NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 1516

STATE OF LOUISIANA

VERSUS

RONALD LEE POINDEXTER

DATE OF JUDGMENT: JUN 10 2011

ON APPEAL FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
NUMBERS 556,002, 544,292, 545,542, 556,947, PARISH OF TERREBONNE
STATE OF LOUISIANA

HONORABLE DAVID ARCENEAUX, JUDGE

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BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

Disposition: CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED.

KUHN, J.

Defendant, Ronald Lee "Rabbit" Poindexter, was charged by amended bill of information with the attempted first degree murders of Renee Chaisson (count I) and Joseph Medice (count II), violations of La. R.S. 14:27 and 14:30, and pled not guilty on both counts.[1] Following a jury trial, on count I, defendant was found guilty of the responsive offense of attempted second degree murder, a violation of La. R.S. 14:27 and La. R.S. 14:30.1, and, on count II, he was found guilty as charged. Thereafter, the State filed a habitual offender bill of information against defendant, alleging he was a fifth-felony habitual offender.[2] Following a hearing, defendant was adjudged a fifth-felony habitual offender and was sentenced, on each count, to imprisonment at hard labor for the remainder of his natural life without benefit of parole, probation, or suspension of sentence, with the sentences to be served consecutively. He now appeals contending the evidence was insufficient to support the convictions and that the trial court erred in denying the defense objection to the jury instructions. We affirm the convictions, habitual offender adjudications, and sentences.[3]

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[1] Co-defendants, Shelby Joseph Norman, and Tiffany Marie Diggs, were originally charged with counts I and II by grand jury indictment as well.

[2] Predicate #1 was set forth as defendant's October 23, 1996 guilty plea, under Thirty-second Judicial District Court Docket #256,544, to second degree battery. Predicate #2 was set forth as defendant's March 9, 1999 guilty plea, under Thirty-second Judicial District Court Docket #320,960, to simple burglary. Predicate #3 was set forth as defendant's July 9, 2003 guilty plea, under Thirty-second Judicial District Court Docket #408,030, to distribution of cocaine. Predicate #4 was set forth as defendant's September 26, 1996 guilty plea, under Seventeenth Judicial District Court Docket #287,330, to simple robbery (on an original charge of armed robbery).

[3] Defendant moved this court to "summarily reverse conviction" because the original record filed with this court did not contain certain transcripts. On order of this court, the record was supplemented with the missing transcripts. Accordingly, the motion to reverse the convictions is denied as moot.

FACTS

On March 4, 2009, Houma Police Department Assistant Chief of Detectives Dana Coleman responded to 121 Bennett Court, in Houma, to help Rene Chaisson and Joseph S. "Tree Man" Medice, Jr., who had suffered stab wounds. Chaisson was sitting at the door to the residence. His speech was unintelligible. He had been stabbed in the upper torso and the leg and was compressing the wound to his leg. When Chaisson briefly removed the compression, the wound bled "like a water fountain." Medice was lying face down inside the residence, clutching his chest with both hands. When he attempted to speak, there was a gurgling sound. Detective Coleman could see the interior of Medice's chest through the open wound and could hear Medice's body sucking in air as he tried to speak. Medice had seventeen additional stab wounds, including a "deep gash" to his forehead. He spent four days in the intensive care unit of the hospital receiving treatment for his wounds. The wound to his chest was next to his heart and "pushed [Medice's] heart over." At the time of trial, he had continuing breathing problems due to stab wounds to his lungs.

During his investigation of the offenses, Detective Coleman spoke to Tiffany Marie Diggs. She implicated defendant, who was her boyfriend, Shelby Norman, and Dwayne Bias a/k/a "Blue" or "Reggie" in the crimes. Detective Coleman told Diggs the victims had been stabbed, and she stated, "I sent 'em there to rob 'em, I didn't send 'em there to stab 'em."

Detective Coleman interviewed defendant on March 6, 2009. After being advised of his ***Miranda***[4] rights, defendant claimed he had gone to Chaisson's home

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

alone and stabbed Medice "when things got a little out of hand." Defendant had $160 on his person and indicated the money had come from Medice from "a dope deal." Defendant had stab wounds on one of his legs and on his back, but the wounds were "no comparison" to the injuries suffered by the victims, and he did not seek medical treatment for his injuries. He indicated the knife he used on Medice was at his cousin's home. Defendant's cousin, Gustavia Brown, was surprised to learn the knife was at her house, and surrendered the knife to the police after defendant directed her to its location. The knife had a 4" or 5" blade.

The defense did not dispute that defendant had stabbed Chaisson and Medice, but claimed defendant acted in self-defense after Medice attacked him when he refused to "front" drugs to Medice during a drug deal.

