NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 2160

STATE OF LOUISIANA

VERSUS

RAYMOND PRICE, JR.

Judgment Rendered: June 8, 2012

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On Appeal from the
17th Judicial District Court,
In and for the Parish of Lafourche,
State of Louisiana
Trial Court No. 490289

Honorable F. Hugh Larose, Judge Presiding

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* * * * *

BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

The defendant, Raymond Price, Jr., was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. He pled not guilty. After a trial by jury, he was found guilty of the responsive offense of manslaughter, in violation of La. R.S. 14:31. The trial court denied the defendant's motion for post-verdict judgment of acquittal and imposed a sentence of forty years of imprisonment at hard labor.[1] The defendant now appeals, challenging the sufficiency of the evidence to support the conviction. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

During the early morning hours of August 18, 2010, near 3:00 a.m., Eric Gauthier heard a loud noise outside his apartment in Thibodaux, Louisiana, on Drew Court. Gauthier looked out his sliding glass door to investigate and observed a black male standing on Richland Drive near the Drew Court intersection, and another black male pointing something as he stepped out of a white vehicle. At that point, Gauthier observed what he clearly recognized as gunfire. After the gunshot, the victim fell to the ground, and the shooter stepped back into the vehicle and drove away. Paramedics and officers of the Lafourche Parish Sheriff's Office were dispatched to the scene. The victim, identified as Patrick Batiste, was pronounced dead shortly after being transported to the emergency room. Later that day, the defendant turned himself in to the Thibodaux Police Department and eventually confessed to shooting the victim twice.

Dr. Feaster Fitzpatrick, an expert in forensic pathology in the Lafourche Parish Coroner's office, performed the autopsy on the victim. The victim suffered two gunshot wounds. One of the projectiles went through the victim's head,

[1] The defendant denied the allegations set forth in a habitual offender bill of information filed by the State, for which a hearing is pending at the time of this appeal.

damaged his brain and carotid arteries, and stopped short of exiting. The second gunshot wound was to the victim's neck and exited through muscle without hitting the bone. The gunshot wound to the head was the cause of death.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant contends that he reasonably believed his life was in danger when he killed the victim. The defendant claims that the victim would have killed him for stealing crack cocaine from him if he had not grabbed the gun from the victim in self-defense. The defendant contends that he did not realize how seriously injured the victim was after the first shot and fired a second shot in self-defense. The defendant further contends that his statements in his recorded confession established that the victim was the aggressor and initiated the physical altercation. The defendant concludes that the State failed to meet its burden of proof.

A conviction based on insufficient evidence cannot stand, as it violates due process. See U.S. Const. amend. XIV, § 1; La. Const. art. I, § 2. The constitutional standard for testing the sufficiency of the evidence, as enunciated in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime beyond a reasonable doubt. See La. C.Cr.P. art. 821. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part that in order to convict, "assuming every fact to be proved that the evidence tends to prove," every reasonable hypothesis of innocence is excluded. See La. R.S. 15:438; **State v. Wright**, 98-0601 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied,

99-0802 (La. 10/29/99), 748 So.2d 1157 and 2000-0895 (La. 11/17/00), 773 So.2d 732.

In accordance with La. R.S. 14:31(A)(1), manslaughter is a homicide which would be a first or second degree murder, but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. "Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed." See La. R.S. 14:31(A)(1). "Sudden passion" and "heat of blood" are not elements of the offense of manslaughter; rather, they are mitigatory factors in the nature of a defense which tend to lessen the culpability. **State v. Rodriguez**, 2001-2182 (La. App. 1st Cir. 6/21/02), 822 So.2d 121, 134, writ denied, 2002-2049 (La. 2/14/03), 836 So.2d 131.

Manslaughter requires the presence of specific intent to kill or inflict great bodily harm. See **State v. Hilburn**, 512 So.2d 497, 504 (La. App. 1st Cir.), writ denied, 515 So.2d 444 (La. 1987). Specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Buchanon**, 95-0625 (La. App. 1st Cir. 5/10/96), 673 So.2d 663, 665, writ denied, 96-1411 (La. 12/6/96), 684 So.2d 923. Specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. **State v. Delco**, 2006-0504 (La. App. 1st Cir. 9/15/06), 943 So.2d 1143, 1146, writ denied, 2006-2636 (La. 8/15/07), 961 So.2d 1160.

A homicide is justifiable when committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger. La. R.S. 14:20(A)(1). A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in

good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict. La. R.S. 14:21.

In the instant matter, the victim's death was proven. The fact that the defendant shot the victim two times indicates the defendant clearly had the specific intent to kill or to inflict great bodily harm upon him. Therefore, the only remaining issue in a review of the sufficiency of the evidence is whether the defendant acted in self-defense. See **State v. Spears**, 504 So.2d 974, 977-78 (La. App. 1st Cir.), writ denied, 507 So.2d 225 (La. 1987).

When self-defense is raised as an issue by the defendant, the State has the burden of proving, beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. Thus, the issue in this case is whether any rational fact finder, viewing the evidence in the light most favorable to the prosecution, could have found beyond a reasonable doubt that the defendant did not kill the victim in self-defense. The manslaughter verdict indicates that the jury accepted the testimony of the prosecution witnesses, insofar as such testimony established that the defendant did not kill the victim in self-defense. See **Spears**, 504 So.2d at 977-78.

After hearing the initial loud noise, Gauthier observed the victim standing in the street approximately sixty to eighty feet from his glass door, as the defendant stood with one leg out of the vehicle pointing an object. After Gauthier heard what he was certain to be a gun being fired, the victim fell to the ground and the shooter fled the scene in the vehicle. Gauthier was unable to identify the shooter.

