

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 0365

STATE OF LOUISIANA

VERSUS

JASON LEE BROWN

**Judgment rendered November 9, 2011.**



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Appealed from the  
32nd Judicial District Court  
in and for the Parish of Terrebonne, Louisiana  
Trial Court No. 530,571  
Honorable David W. Arceneaux, Judge

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JASON LEE BROWN

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PRO SE

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**BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.**

*Welch J. concurs in result*

## **PETTIGREW, J.**

The defendant, Jason Lee Brown, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1(A)(1). The defendant pled not guilty. The defendant filed a motion to suppress statements and, following a hearing on the matter, the motion was denied. Subsequently, the defendant was tried before a jury and found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The defendant now appeals, designating one counseled assignment of error and three pro se assignments of error. We affirm the conviction and sentence.

### **FACTS**

On September 1, 2008, Hurricane Gustav made landfall in Chauvin, Louisiana. Two days later on September 3, Chauvin residents Jack Lyons, Sr., the defendant, Steven Lecompte, Kenny Henry, and others, got together at Jack's house to barbeque and drink beer. The defendant and Steven were good friends. There was no electricity, so Jack used a friend's generator to run his air conditioner. Later that evening, the defendant brought a .45 semiautomatic handgun to the open field behind Jack's house. The defendant allegedly purchased the gun from Steven two weeks prior to the hurricane. The defendant and others fired the gun into the field. Kenny testified at trial that he asked the defendant to shoot the gun, but the defendant told Kenny he could not because he had only one bullet left. Kenny then saw the defendant put the gun in his (defendant's) truck.

As the get-together wound down, most of the people left Jack's house. Steven, Kenny, and the defendant remained. The friend who loaned Jack his generator retrieved the generator, leaving Jack's house without air conditioning. Jack suggested that they stay on a crew boat nearby that he had access to. On the boat, they would have air conditioning and would be able to take hot showers. Jack, Kenny, and the defendant agreed that they would all ride together in the defendant's truck to the boat. Steven, however, did not want to stay on the boat. When Steven got in his truck to leave, Jack and the defendant tried to get him to stay because he had had too much to

drink. Steven and the defendant began arguing but, ultimately, Steven drove home, and the defendant and the others drove to the boat. After Jack and Kenny boarded the boat, the defendant drove to his own house, which was nearby, to get blankets. The defendant returned to the boat with the blankets and, as he prepared to board the boat, he fell into the bayou, where the water was about waist-high. Kenny retrieved the blankets, and the defendant went back to his house to change his wet clothes. The defendant then returned and spent the night on the boat.

Sherry LeBoeuf and her boyfriend, Luke Dupre, lived together three houses down from the defendant's house. They did not have electricity after the hurricane, so they slept outside on their front porch. Sherry testified at trial that between 10:00 p.m. and midnight on September 3 (the same night the defendant was staying on the boat), she was on her porch when she observed the defendant and Steven arrive at the defendant's house each in his own truck. Steven and the defendant went into the defendant's house. They left their truck headlights on. When the defendant and Steven came back outside, they were arguing. Sherry testified that the defendant, who appeared very angry, repeatedly hit Steven, but Steven never struck back. Steven kept backing away as the defendant hit him. Sherry heard the defendant tell Steven that he thought Steven was his friend. She then heard Steven tell the defendant that "he didn't even touch her," and that he was the defendant's friend. After about thirty minutes of arguing, the defendant and Steven each got in his own truck and left. About ten minutes later, the defendant and Steven returned, each in his own truck. The defendant went inside, while Steven waited on the defendant's porch. The defendant came back outside and hit Steven, causing him to fall off the porch. They continued to argue and then left again. About five minutes later, the defendant came back to his house alone. He went inside and then came back out with laundry in his hands. He put it in the cab of his truck and left.

Luke testified at trial to essentially the same facts as Sherry. Luke had been sleeping off and on when the defendant and Steven were at the defendant's house. As such, Luke remembered the defendant coming back to his house only twice. Luke

testified that when Sherry woke him up, he saw the defendant hollering and cursing at Steven. He saw the defendant knock Steven to the ground several times. Steven did not fight back, but tried to calm down the defendant. Luke stated that Steven kept saying "I didn't touch her." According to Luke's police statement and trial testimony, the defendant was "in a rage." Luke testified that the defendant and Steven left, then about ten minutes later, the defendant returned alone and grabbed what appeared to be a bundle of clothes from the dryer. The defendant put the bundle in his truck and left.