Medice gave the following account of the incident. He had a tree-cutting business and had been paid $1,000 the day before the incident. On the day of the incident, he took the money to the casino, but still had approximately $960 in his pocket when he visited Chaisson shortly before 7:00 a.m. On the way to Chaisson's house, Medice saw Alice Chapman and gave her a ride because he was struggling with a drug addiction and wanted "somebody to talk to." After Medice and Chapman arrived at Chaisson's house, Diggs arrived. Medice had used drugs with Diggs in the past. Medice pulled out his money from his pocket to give Chaisson $10 so he could buy tobacco for his cigarettes. Diggs asked Medice to give her $20, but he refused. Diggs cursed Medice, and Chaisson told her she had to leave.

According to Medice, shortly after Diggs left, two men knocked on Chaisson's door and he let them into the residence. One man had braided hair, and the other was shorter. Prior to trial, Medice identified the man with braids as Shelby

Norman. Medice identified defendant in court as the shorter man. The men asked Medice if he was "Tree Man" and when he replied affirmatively, they offered to sell him "some stuff" for $300. Medice asked, "[W]here's it at?" and defendant stated, "I need the money and I'm gon go get it." However, Chapman told Medice not to buy any drugs, so he told the men he did not want anything. Defendant then told Medice, "[H]ow about this, give me all your money?" Medice told defendant to "come get my money." Defendant told Norman to "catch that for me," and Norman grabbed a stick. Defendant told Norman to hit Medice, but he hesitated. Defendant stated, "I told you to hit him[,]" and Norman swung the stick at Medice, but Medice blocked the blow with his arm, breaking the stick. Medice punched Norman and, as he turned to face defendant, was stabbed in the forehead with a pocket knife. Medice removed his own knife from his pocket. Defendant then stabbed Medice in the arm, and the knife stuck in Medice's arm. Medice removed the knife and tried to stab defendant. Medice then felt someone stab him in the back twice. Medice continued to punch defendant, and he continued to stab Medice. Medice continued fighting until he was stabbed with a 9" long butcher knife in his left lung and fell to the floor. He saw Diggs stab him once in the lung. He told defendant, "I can't fight no more, it ain't worth dying over, the money's in my left-hand pocket." Defendant took Medice's money from his pockets stating, "[Tree Man], you are a mother, but I need the money." Medice heard Chaisson shouting for help and saw defendant punch him to the ground and repeatedly stab him. Medice conceded he had been convicted of possession of cocaine seven or eight years earlier. He denied having any sexual contact with Diggs at Chaisson's house.

Chaisson gave the following account of the incident. Medice was his friend and visited him on the day of the incident. Diggs also visited, but left after arguing with Medice. Fifteen to twenty minutes later, two men came to the house. One of the men demanded that Medice give him money, and Medice told him he did not have any money. Then the man asking for money started struggling with Medice. Chaisson did not see Medice do anything to the men before the struggle started. The man asking Medice for money stabbed him with a knife. The other man picked up a board that Chaisson used for his bed and hit Medice with it, breaking the board. The other man then walked off. Chaisson indicated he tried to help Medice and the man asking for money stabbed him twice in his leg, once in his arm, and once in his shoulder. Chaisson tried to stop the bleeding from his leg with a towel, but it was uncontrollable. He was released from the hospital after two hours, but continued to suffer pain from his shoulder to his fingers.

Diggs[5] gave the following account of the incident. She was familiar with Medice because she had "trick[ed] with him." She knew Shelby Norman from her neighborhood. She had known defendant for about two or three years. She claimed she was not present during the stabbing, but "knew about it." According to Diggs, Medice "picked her up" and took her to Chaisson's house. She had oral sex with Medice at the house and saw him with "[a] good bit of money." She argued with Medice because she wanted "[her] money." She left Chaisson's house and told him and Medice to leave the door unlocked because she was going to come back "to smoke more dope." She then told defendant that Medice had "a lot of

[5] Diggs indicated she "pled guilty" in connection with the incident and, in exchange for her truthful testimony, received two five year sentences, to run concurrently with each other.

money." She conceded she knew that "they was gon rob him." She indicated "Blue" had the car. She stated, "The only thing that ... they was going to rob 'em, they ain't suppose to, whatever, stab 'em."

SUFFICIENCY OF THE EVIDENCE

Defendant first asserts that there was no testimony he entered the house with an intent to commit a murder or formed that intent after entering. He contends that when Medice gave him the money, he took the money and stopped fighting.

The standard of review for 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 conclude the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, assuming every fact to be proved that the evidence tends to prove, in order to convict, every reasonable hypothesis of innocence is excluded. ***State v. Wright***, 1998-0601, p. 2 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 1999-0802 (La. 10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732.

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. ***Id.***, 1999-0802 at p. 3, 730 So.2d at 487.

First degree murder is the killing of a human being: when the offender has a specific intent to kill or to inflict great bodily harm and is engaged in the perpetration of armed robbery; or when the offender has a specific intent to kill or to inflict great bodily harm upon more than one person. La. R.S. 14:30(A)(1) & (3). Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. La. R.S. 14:30.1(A)(1). 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. La. R.S. 14:27(A).

To be guilty of attempted murder, a defendant must have the specific intent to kill and not merely the specific intent to inflict great bodily harm. Specific intent to kill can be implied by the intentional use of a deadly weapon such as a knife or a gun. ***State v. Templet***, 2005-2623, p. 15 (La. App. 1st Cir. 8/16/06), 943 So.2d 412, 421, writ denied, 2006-2203 (La. 4/20/07), 954 So.2d 158. Specific intent is the state of mind that exists when the circumstances indicate the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Specific intent need not be proven as a fact but may be inferred from the circumstances and actions of the accused. The trier of fact determines whether the requisite intent is present in a criminal case. ***State v. Brown***, 2003-1076, pp. 9-10 (La. App. 1st Cir. 12/31/03), 868 So.2d 775, 782, writ denied, 2004-0269 (La. 6/4/04), 876 So.2d 76.

In reviewing the correctness of such a determination, the court should review the evidence in a light most favorable to the prosecution and must determine if the evidence is sufficient to convince a reasonable trier of fact of the defendant's guilt beyond a reasonable doubt as to every element of the offense. In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. ***Id.***, 2003-1076 at p. 10, 868 So.2d at 782.

After a thorough review of the record, we are convinced that any rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of attempted first degree murder, attempted second degree murder, and the defendant's identity as the perpetrator of those offenses against the victims. The jury rejected defendant's theory that he stabbed the victims in self-defense after Medice attacked him to get his drugs.

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. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). No such hypothesis exists in the instant case.

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 jury. See ***State v. Calloway***, 2007-2306, p. 1 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

The verdict rendered against defendant indicates the jury accepted the testimony offered against him and rejected his attempt to discredit that testimony. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The testimony of the victim alone is sufficient to prove the elements of the offense. The trier of fact may 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. ***State v. Lofton***, 1996-1429, p. 5 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 1997-1124 (La. 10/17/97), 701 So.2d 1331.

In reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See ***State v. Ordodi***, 2006-0207, p. 14 (La. 11/29/06), 946 So.2d 654, 662. It was not irrational for the jury to conclude the defendant acted with specific intent to kill the victims when he went to Chaisson's house to rob Medice; stabbed both victims into submission; took Medice's money from his pocket; left the victims to bleed to death; fled the scene; and hid the weapon at his cousin's house.

This assignment of error is without merit.

JURY CHARGE

Defendant next maintains that the trial court erred in overruling his objection to the jury charge on the law of principals because he was the only defendant on trial.

The court shall charge the jury as to the law applicable to the case. La. C.Cr.P. art. 802(1).

The trial court charged the jury on the law of principals as follows:

> All persons concerned in the commission of a crime are principals and are guilty of the crime charged if, whether present or absent, they directly commit the act constituting the crime, aid or abet in its commission, or directly or indirectly counsel or procure another to commit the crime. However, mere knowledge of a co-perpetrator's specific intent by a defendant is not sufficient to conclude that the defendant himself had specific intent.

Prior to the charging of the jury, the defense objected to the jury charge, contending that defendant was the only defendant on trial, evidence at trial indicated Diggs had pled guilty to "her role" in the proceedings, and the jury instruction unfairly gave the jury the impression it had to find defendant guilty because Diggs pled guilty. The trial court disagreed with the interpretation of the jury charge asserted by the defense and noted the defense objection for the record.

There was no error. The duty of the trial judge to charge the jury on the law applicable to the case obligates him to "cover every phase of the case supported by the evidence whether or not accepted by him as true." ***State v. Krolowitz***, 407 So.2d 1175, 1182 (La. 1981). The evidence in this case supported a theory of liability based on the law of principals. Medice testified he was attacked by at least three people. Thus, the trial court was obligated to give the challenged jury charge, which carefully tracked the language of La. R.S. 14:24 and included the jurisprudential

rule that a principal may be connected only to those crimes for which he has the requisite mental state. See ***State v. Neal***, 2000-0674, pp. 12-13 (La. 6/29/01), 796 So.2d 649, 659, cert. denied, 535 U.S. 940, 122 S.Ct. 1323, 152 L.Ed.2d 231 (2002).

This assignment of error is without merit.

DECREE

For these reasons, we affirm the convictions, habitual offender adjudications, and the sentences imposed against defendant-appellant, Ronald Lee "Rabbit" Poindexter.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED; MOTION TO REVERSE THE CONVICTIONS DENIED.