**NOT DESIGNATED FOR PUBLICATION**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2004 KA 1609-R**

**STATE OF LOUISIANA**

**VERSUS**

**HENRY LEE LEONARD**

**Judgment rendered: December 28, 2006**

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**On Appeal from the 19th Judicial District Court**
**Parish of East Baton Rouge, State of Louisiana**
**Case Number 7-03-497; Sec. III**
**The Honorable Michael Erwin, Judge Presiding**

**********

**Hon. Doug Moreau**
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**State of Louisiana**

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**Counsel for Appellant**
**Henry Lee Leonard**

**BEFORE: WHIPPLE, DOWNING AND HUGHES, JJ.**

Downing, J. dissents.

**HUGHES, J.**

The defendant, Henry Lee Leonard, was indicted by an East Baton Rouge Parish Grand Jury on August 27, 2003, with one count of second degree murder, a violation of La. R.S. 14:30.1. Through counsel, the defendant waived formal arraignment and entered a plea of not guilty as charged. Following a four-day jury trial, the defendant was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. The defendant appealed, asserting four assignments of error. We reversed the defendant's conviction and sentence and remanded for a new trial. See **State v. Leonard**, 2004-1609 (La. App. 1st Cir. 4/27/05), 915 So.2d 829. The Louisiana Supreme Court reversed our decision for failing to apply the harmless error doctrine and remanded the matter back to this court to apply a harmless error analysis and to consider any assignments of error pretermitted in our original opinion.[1] See **State v. Leonard**, 2005-1382 (La. 6/16/06), 932 So.2d 660, 2006 WL 1669455. For the following reasons, we affirm the conviction and sentence.

## FACTS

On July 20, 2003, the defendant, while armed with a .45 caliber pistol, went to Lakeline Direct, a twenty-four hour medical call center where his ex-wife, Leola Leonard, worked, and waited outside the building. According to the defendant, he was a deputy city constable, and he carried a weapon on his person on many occasions, even while not on duty. Ms. Leonard, a nurse, arrived for work at approximately midnight. A metal door with an electronic keypad lock, a surveillance camera, and security patrols protect the building. At approximately 1:30 a.m., the last employee from the earlier shift left the building. At approximately 2:30 a.m., Ken LeDeaux, Ms. Leonard's boyfriend, called and asked if he could stop by to see her for a minute. He arrived shortly after calling, parked

[1] We pretermitted consideration of the assignment of error addressing sufficiency of evidence. **Leonard**, 2004-1609 at p. 15, 915 So.2d at 837.

next to Ms. Leonard's vehicle, and called her from his cell phone to let her know he had arrived.

At approximately 2:53 a.m., David Howell, a security officer for the security patrol at Ms. Leonard's workplace, arrived for routine patrol. He checked the front of the building to make sure it was locked. He noticed Mr. LeDeaux's and Ms. Leonard's vehicles in the parking lot. He did not see any other vehicles in this side lot. After checking the front of the building, he drove around to the side of the building to make sure the employee entrance side door was also locked. As he checked the door, he saw the defendant sitting on an air conditioning unit. Mr. Howell asked the defendant why he was there, and the defendant told him he was waiting for his wife. The defendant was wearing pajama pants and a pullover shirt.

Mr. Howell called his dispatcher and asked her to call Ms. Leonard to see if she was all right. When the dispatcher asked Ms. Leonard whether she had someone in the parking lot waiting for her, she replied no. Ms. Leonard then walked to the back, disarmed the code, opened the door and saw the defendant. She was not expecting to see him, and she asked him what he was doing there. The defendant replied that he did not know, that he just woke up and something told him to go there. Ms. Leonard told the defendant he knew he was not supposed to be there. The defendant started to walk off. As he approached Mr. LeDeaux's car, he asked her how long Mr. LeDeaux had been there. Ms. Leonard told the defendant, "none of your business." The defendant later claimed he had been to Ms. Leonard's place of employment many times before, and she had never turned him down before when he wanted to talk to her. According to the defendant, he intended to wait for Ms. Leonard to walk Mr. LeDeaux to his car and to then talk to her privately.

While the defendant and Ms. Leonard were talking, Mr. Howell went to check the rest of the building. Mr. Howell noticed an S.U.V. parked in another

parking lot around the corner and up against the building. When questioned, the defendant told Mr. Howell the vehicle was his, and the defendant started walking toward it as though he were leaving. The defendant also told Ms. Leonard he was leaving. As he walked toward his vehicle, Ms. Leonard went back into the building.