The next morning, September 4, Kenny went to Steven's house to borrow his utility trailer. Kenny walked into the house and found Steven dead on his sofa from a single gunshot wound to his head. The bullet entered the left side of Steven's nose, passed through his brain, and lodged in the arm of the sofa. Police retrieved the spent bullet from the sofa. Police also found a spent .45 shell casing near the sofa. No gun was found in Steven's house. The police also subsequently found five .45 shell casings in the field behind Jack's house.

Detective Terry Daigre, with the Terrebonne Parish Sheriff's Office, interviewed several people, including the defendant, on the same day Steven's body was found. During this first interview, Detective Daigre did not have the information about the defendant being in possession of a .45 semiautomatic handgun and shooting it behind Jack's house. The detective also did not have any information about the defendant beating up on Steven in the defendant's front yard the night before. In this interview, Detective Daigre learned only that, the night before, the defendant slept on the crew boat and Steven drove home after arguing with the defendant about driving while intoxicated. The defendant was allowed to leave.

Upon learning about the shooting in the field behind Jack's house and what Sherry and Luke had observed the night before, Detective Daigre brought the defendant back in for questioning. Since the defendant was now a suspect, Detective Daigre **Mirandized** the defendant. At 2:47 a.m. on September 5, 2008, the defendant initialed, signed, and dated a waiver of rights form. The defendant then provided a

statement, which Detective Daigre thought was being videotaped (audio included). In this statement, the defendant told the detective that he went to return the .45 handgun back to Steven and that, as he was handing Steven the gun, he accidentally shot him. Following the interview, Detective Daigre discovered that the videotape equipment had malfunctioned and, as such, the statement was not recorded. Accordingly, the defendant gave another statement at 4:22 a.m. (September 5). This statement was memorialized on an audio tape recorder. In this statement, the defendant said that he was thinking about purchasing the .45 handgun from Steven. The defendant maintained possession of the gun while contemplating whether to purchase it. The defendant told Detective Daigre about the gathering at Jack's house and how he shot the gun behind Jack's house. The defendant kept the gun in his truck. He stated that he, Jack, and Kenny decided to sleep on the crew boat and that he and Steven had gotten into an argument about Steven driving home while intoxicated. The defendant dropped Kenny and Jack off at the boat, and then went to his house. While the defendant was at his house, Steven arrived and they began to argue. The defendant slapped Steven a couple of times, but Steven never swung back. After they calmed down, the defendant told Steven to get his stuff and not come back. The defendant grabbed some blankets and went back to the boat. He slipped in the water and went back to his house to change. He returned to the boat. The defendant then left the boat a third time to get Kenny's phone charger, which was in Kenny's truck at Jack's house. The defendant returned to the boat. After about an hour, the defendant left the boat again. He told the detective that he had decided that he did not want to purchase the gun, so he was going to bring it back to Steven. The defendant drove to Steven's house and went inside with the gun in his hand. He told Steven, who was lying on his sofa, that he did not want the gun. As he was handing the gun to Steven, it accidentally went off. The defendant "freaked out" and left in his truck with the gun. He drove to Robinson Canal and threw the gun in the bayou. The gun was never found.

The defendant testified at trial. He stated that he was pressured by Detective Daigre into giving a false confession. According to the defendant, he did not shoot Steven, accidentally or otherwise. He stated that he never went to Steven's house the night Steven was killed and insisted he would not have gone there to return the gun because Steven took possession of the gun after several people shot it behind Jack's house. The defendant testified that the last time he saw Steven was when they had the altercation in the defendant's front yard. Following the fight, the defendant told Steven to get his stuff and never return.

### **COUNSELED ASSIGNMENT OF ERROR**

In his counseled assignment of error, the defendant argues the trial court erred in denying the motion to suppress his statement. Specifically, the defendant contends that his confession was not free and voluntary, but was coerced.

Before a confession can be introduced into evidence, it must be affirmatively shown that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. La. R.S. 15:451. Confessions obtained by any direct or implied promises, however slight, or by the exertion of any improper influence, are involuntary and inadmissible as a matter of constitutional law. **State v. Brown**, 481 So.2d 679, 684 (La. App. 1 Cir. 1985), writ denied, 486 So.2d 747 (La. 1986). It must also be established that an accused who makes a confession during custodial interrogation was first advised of his **Miranda** rights. **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Since the general admissibility of a confession is a question for the trial court, its conclusions on the credibility and weight of the testimony are accorded great weight and will not be overturned unless they are not supported by the evidence. **State v. Patterson**, 572 So.2d 1144, 1150 (La. App. 1 Cir. 1990), writ denied, 577 So.2d 11 (La. 1991). However, a trial court's legal findings are subject to a *de novo* standard of review. See State v. Hunt, 2009-1589, p. 6 (La. 12/1/09), 25 So.3d 746, 751. The trial court must consider the totality of the circumstances in determining whether a confession is admissible. **State v. Hernandez**, 432 So.2d 350, 352 (La. App. 1 Cir. 1983). The

direct testimony of the interviewing police officer can be sufficient to prove a defendant's statement was freely and voluntarily given. See **State v. Sims**, 310 So.2d 587, 589-590 (La. 1975); **State v. Washington**, 540 So.2d 502, 507-508 (La. App. 1 Cir. 1989).

Although the burden of proof is generally on the defendant to prove the grounds recited in a motion to suppress evidence, such is not the case with the motion to suppress a confession. In the latter situation, the burden of proof is with the State to prove the confession's admissibility. La. Code Crim. P. art. 703(D). The State must prove beyond a reasonable doubt that the confession was made freely and voluntarily. **State v. Seward**, 509 So.2d 413, 417 (La. 1987). See **State v. Smith**, 409 So.2d 271, 272 (La. 1982). Therefore, if the defendant alleges police misconduct in eliciting a confession, it is incumbent upon the State to rebut these allegations specifically. **State v. Welch**, 448 So.2d 705, 712 (La. App. 1 Cir. 1984), writ denied, 450 So.2d 952 (La. 1984). In determining whether the ruling on defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n.2 (La. 1979).

The defendant was brought in to the police station for the first time as a suspect on September 5 and provided a statement shortly after 2:47 a.m. In this statement, which was not recorded because of malfunctioning equipment, the defendant admitted that he shot Steven. The defendant suggests in his brief that, during this time (the approximately one-and-one-half hours before the defendant's tape-recorded interview at 4:22 a.m.), the defendant was threatened with death, his children were threatened, and he was told that if he said it was an accidental shooting, he could go home. However, none of these assertions made by the defendant are supported by the record.

Detective Daigre testified at the motion to suppress hearing<sup>1</sup> that prior to the 2:47 a.m. statement, the defendant was advised of his **Miranda** rights, and he and the

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<sup>1</sup> Detective Daigre was the only person to testify at the motion to suppress hearing.

defendant completed the **Miranda** rights form together. The defendant signed and dated the form. The detective stated the defendant appeared to understand what he was talking about, and the defendant was awake and alert. When asked if the defendant appeared intoxicated in any way or under the influence of medication or drugs, Detective Daigre responded, "No, sir, not at all." Regarding promises or coercion prior to the interview, the following colloquy between the prosecutor and Detective Daigre took place at the motion to suppress hearing:

Q. Okay. All right, and prior to him executing the rights waiver form and after executing the rights waiver form [sic], did you offer him any promises or tell him he would be treated with any type of favoritism if he cooperated and if he confessed to the murder?

A. No, I did not.

Q. Did you threaten him or coerce him or brow beat [sic] him in any way?

A. No, sir.

Detective Daigre was asked at the motion to suppress hearing if there were any threats made to the defendant or any promises to get him to cooperate during the approximately one-and-one-half hours of the interview that was not recorded. The detective responded, "No, sir." Further, according to the detective, at no time during the interview that was not recorded did the defendant ask for a lawyer or invoke his right to remain silent. Detective Daigre was also asked if there was anything in the first interview that was not covered in the second interview. He responded, "No, sir." The colloquy on cross-examination between defense counsel and Detective Daigre at the motion to suppress hearing emphasized that there was little difference between the defendant's unrecorded and recorded statements and that the detective did not promise the defendant anything or make threats against his children or threaten him with a first degree murder charge:

Q. All right. In that first statement, did Mr. Brown make incriminating statements in that first statement, in the statement that you thought was being recorded with the video camera?

A. Yes, he did.

Q. Okay. Was it pretty much the same statement that he gave when you took it again at 4:22 on or with the tape recorder?

A. Yes, sir.

Q. Was there any substantial variance between those two statements?

A. Not other than the missing video part, the part that you can't, you can't see it, no, there was no, no huge significant difference.

....



Q. At any time did y'all make any kind of threats at all towards him when he said he didn't have any involvement in the shooting? Did you make any kind of threats, even vale [sic] threats such as that you were going to take his children away or that he was going to get a first degree murder charge and receive the death penalty or anything of that nature?

A. No, sir.

Q. Did -- I'm sorry, what was the other detective that was with you?

A. Detective Lieutenant Cher Pitre.

Q. Cher. Did either one of you at any time suggest to Mr. Brown when he was denying that he had any involvement that if this was an accidental shooting that things would go easier on him or that he'd be able to go home if he gave that type of statement?

A. No, sir.

Q. You don't recall anything of that nature?

A. No, telling him he could go home if it was an accident? No, sir.

Q. Do you recall implying that things would go easier for him if it was an accidental shooting?

A. No, sir.

....

Q. Did his statement in the first statement where you all tried to take the video statement, did incriminating stuff he said during that statement did it change any substantially when you took the audio statement?

A. What changed about it was that the motions he made with his hand when he was explaining it.

Q. Motions he made with his hand?

A. With his hand that the video, that is not on video.

Q. Okay, and, and could you tell us what the difference was?

A. When, when he talks about going to return this weapon and as he's describing this, he's doing motions with his hands.

Q. In the first statement --

A. Yes. Yes, sir. And he talks about handing the weapon back and it accidentally going off. And when he is telling me that he is pulling his finger back as in a motion of firing a weapon.

Q. And then the second time he gave the statement when he gave it just with the tape recorder he wasn't making these hand gestures?

A. I don't know. I don't know if -- but what I mean by it's different is you can't, you can't see that because this video equipment malfunctioned.

Similarly, at trial of the matter, Detective Daigre made it clear on direct examination that the defendant was not threatened or promised anything to induce a confession or inculpatory statement:

Q. Approximately how long did you talk to him to take this verbal statement before you realized that the videotape wasn't working, the machine wasn't working properly?

A. Immediately after realizing that the video equipment was done, we thought we were finished. The video equipment wasn't done, we found that it wasn't, we went back in and did the audio statement.

Q. How long did that take?

A. How long did the --

Q. The first verbal statement that you thought --

A. The verbal and video?

Q. Yes.

A. Probably it had to be in excess of an hour to do the **Miranda** form and everything else.

Q. You were in court when Mr. Brown, Paul Brown [defense counsel], made his opening statement; is that right?

A. Yes, I was.

Q. You heard him talk about the defense that his client was coerced in giving this false confession?

A. Yes, I heard him say that.

Q. Did you brow beat [sic] him, did you threaten him, did Cher Pitre or anybody make him any promises about getting help or anything of that nature to get him to confess to something that he didn't do?

A. No, we didn't. The only thing that we told him was what we had learned.

Q. Did you read him his **Miranda** Rights?

A. Yes, I did.

Q. Did you tell him you have the right to not talk to you?

A. Yes, I did.

Q. Did you tell him he had the right to have a lawyer present?

A. Yes, I did.

Q. Did he ever tell you that he wanted to invoke those rights?

A. No, he did not.

Q. When you were talking to him, did he appear to understand what you were saying?

A. Yes, he did.

Q. Did you ever threaten him with going -- with getting the death penalty or anything of that sort if he didn't confess to it?

A. No, I did not.

....

