrepresentation reasonably raises the inference of a "guilty mind," as in the case of flight following an offense or the case of material misrepresentation of facts by the defendant following an offense. Lying has been recognized as indicative of an awareness of wrongdoing. **Captville**, 448 So.2d at 680 n.4. The facts in the instant matter established acts of both flight and material misrepresentation by the defendant.

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. **State v. Taylor**, 97-2261, pp. 5-6 (La. App. 1 Cir. 9/25/98), 721 So.2d 929, 932. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. **State v. Mitchell**, 99-3342, p. 8 (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. 1 Cir. 1985).

After a thorough review of the record, we find that the evidence supports the jury's unanimous 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 second degree murder.

The assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.