At approximately 3:05 a.m., Mr. Howell, noticing the defendant's vehicle was still there, went back to the facility and saw the defendant sitting on the air conditioning unit again. At approximately 3:30 a.m., Mr. LeDeaux walked out of the building. Ms. Leonard, who was walking with him, went back into the building to set the alarm. Moments later, Ms. Leonard heard three gunshots outside and called 911. From the surveillance camera monitor inside, Ms. Leonard watched as the defendant picked up the body of Mr. LeDeaux and placed it into the trunk of Mr. LeDeaux's vehicle. The defendant then got into Mr. LeDeaux's vehicle and drove away.

Within minutes, a law enforcement officer spotted the defendant driving his vehicle at a fairly high rate of speed across the parking lot, followed him, and then stopped him. When the officer noticed blood on the defendant's body, he notified headquarters, placed the defendant under arrest, and advised him of his **Miranda** rights. He asked the defendant if he had been shot, and the defendant claimed that he fell and cut his knee. The officer found no injuries on the defendant that would have caused "[anywhere] near the amount of blood" on him, and he again questioned the defendant. The officer asked the defendant whose blood was on him, and the defendant responded only that he was in a state of shock. The officer looked into the defendant's vehicle and saw a cocked semi-automatic .45-caliber pistol on the passenger seat. The weapon had one round in the chamber and nine remaining in the magazine. Subsequent ballistics testing revealed that the two

spent bullets and the three shell casings found at the crime scene were fired from the defendant's weapon.

Mr. LeDeaux's vehicle was found by police officers about two-tenths of a mile from the crime scene. Officers found the keys in the car, bloody eyeglasses on the passenger seat, a bloody sheet on the passenger side, and the victim's body in the trunk. They also found a pair of bloody, black Jersey gloves at the scene. Testing revealed that DNA found on the pants and "flip flops" of the defendant, in the parking lot where the shooting occurred, on the driver's seat of the defendant's vehicle, and on the outside of the right and left gloves was consistent with the DNA profile of Kenneth LeDeaux. Also, a mixture of DNA consistent with the profiles of Mr. LeDeaux and the defendant was found in the interior right thumb and index finger of the right-handed glove.

An investigating officer also found a blue notebook in the defendant's vehicle that contained detailed information about Mr. LeDeaux, including his name and address, his pager number, his home, cell, and office phone numbers, and a criminal information unit (C.I.U.) number used by police officers to run a background check on criminal records, driving records, and license plates. Under the C.I.U. number in the defendant's notebook were notations of Mr. LeDeaux's driver's license number and date of birth, the color, make, and model of his vehicle, and the university he attended. The same information was written on several different pages. The officer also found a prior e-mail from Mr. LeDeaux to Ms. Leonard in the glove box of the defendant's vehicle. Testimony revealed that the defendant took this e-mail from Ms. Leonard's wallet, along with her keys, when he entered her unlocked apartment when she was not at home.

After the Leonards' divorce, the defendant would call Ms. Leonard and go to her home and place of employment, often unannounced or uninvited. The defendant knew that Ms. Leonard was seeing Mr. LeDeaux, and the defendant had

met and spoken with him on several occasions. While the defendant desired to reunite with his ex-wife, Ms. Leonard told the defendant before the shooting she did not want to reconcile. She also sent the defendant an e-mail shortly before the shooting informing him that she no longer intended to provide financial support to him.

***Motion for Mistrial for Prosecutor's Violation of La. Code Evid. art. 609.1***

In this assignment of error, the defendant argued the district court erred in failing to grant his motion for mistrial after the prosecutor intentionally elicited inadmissible evidence, which had been expressly excluded by the court after a pre-trial **Prieur** hearing. In finding merit to this assignment of error, this court reversed the defendant's conviction because the trial court's abuse of discretion in not granting a mistrial based on the prosecutor's calculated violation of the trial court's order resulted in the denial of the defendant's right to a fair trial. See **Leonard**, 2004-1609 at p. 14, 915 So.2d at 836. The Louisiana Supreme Court found that this erroneous admission of prejudicial evidence was subject to a harmless error analysis (not applied by this court in our original opinion) and reversed this court's ruling.[2] We must now determine, as directed by the Louisiana Supreme Court, if the guilty verdict actually rendered at trial was surely unattributable to the error. See **Leonard**, 2005-1382 at pp. 11-13, 932 So.2d at 667-668.

A mistrial under the provisions of La. Code Crim. P. art. 771 is at the discretion of the trial court and should be granted only where the prejudicial remarks of the witness, or in the case at hand, of the prosecutor, make it impossible for the defendant to obtain a fair trial. See **State v. Miles**, 98-2396, p. 4 (La. App. 1st Cir. 6/25/99), 739 So.2d 901, 904, writ denied, 99-2249 (La. 1/28/00), 753 So.2d 231. Nevertheless, in situations where the witness's impermissible reference

[2] See **State v. Leonard**, 932 So.2d at 667-668, wherein the supreme court discusses the prosecutor's violation of La. Code Evid. art. 609.1 and the harmless error issue at length.

to another crime was deliberately elicited by the prosecutor, the jurisprudence has held that the impermissible reference is imputable to the State and mandates a mistrial. **Miles**, 98-2396 at p. 4, 739 So.2d at 904.

The comment by the prosecutor regarding the victim of the battery was an impermissible one which falls within the ambit of La. Code Crim. P. art. 771. While the purpose of the prosecutor's remark is not clear, under the facts of this case, we find that the admission of the other-crimes evidence at issue was harmless error beyond a reasonable doubt, even if we were to assume the comment was deliberately intended to suggest bad character. See **Miles**, 98-2396 at p. 4, 739 So.2d at 904.

The erroneous admission of other-crimes evidence is a trial error subject to harmless-error analysis on appeal. **State v. Johnson**, 94-1379, pp. 16-17 (La. 11/27/95), 664 So.2d 94, 101. The test for determining whether an error is harmless is whether the verdict actually rendered in this case "was surely unattributable to the error." **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993); **Johnson**, 94-1379 at p. 14, 664 So.2d at 100.

In the case at hand, the defendant admitted on the stand to shooting the victim three times. The identification of the defendant as the killer was not an issue. The issue in this case was the defendant's description of the alleged actions of Ken LeDeaux that led to the shooting and the defendant's claim that he acted in self-defense. While the defendant claimed that he thought Mr. LeDeaux had a gun, no gun was found at the scene of the shooting. In fact, after shooting and killing Mr. LeDeaux, the defendant claimed he searched all over Mr. LeDeaux's vehicle, including in the glove compartment and center console, on the ground, and underneath the vehicle for a gun, but never found one. (R. pp. 737-738). The details of the defendant's actions in the prior simple battery do not bear upon, or relate in any way, to Mr. LeDeaux's actions in this case where the crux of the issue

is self-defense. See **State v. Powell**, 28,788 p. 13 (La. App. 2d Cir. 11/1/96), 683 So.2d 1281, 1289.

Based on the circumstances of this case, we find that while the prosecutor's comment regarding the identity of the victim of the defendant's prior battery was improper and contrary to the express prior ruling of the trial court, the State's evidence was more than sufficient to refute the defendant's claim of self-defense. As such, the guilty verdict surely was unattributable to any error in admitting evidence concerning the victim in the defendant's prior conviction. We find no indication that the defendant was unable to obtain a fair trial. We are convinced beyond a reasonable doubt that the admission of details of the defendant's prior conviction of simple battery was harmless error. See **Miles**, 98-2396 at pp. 4-5, 739 So.2d at 904-905; see **Powell**, 28,788 at pp. 12-13, 683 So.2d at 1289.

This assignment of error is without merit.

***Sufficiency of Evidence***

In this assignment of error, the defendant avers the evidence was insufficient to support the conviction of second degree murder. Specifically, the defendant contends that the State failed to prove all of the elements of second degree murder beyond a reasonable doubt.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. In reviewing claims challenging the sufficiency of the evidence, this Court must consider "whether, after 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. Mussall**, 523 So.2d 1305, 1308-1309 (La. 1988).

La. R.S. 14:30.1 provides, 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[.]

Specific intent is that state of mind which 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).

La. R.S. 14:20 provides, in pertinent part:

> A homicide is justifiable:
>
> (1) 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. 14:21 provides:

> 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.

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 factfinder's determination of guilt. **State v. Taylor**, 97-2261, pp. 5-6 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932. In a homicide case, the State must prove,

beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. **Taylor**, 97-2261 at p. 4, 721 So.2d at 931.

In the case at hand, the testimony elicited at trial established that Ken LeDeaux died as a result of three gunshot wounds to the head, neck, and thorax from a Para-Ordnance .45 auto handgun. (R. pp. 626-630, 701). The defendant owned the weapon that killed Mr. LeDeaux, and the defendant admitted that he shot his victim three times. (R. pp. 701, 736).

On July 20, 2003, the defendant waited outside of the place of employment of his ex-wife, Leola Leonard. (R. p. 733). At approximately 3:30 a.m., Ken LeDeaux, who was visiting Ms. Leonard, his girlfriend, exited her place of employment alone and walked to his vehicle. (R. p. 735). Mr. LeDeaux and Ms. Leonard were planning to become engaged on a trip to Las Vegas three days later on July 23. (R. p. 568). Before Mr. LeDeaux could get into his vehicle, the defendant approached him and shot and killed him. (R. p. 736). According to the defendant, Mr. LeDeaux, upon being approached, told the defendant, "All right, now, don't come no closer. I got a gun." (R. p. 736). When the defendant drew his weapon, Mr. LeDeaux allegedly made a sudden movement and had a silver object in his hand. (R. p. 736). According to the defendant, Mr. LeDeaux had a cell phone in his hand which the defendant mistook for a gun. (R. p. 737).

After shooting Mr. LeDeaux, the defendant allegedly searched Mr. LeDeaux's vehicle, the ground, and underneath the vehicle for a gun. (R. pp. 737-738). No gun was found. Upon not finding any weapon, the defendant picked up Mr. LeDeaux's lifeless body and placed it in the trunk of Mr. LeDeaux's vehicle. The defendant then attempted to wipe up the blood on the rear bumper of the vehicle and in the parking lot with a sheet he found in the trunk of Mr. LeDeaux's vehicle. Following this, he threw the sheet inside of Mr. LeDeaux's vehicle. After

closing the trunk, he picked up Mr. LeDeaux's glasses from the ground and put them on the passenger seat. (R. p. 738).

The defendant then drove Mr. LeDeaux's vehicle a short distance to where his own vehicle was parked. He got out of Mr. LeDeaux's vehicle, opened the door to his own vehicle and retrieved a pair of gloves. He secured his own vehicle, put the gloves on his hands, and got back into Mr. LeDeaux's vehicle. He drove Mr. LeDeaux's vehicle to a rear parking lot behind a building. He exited Mr. LeDeaux's vehicle and, as he made his way back to his own vehicle, he removed the gloves he was wearing and threw them on the ground. The defendant then got into his vehicle, thought somebody saw him, and slowly drove away. (R. p. 739).

Minutes later, the defendant was stopped by James Cutrer, a Baton Rouge police officer patrolling the area, and was ordered to get out of his vehicle and get on the ground. Noticing the blood on the defendant, the officer asked him why he had so much blood on his pants. (R. p. 740). According to the officer, the defendant responded that he had fallen and cut his knee. (R. p. 349). The defendant was placed under arrest and advised of his **Miranda** rights. (R. pp. 348-49). The loaded .45 caliber handgun was found on the defendant's passenger seat with nine rounds in the magazine and one live round in the chamber. (R. p. 741). At no time during the defendant's apprehension and arrest did he inform any officer that he had shot another person in self-defense.

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 which raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984). The defendant's hypothesis of innocence was based on a claim of self-defense. In finding the defendant guilty of second degree murder, it is clear that the jury did not believe the defendant's testimony regarding Mr. LeDeaux's

alleged threat, his alleged sudden movement toward his car, and the alleged silver object in his hand mistaken for a weapon.

The jurors apparently concluded that the defendant's version of the events immediately preceding the fatal shots was a fabrication designed to deflect blame from him. The conclusion by the jurors that the defendant did not testify truthfully could reasonably support an inference that the "truth" -- if told by him as the only survivor -- would have been unfavorable to his self-defense theory. See **Captville**, 448 So.2d at 680.

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. See **State v. Davenport**, 445 So.2d 1190 (La. 1984). Lying has been recognized as indicative of an awareness of wrongdoing. See **State v. Rault**, 445 So.2d 1203 (La.), cert. denied, 469 U.S. 873, 105 S.Ct. 225, 83 L.Ed.2d 154 (1984). The facts in the instant case established acts of both flight and material misrepresentation by the defendant.

In rejecting a claim of self-defense, the jury rejected the defendant's claim of provocation by Mr. LeDeaux, and obviously concluded that the force used by the defendant against his victim was unreasonable and unjustifiable. As such, the hypothesis of innocence presented by the defendant falls.

While there is no other hypothesis which raises a reasonable doubt, we note that in the sufficiency of evidence portion of the defendant's brief wherein he confines his argument exclusively to self-defense, the defendant has inserted, out of context and in relation to no other part of the brief, the definition of manslaughter. If the defendant's intention was to have this Court address the issue of manslaughter, it is unclear. Regardless, the verdict sheet provided to the jury included the responsive offense of manslaughter. (R. p. 214). In finding the

defendant guilty of second degree murder, the jury implicitly rejected the theory of manslaughter.

After a thorough review of the record, 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 that the defendant was guilty of second degree murder and that the shooting of his victim was not justified.

This assignment of error is without merit.

***Autopsy Report***

In this assignment of error, the defendant avers the district court erred in allowing Dr. Shannon Cooper to testify from an autopsy performed by another, in violation of defendant's Sixth Amendment right to confront the witnesses against him. Specifically, the defendant asserts that because Dr. Michael Cramer performed the autopsy, but Dr. Shannon Cooper testified at trial from Dr. Cramer's report, Dr. Cooper's reading of the report constituted inadmissible hearsay.

At trial, the defendant objected to Dr. Cooper testifying based on **Crawford v. Washington,** 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). The trial court overruled the defendant's objection after inquiring whether **Crawford** addressed the issue of one expert testifying about the findings of another expert and receiving an answer from the defendant's counsel in the negative. Though the trial court's ruling was correct, it failed to make the correct inquiry.

The correct order of inquiry is: first, whether the coroner's report was "testimonial hearsay" prohibited by **Crawford**; second, whether Dr. Cooper is merely reading the report or testifying as an expert based upon the report; finally, if he is testifying as an expert based upon hearsay, whether he is properly qualified as an expert in the field upon which he is testifying.

Under the first prong of our inquiry, we examine whether the coroner's report constituted testimonial hearsay. Testimonial hearsay is prohibited, as explained by the **Crawford** decision. The Supreme Court clearly states, "not all hearsay implicates the Sixth Amendment's core concerns." **Crawford**, 541 U.S. at 51, 124 S. Ct. at 1364. The Confrontation Clause applies to "witnesses" *against* the accused. **Crawford**, 541 U.S. at 51, 124 S. Ct. at 1364. As noted by Chief Justice Rehnquist and Justice O'Connor in their concurrence, "the Court's analysis of 'testimony' excludes at least some hearsay exceptions, such as business records and official records." **Crawford**, 541 U.S. at 76, 124 S. Ct. at 1378.

Professor George Pugh noted the problem in recognizing a business records exception to the hearsay rule in criminal cases many years before **Crawford** was decided. Symposium, *The Work of the Louisiana Appellate Courts for the 1971-1972 Term,* 33 La. L.Rev. 169, 318-319 (1972). In **State v. Monroe**, 345 So.2d 1185 (La. 1977), our supreme court modified its previous rulings in response to Professor Pugh's criticism of the earlier decision in **State v. Graves**, 259 La. 526, 250 So.2d 727 (1971). In **Monroe**, the court held that since "the only evidence which strongly tended to corroborate the woman's testimony to the occurrence of sexual penetration, an essential element of the crime, were the hearsay medical examination reports and double hearsay testimony of Dr. Minyard based thereon," the coroner's report was not admissible. **Monroe**, 345 So.2d at 1190.

Although the opinion stated that the assistant coroner's report was clearly hearsay and did not come within any exception to the rule against hearsay, Justice Marcus noted in his dissent the report would fall under the business records exception to the hearsay rule and further implied that the report was not "testimonial hearsay," although he did not use that phrase. **Monroe**, 345 So.2d at 1191 (Marcus, J., dissenting).

**Monroe** allowed an exception where the witness was unavailable and the hearsay was reliable. This exception was used in **State v. Prestridge**, 399 So.2d 564 (La. 1981).

Because La. Code Crim. P. art. 105 is narrowly drawn, it only allows the coroner's report for non-testimonial hearsay:

> A coroner's report and a procès verbal of an autopsy shall be competent evidence of death and the cause thereof, but not of any other fact.

The coroner's report was therefore admissible to prove the cause of death.[3]

The second inquiry is whether Dr. Cooper was simply reading the report or testifying as an expert. Dr. Cooper testified that as the Coroner of East Baton Rouge Parish, he was the legal custodian of all records made and kept by his office. Dr. Cooper was qualified and accepted as an expert in the field of medicine with a specialization in forensic pathology. He reviewed the autopsy report prepared by Dr. Cramer and the autopsy photographs that were taken in this case. Dr. Cooper indicated he was able to testify regarding the autopsy findings and protocol completed by Dr. Cramer.

The coroner or a coroner's deputy may testify as to the victim's death or the cause thereof, even where the testifying witness did not perform the autopsy or prepare the report. See **State v. Ducre**, 596 So.2d 1372, 1381 (La. App. 1st Cir. 1992).

In the case at hand, the defendant did not dispute that he shot and killed Ken LeDeaux. The defendant, by his own admission at trial, testified that he shot Mr. LeDeaux three times. The autopsy report indicated that the gunshot wounds, particularly the one to his chest, killed Mr. LeDeaux. The only issue argued by the

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[3] The **Crawford** holding calls into question the decision in **State v. Holmes**, 258 La. 221, 245 So.2d 707 (La. 1971). There the issue was whether the victim died of a penknife wound or because of a heart attack. Justice Tate, in his dissent, raised the confrontation issue. In such an instance where the manner of death is determinative of guilt or innocence, this author recommends that the trial court should err on the side of caution. **Holmes,** 258 La. at 242, 245 So.2d at 714-715 (Tate, J., dissenting).

defendant was that the shots fired were in self-defense. The autopsy report did not address any legal theory of self-defense. The report simply established that Mr. LeDeaux was shot three times and that he died almost instantly from those gunshot wounds. In this regard, Dr. Cramer's report and Dr. Cooper's expert testimony concerning that report were merely cumulative. We fail to see how they added to or detracted from the factfinder's determination of the veracity of the defendant's testimony regarding why he shot Mr. LeDeaux.

Further, the defendant had ample opportunity to, and, in fact, did cross-examine and recross-examine Dr. Cooper at trial. The defendant was afforded the opportunity to elicit from Dr. Cooper any information he thought might help his case. No harm was suffered by the defendant as a result of his inability to cross-examine Dr. Cramer rather than Dr. Cooper. Dr. Cramer was not a witness against the defendant. Moreover, we recognize that a coroner often prepares the autopsy report without detailed knowledge of the other facts of the case or even any knowledge of who the defendant might be. Either medical expert could have testified to the same evidence, i.e., the contents of the autopsy report.

We need not reach the third inquiry because we conclude that the coroner's report was not "testimonial hearsay" and that Dr. Cooper's testimony was limited to the contents of the autopsy report.

This assignment of error alleging a violation of the holding in **Crawford** is without merit.

***Post-arrest Silence***

In this assignment of error, the defendant avers the district court erred in overruling the defendant's objection and denying his motion for mistrial based on the prosecutor's references to his post-arrest silence.

In separate lines of questioning of two law enforcement officers, the prosecutor made reference to the defendant's post-arrest silence. The defendant did

not object to these allegedly inappropriate and inadmissible references immediately after they were made, and in his brief admits to failing to do so. The defendant did not complain of the prosecutor's line of questioning until the day after the alleged violations.

While the defendant did object during the direct examination of Officer James Cutrer, the objection was made to the introduction of an allegedly inculpatory statement by the defendant that was not provided to defense counsel in pre-trial discovery. This objection, which the trial court overruled, had nothing to do with any impermissible references to the defendant's post-arrest silence following **Miranda** warnings. See **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Under La. Code Crim. P. art. 841, a contemporaneous objection is required to preserve an error for appellate review. The purpose of the contemporaneous objection rule is to allow the trial judge the opportunity to rule on the objection and thereby prevent or cure an error. **State v. Hilton**, 99-1239, p. 12 (La. App. 1st Cir. 3/31/00), 764 So.2d 1027, 1035. The defendant did not make a contemporaneous objection following the statements made by the officers. Irregularities or errors cannot be availed of on appeal if they are not objected to at the time of the occurrence. **State v. Walker**, 94-0587, p. 4 (La. App. 1st Cir. 4/7/95), 654 So.2d 451, 453. Since the defendant failed to lodge a contemporaneous objection on this ground during trial as required by La. Code Crim. P. art. 841, he is precluded from raising the issue on appeal. Even had the objections been made timely, given the totality of the evidence, the improper admission of these statements would have been harmless error.

This assignment of error lacks merit.

**CONVICTION AND SENTENCE AFFIRMED.**