Q. Did he voluntarily produce this information about him, I think you used the term that he said he killed his friend?

A. Yes.

At trial, the defendant testified on direct examination that it was Detective Daigre's threatening him with life imprisonment and with hurting his children, as well as promising the defendant he could go home if he said the shooting was accidental, that caused him to falsely confess to shooting Steven:

A. After several hours of being in this room with him going back and forth on saying how the fight led up to certain types of anger. He had witnesses and all -- I mean he was throwing in that he had witnesses to the scene. He was throwing in that he had witnesses of us fighting, throwing in all kind of forensic stuff. On and on. And then telling me that my family wanted me to talk to him, and then he started telling me that I needed to think about my children, that I'm going down for first degree murder. If I didn't want my children hurt I would tell 'em I did this, which I did not.

Q. Well you do understand the difficulty of you giving a statement saying that you were at the scene of the offense?

A. Now I do.

Q. How did you think giving that statement was going to help you extricate or take yourself out of this situation that you had gotten yourself into?

A. He -- in the times that he was being calm and friendly, he mentioned that this may have been an accidental shooting. If it was something along that nature. He went in to explaining different levels that, murder or deaths are classified under. Telling me that I'm going down for first degree murder which carries mandatory life sentence, but if it was an accidental shooting

then there's no life sentence. He can actually lower the charge and I can be able to go home.

Q. And that was suggested to you by the officer?

A. Yes, sir.

Q. And at some point in time that's the story you gave him?

A. Yes, sir, after he kept repeating that I needed to think about my children, that my children are going to be hurt in some type of way, and I was confused, pressurized after several hours of this attack, and I finally cracked and told him what he wanted me to tell him.

After the defendant's testimony at trial, the State, in rebuttal, recalled Detective Daigre to the stand and the following colloquy took place:

Q. Okay. You heard the defendant testify; you were in court, right?

A. Yes, I was.

Q. Did you make him any of the promises that he said that you made?

A. No, I did not.

Q. Did you tell him that if he didn't cooperate he was looking at the death penalty?

A. No, I did not tell him that.

....

Q. Did you, at any time, suggest to him that he say, look, if you tell me this is an accident we'll go easy on you, or anything of that sort?

A. No, I did not.

Q. As an officer of the law, would you suggest to him to say anything other than the truth?

A. No, I would not.

Q. Have you ever suggested to a suspect that he lie to help himself?

A. No, I would not.

Q. Could you get in trouble for doing that?

A. Yes, I can.

Q. Can you lose [sic] your badge for doing that?

A. Yes, I can.

Q. Did you ever tell him the comments that you heard him say about his kids, about him not being able to see his kids, or in some kind of way harming his kids if he doesn't come clean and make this up?

A. No, I have no reason to threaten his children.

Detective Daigre further testified that he "never found an aggravated [sic] circumstance in this case to make this first degree murder."

The record before us clearly establishes that the defendant's inculpatory statement was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises, and that the defendant was advised of his **Miranda** rights prior to making a confession while in police custody. The defendant's claims that Detective Daigre threatened him or his children, or promised him that he could go home if he admitted to accidentally shooting Steven, are unsupported by the testimonial evidence. The State rebutted the defendant's

allegations specifically, and the trial court, in choosing to believe Detective Daigre's testimony over the defendant's testimony, found that the defendant's inculpatory statement was voluntarily made. See State v. Batiste, 2006-824, p. 11 (La. App. 5 Cir. 3/13/07), 956 So.2d 626, 634, writ denied, 2007-0892 (La. 1/25/08), 973 So.2d 751. Any comments Detective Daigre may have made to the defendant about witnesses and forensics, or that he needed to start thinking about his children, were not promises or inducements designed to extract a confession. See State v. Petterway, 403 So.2d 1157, 1159-1160 (La. 1981); State v. Dison, 396 So.2d 1254, 1257-1258 (La. 1981). A confession is not rendered inadmissible because officers "exhort or adjure" an accused to tell the truth, provided the exhortation is not accompanied by an inducement in the nature of a threat or which implies a promise of reward. State v. Robertson, 97-0177 (La. 3/4/98), 712 So.2d 8, 31, cert. denied, 525 U.S. 882, 119 S.Ct. 190, 142 L.Ed.2d 155 (1998).

We find no error or abuse of discretion in the trial court's denial of the motion to suppress. Accordingly, the assignment of error is without merit.

### **PRO SE ASSIGNMENTS OF ERROR NOS. 1, 2 AND 3**

In these three related pro se assignments of error, the defendant argues, respectively, the evidence was insufficient to support his conviction because the State failed to prove he had the specific intent to kill the victim; the evidence failed to exclude the reasonable hypothesis of innocence that the defendant accidentally shot the victim; and the evidence supported a conviction for the responsive offense of negligent homicide.

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 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** 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, p. 5 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

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. See La. R.S. 14:30.1(A)(1). Specific intent is that 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). The existence of specific intent is an ultimate legal conclusion to be resolved by the trier of fact. **State v. McCue**, 484 So.2d 889, 892 (La. App. 1 Cir. 1986). Deliberately pointing and firing a deadly weapon at close range indicates specific intent to kill or inflict great bodily harm. See **State v. Robinson**, 2002-1869, p. 8 (La. 4/14/04), 874 So.2d 66, 74, cert. denied, 543 U.S. 1023, 125 S.Ct. 658, 160 L.Ed.2d 499 (2004).

In his taped statement to Detective Daigre, the defendant said that he left the boat to return the gun to Steven. The defendant claimed he arrived at Steven's house and, as he was handing the gun to Steven, it accidentally went off. When the defendant took the stand at trial, however, he testified that he never went to Steven's house, but that he was pressured by Detective Daigre into giving a false confession. According to the defendant, he did not shoot Steven, accidentally or otherwise, because he never went to Steven's house the night Steven was killed. In his closing argument, defense counsel made clear that the theory of the defense was that the defendant never went to Steven's house the night he was killed, so the defendant could not have been the shooter:

And had [the defendant] stuck with his story that he told to the police officer, the second one, that this was an accidental shooting it would have been a much easier case to defend than what we have here today. The case is much more complicated and intertwined now that you know that he basically said he lied about that whole statement.

Now, why, when he has given a statement to the police . . . that this was an accidental shooting ... which, if believed, I submit to you at most would be a negligent homicide.

Why did he then say that's not true, the real truth is I didn't go to Stephen's [sic] at all, I made up this story because I thought I was going to help myself? Why would he do that? I submit to you there's only one reason, and that's because that's the truth.

It makes no sense at all. He had a defense to this case if he'd have stuck with that story, a defense that it was an accident. But the reason he couldn't stick with that, the reason why he took the stand and testified and swore under oath that both, that he lied the first time because he -- and he didn't give the officer everything he knew and he lied the second time because he felt pressured by the officer and he thought he was helping himself, those were both lies.

And he came in here today, took an oath, took the stand and told the truth.

With his testimony at trial, the defendant put forth his sole hypothesis of innocence. In finding him guilty, the jury rejected this hypothesis. See **State v. Captville**, 448 So.2d 676, 680 (La. 1984). The defendant cannot now, for the first time on appeal, raise a new hypothesis of innocence for this court to consider that was not put forth to, and therefore not considered by, the jury (namely, that the defendant *did* go to Steven's house, but that the shooting was accidental). The **Jackson** standard does not serve as a vehicle for a reviewing court to second guess the rational credibility determinations of the fact finder at trial. The **Jackson** standard also does not provide a defendant with a means of splitting alternative and inconsistent defenses in different forums, raising one defense before the jury and when that fails, asserting a second defense presupposing a different set of facts in an appellate court conducting sufficiency review under **Jackson** and La. Code Crim. P. art. 821(E). **State v. Juluke**, 98-0341, pp. 4-5 (La. 1/8/99), 725 So.2d 1291, 1293 (per curiam).

The **Juluke** issue notwithstanding, we find the defendant's argument meritless. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1 Cir.), writ denied, 514 So.2d 126 (La.

1987). In finding the defendant guilty, the jury clearly concluded the defendant went to Steven's house the night Steven was killed. Further, it is clear the jury concluded that the shooting was not accidental, but that the defendant shot Steven with the specific intent to kill or to inflict great bodily harm. As such, the hypothesis of an accidental shooting falls.

The jury heard all of the testimony and viewed all of the evidence presented to it at trial and, notwithstanding any inconsistencies, found the defendant guilty. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Taylor**, 97-2261, p. 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. See **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 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 intentionally shot and killed the victim and, therefore, was guilty of second degree murder. See **State v. Calloway**, 2007-2306, pp. 1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

**CONVICTION AND SENTENCE AFFIRMED.**