During his recorded confession, the defendant explained that he became familiar with the victim when they were incarcerated together in Jonesboro. The defendant further indicated that the incident in question began because he had stolen four ounces of crack cocaine from the victim one to two weeks before the

incident. When the victim came to pick up the defendant just before the shooting, the defendant did not know that the victim was aware of the fact that the defendant had stolen the drugs. The defendant was under the impression that he would be purchasing marijuana from the victim. After the defendant got into the victim's vehicle, the victim told him that they had to go to the victim's house to get the marijuana. While they were riding, the victim asked the defendant about the stolen drugs, began to curse him, and pulled out a gun and pointed it at the defendant. According to the defendant's statement, he reached for the gun. The defendant explained that once he had control of the gun, the victim told him, "you might as well kill me." The defendant also stated, "I got control of it a lil bit ... you know, I end up turning the gun and then . . . the gun ended up going off." According to the defendant, he then became paranoid. The victim opened the door and jumped out of the vehicle. At some point, the defendant told the victim that if he took him back home, he would give him his gun back. The defendant further stated, "one thing led to another to to (sic) where I end up shooting him again."

The defendant stated that the victim was falling when he shot him the second time but was not yet on the ground. The defendant specifically stated, "he was like still up, but he was like, he was going down, like like (sic) he was about to sit down or whatever." The defendant then informed the police that he threw the gun alongside U.S. Highway 167, travelling towards Alexandria, in either water (a ditch or creek) or grassland. The police were unable to recover the weapon.

The victim's girlfriend, Tammy Alex, testified that she and the victim had been together for six and one-half years before the shooting and had two children together. The victim lived with Alex, although he slept at his mother's home on the days that he had an appointment with his probation officer. According to Alex, the victim only owned one gun, and he kept that gun at her house. Before the

victim's death, Alex last spoke to him about 11:30 p.m. and, according to Alex, the victim did not seem to be angry about anything that day. Before the trial, the police collected the gun, a .45 caliber, from Alex's apartment. She further testified that although she knew the victim was a drug dealer, he did not share the details of his dealings with her and he never told her that the defendant had stolen any drugs from him. During cross-examination, Alex admitted that she did not know whether the victim kept another gun at his mother's home or in the other vehicle that he owned and kept at his mother's home.

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 goes to the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given is not subject to appellate review. Thus, an appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Williams**, 2001-0944 (La. App. 1st Cir. 12/28/01), 804 So.2d 932, 939, writ denied, 2002-0399 (La. 2/14/03), 836 So.2d 135. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the trier of fact. **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

In finding the defendant guilty of manslaughter, it is clear the jury rejected the claim of self-defense and found the defendant's killing of the victim neither reasonable nor necessary. Louisiana jurisprudence has been consistent in its treatment of the scenario where a victim/aggressor is disarmed. The appellate courts have found repeatedly that during such encounters, where the defendant

disarms the victim/aggressor and then kills him or uses the victim's/aggressor's own weapon against him to kill or injure him, the defendant becomes the aggressor and loses the right to claim self-defense. See **State v. Bates**, 95-1513 (La. App. 1st Cir. 11/8/96), 683 So.2d 1370, 1377; **State v. Pittman**, 93-0892 (La. App. 1st Cir. 4/8/94), 636 So.2d 299, 302-03; **State v. Smith**, 490 So.2d 365, 369-70 (La. App. 1st Cir.), writ denied, 494 So.2d 324 (La. 1986); **State v. Patton**, 479 So.2d 625, 627 (La. App. 1st Cir. 1985). See also **State v. Mackens**, 35,350 (La. App. 2d Cir. 12/28/01), 803 So.2d 454, 461, writ denied, 2002-0413 (La. 1/24/03), 836 So.2d 37; **State v. Jenkins**, 98-1603 (La. App. 4th Cir. 12/29/99), 750 So.2d 366, 376-77, writ denied, 2000-0556 (La. 11/13/00), 773 So.2d 157; **State v. Stevenson**, 514 So.2d 651, 655 (La. App. 2d Cir. 1987), writ denied, 519 So.2d 141 (La. 1988).

Based on the evidence presented during the trial, including the defendant's own version of the events, a rational trier of fact could have reasonably concluded that the defendant fired both shots after disarming the victim, that the killing was unnecessary to save the defendant from the danger envisioned by La. R.S. 14:20(A)(1), and/or that the defendant had abandoned the role of defender and had taken on the role of an aggressor and, as such, was not entitled to claim self-defense. See La. R.S. 14:21; see also **Bates**, 683 So.2d at 1377. The defendant stated that before he shot the victim, but after he gained control of the gun, the victim told him, "you might as well kill me." The defendant admitted to shooting the victim again after the victim jumped out of his vehicle. Moreover, the defendant's omissions and actions after he left the scene, of failing to report the shooting, running to hide, and disposing of the weapon are inconsistent with a theory of self-defense. See **State v. Emanuel-Dunn**, 2003-0550 (La. App. 1st Cir. 11/7/03), 868 So.2d 75, 80, writ denied, 2004-0339 (La. 6/25/04), 876 So.2d 829;

State v. Wallace, 612 So.2d 183, 191 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1253 (La. 1993). Flight following an offense reasonably raises the inference of a "guilty mind." **State v. Captville**, 448 So.2d 676, 680 n.4 (La. 1984). The jury's rejection of the defense of justifiable homicide is supported by these circumstances.

After a thorough review of the record, we find that the evidence supports the jury's unanimous verdict of manslaughter. 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 did not kill his victim in self-defense and, as such, was guilty of manslaughter.

CONCLUSION

Based on the foregoing reasons, the defendant's sole assignment of error lacks merit. Therefore, we affirm the defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED.