NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 0628

STATE OF LOUISIANA

VERSUS

ALONZO JAVON EDMOND

Judgment Rendered: NOV 14 2012

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On Appeal from the 16th Judicial District Court
In and for the Parish of St. Mary
Trial Court No. 2009-180327

The Honorable Edward M. Leonard, Jr., Judge Presiding

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BEFORE: PARRO, HUGHES, AND WELCH, JJ.

HUGHES, J.

The defendant, Alonzo Javon Edmond, was charged by grand jury indictment with second degree murder, a violation of LSA-R.S. 14:30.1. The defendant pled not guilty and after a trial by jury was found guilty of the responsive offense of manslaughter, a violation of LSA-R.S. 14:31. The trial court denied the defendant's motion for post verdict judgment of acquittal and motion for new trial. The defendant was sentenced to twenty-five years imprisonment at hard labor. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, challenging the sufficiency of the evidence in support of the conviction and the trial court's denial of his motion for new trial. The defendant further requests a review for error pursuant to LSA-C.Cr.P. art. 920(2). For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On May 7, 2009, near 1:00 a.m., Keenan Larry, Terrance Johnson, Columbus Butler (the victim), and Jeremy Butler (the victim's brother) parked their vehicle and walked about a block to the home of Effie Edmond (the defendant's aunt, with whom he was living at the time) on Schoolhouse Lane in Charenton, Louisiana, to confront the defendant about a dispute involving Johnson's girlfriend, Angelina Dapremont.[1] The defendant and his cousin, Kirk Edmond, were standing outside in the driveway at the time. An argument ensued between the men, and the defendant fired his .22 rifle striking the victim in the chest. After the victim was shot, he stumbled, but

[1] We note that Johnson also was known by the last name of "Bartley," which was disclosed at trial as being his mother's last name. Also, herein, Columbus Butler will be referred to as the "victim," while his brother, Jeremy Butler, will be referred to as "Butler."

made it to the corner of Chitimacha Trail and Schoolhouse Lane before collapsing in the roadway. The victim suffered a single "distant range" gunshot wound to the chest. Toxicological analysis and the coroner's evaluation revealed that the victim had an elevated level of alcohol in his blood, fractures to two of his fingers on his right hand, a piece of glass imbedded in the palm of his left hand, and the victim died as a result of the gunshot wound, which injured his lung and caused him to bleed to death.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the trial court erred in denying his motion for a new trial. The defendant specifically argues that the evidence was insufficient to support the verdict, because he was acting in self-defense; thus, he asserts that the State failed to prove that he had the specific intent to kill or inflict great bodily harm.[2] The defendant contends that, prior to the shooting, four men appeared at his house, looking for a fight, and that they were the aggressors. He further emphasizes that the victim was intoxicated at the time, with a blood-alcohol level that was nearly four times the legal limit for a DWI offense. Additionally, the defendant points out that the State witnesses testified that the victim was shot in the

[2] At the outset we note that the defendant's assertion that the State failed to show that he had specific intent to kill, because he killed the victim in self-defense, is flawed. A homicide committed in self-defense is a justifiable homicide, which requires the specific intent to kill or to inflict great bodily harm. Thus, if the defendant killed the victim in self-defense, the element of specific intent would have been present, except that the homicide would be excused because the defendant, in defending himself, would have been justified. See LSA-R.S. 14:20. Additionally, the question of the sufficiency of evidence is properly raised by a motion for post-verdict judgment of acquittal. LSA-C.Cr.P. art. 821. A motion for new trial presents only the issue of the weight of the evidence and is examined under the so-called thirteenth juror standard, under which the trial judge reweighs the evidence. See **State v. Hampton**, 98-0331 (La. 4/23/99), 750 So.2d 867, 879-80, cert. denied, 528 U.S. 1007, 120 S.Ct. 504, 145 L.Ed.2d 390 (1999); **State v. Voorhies**, 590 So.2d 776, 777 (La. App. 3 Cir. 1991). Appellate courts may review the grant or denial of a motion for new trial only for errors of law. See LSA-C.Cr.P. art. 858. Accordingly, the denial of the defendant's motion for new trial based on LSA-C.Cr.P. art. 851(1) is not subject to review on appeal. The only issue reviewable in the present appeal is the constitutional issue of sufficiency of the evidence, which was raised in the defendant's motion for post-verdict judgment of acquittal.

back as he ran away, while the coroner testified that the victim was shot in the front and was not running away at the time. The defendant further emphasizes that he did not leave his yard during the confrontation, and, due to the fact that he gave Johnson's girlfriend a ride home earlier in the week, the other men had threatened him by telephone earlier in the week and that evening. The defendant adds, "It was believed he [the victim] had a gun in his waistband." The defendant also claims that he was afraid of Johnson, noting that Johnson previously caused him to veer his vehicle off the road into a ditch, and he ran from Johnson when he saw him earlier in the week of the shooting. Further noting that only one of the men remained with the victim, the defendant insists that the other two men corroborated their version of the incident (that they had no weapons and the defendant shot an unarmed man) and likely got rid of weapons before talking to the police.

The constitutional standard for testing the sufficiency of the evidence, as adopted by the Louisiana Legislature in enacting LSA-C.Cr.P. art. 821, 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. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). The **Jackson** standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that the trier of fact, in order to convict, must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 2002-1492 (La. App. 1 Cir. 2/14/03), 845 So.2d 416, 420. When a case involves circumstantial evidence and the trier of fact reasonably rejects a 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).

As previously noted, the defendant was convicted of manslaughter. Manslaughter consists, in pertinent part, of a homicide 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, requiring the presence of specific intent to kill or inflict great bodily harm. LSA-R.S. 14:31(A)(1); **State v. Hilburn**, 512 So.2d 497, 504 (La. App. 1 Cir.), writ denied, 515 So.2d 444 (La. 1987). 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. LSA-R.S. 14:10(1). Since specific intent is a state of mind, it need not be proved as a fact, but may be inferred from the circumstances of the transaction and the actions of the defendant. **State v. Templet**, 2005-2623 (La. App. 1 Cir. 8/16/06), 943 So.2d 412, 418, writ denied, 2006-2203 (La. 4/20/07), 954 So.2d 158; **State v. Graham**, 420 So.2d 1126, 1127 (La. 1982). Thus, specific intent may be proven by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Buchanon**, 95-0625 (La. App. 1 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. 1 Cir. 9/15/06), 943 So.2d 1143, 1146, writ denied, 2006-2636 (La. 8/15/07), 961 So.2d 1160.

In this case the evidence indicates that the defendant aimed and fired his gun, shooting the victim. Accordingly, the defendant clearly had the specific intent to kill or to inflict great bodily harm upon the victim. On appeal, the defendant does not dispute the other elements of manslaughter. Rather, he claims that the killing was justified because he acted in self-defense. Therefore, the only remaining issue in a review of the sufficiency of the evidence is whether or not the defendant acted in self-defense.

When the defendant in a homicide prosecution claims self-defense, the State must prove beyond a reasonable doubt that the homicide was not committed in self-defense. **State v. Williams**, 2001-0944 (La. App. 1 Cir. 12/28/01), 804 So.2d 932, 939, writ denied, 2002-0399 (La. 2/14/03), 836 So.2d 135. Louisiana Revised Statute 14.20(A)(1) provides that 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. However, 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. LSA-R.S. 14:21. On appeal, the relevant inquiry is whether or not, after viewing the evidence in the light most favorable to the prosecution, a rational fact finder could have found beyond a reasonable doubt that the defendant did not act in self-defense. **State v. Williams**, 804 So.2d at 939.

Terrance Johnson testified that a week prior to the shooting in this case, he called the defendant to question him about giving his girlfriend, Angelina Dapremont, a ride in the defendant's car. A verbal altercation ensued between Johnson and the defendant, with Johnson demanding to

know where the defendant took his girlfriend on that occasion. After the telephone call, Johnson considered the issue "dead," but days later he saw the defendant and the defendant "took off running." Johnson was unsure why the defendant had run from him, but he stated that he "left that alone." Johnson denied ever forcing the defendant's vehicle off the road.

Keenan Larry was living with the victim at the time of the instant offense. Larry testified that he talked to the defendant on the day before the shooting and that they did not have any problems at that time. Later that night, the defendant called Larry and invited him to come "hang" with him. The defendant sent Kron Stevenson to pick Larry up because he did not have transportation. Around 10:00 p.m., Stevenson took Larry and the victim to the defendant's house. When they arrived, the defendant began accusing Larry of starting rumors and conflict between the defendant and Johnson concerning Johnson's girlfriend. Larry denied the accusations and the two bickered before Stevenson, who wanted to end the argument, drove Larry and the victim back home. When they got home, the defendant called again, asking Larry why he ran away, and they began arguing and threatening to beat each other up. After Larry terminated the telephone call, the defendant called back, insisting on another confrontation and indicating that he had a gun. Larry agreed to go back to the defendant's residence and called Johnson so both of them could confront the defendant.

Larry testified that he and the defendant were friends before the dispute, that he was aware of the fact that the defendant possessed a gun, and that he had seen the defendant fire it when they were "hanging out" two to three weeks before the instant offense. Despite the defendant's comments leading up to the shooting, Larry did not believe that the defendant would actually shoot anyone and did not tell his other friends that the defendant

was armed. Larry was, however, afraid that the defendant and his brother might "jump" him (which he clarified meant a fist fight).

According to Johnson, the defendant was on the telephone with Larry, when Larry met with Johnson that night. Larry gave Johnson his telephone and Johnson heard the defendant say something to the effect that if "any one of ya'll come up here . . . I'm gonna f ya'll up," and, "I got something for you." Johnson stated that he was hesitant, but he knew that the other men wanted to confront the defendant. Johnson believed that there would be a fist fight and had no indication that the defendant had a weapon. Johnson added that they did not expect the defendant to fight them by himself because he heard other people in the background when the defendant was on the telephone, so they knew the defendant was not home alone.

The victim's brother, Jeremy Butler, testified that Larry's telephone speaker was on, during part of his conversation with the defendant, and he heard the defendant threatening to beat up Larry and Johnson. Butler also believed that there would only be a fist fight, and he had no indication that the defendant had a weapon. Larry, Johnson, and Butler were all adamant that they did not have a gun. Larry testified that Johnson and the victim did not carry guns. Further, Larry and Johnson testified that, to their knowledge, no one in Johnson's vehicle had a gun that night. Butler specifically testified that he and his brother did not have a gun and that, to his knowledge, only the defendant had a gun.

Sometime after midnight, Johnson (the driver), Larry, the victim, and Butler (the victim's brother) parked at a nearby residence of a relative of Johnson (about a block away) and walked to the defendant's residence on

Schoolhouse Lane.[3] As they turned the corner and approached the defendant's yard, Johnson and the victim were walking just ahead of Larry and Butler. Johnson exchanged heated words with the defendant, who was standing in the yard of the house where he lived. According to Butler, as they argued, the victim said, "[Y]a'll need to chill out because ya'll gonna be friends anyway, because we all like one big family and stuff." Larry testified that after they noticed that the defendant was armed with a gun, he still did not believe the defendant would use the weapon. Larry further stated that he told the victim, at the time, "[M]an, he ain't gone [sic] use that gun, he just got that gun to show, try to scare somebody . . . ." Regarding the moments before the shooting, Johnson testified:

> At that point I see him in [a shooting] stance. So I take off walking toward that fence where the yellow house [has] a hurricane fence up against [it]. I took off walking towards the fence[.] Columbus [was] walking down the street with a 40 ounce [bottle] of beer in his hand.

During cross-examination, Johnson testified that he and the victim were turning to get away before the victim was shot, and the victim was shot in the back. During redirect examination, Johnson testified that he observed a hole and blood on the victim's back and concluded that the victim had been shot in the back. Similarly, Butler was under the impression that his brother had been shot in the back.

Larry and Johnson stated that the victim did not seem to be drunk at the time of the shooting, though earlier that night Stevenson had given him the bottle of beer he had in his hand at the time of the shooting. Butler, however, confirmed that his brother was "drunk" and "feeling good." Larry estimated that they were about fifteen feet away from the defendant when he

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[3] Larry referred to the nearby residence, where they parked, as "Columbus['s] aunt's yard," while Johnson stated that they parked in "Cecile Bartley's yard," who he said was a family member, by marriage. Butler referred to it as his "Nanny['s] house."

fired the gun, but he admitted that he was unsure of the distance. Johnson estimated the distance between the victim and the defendant as twenty to twenty-five feet. Butler testified that the defendant was standing behind a burgundy car "in a gun motion" or a "gun stance," approximately forty feet away from them at the time of the gunshot, and the defendant threatened to shoot again before fleeing from the scene. Larry called for emergency assistance and stayed with the victim until the police arrived, while Johnson testified that he drove to the Butler family residence to tell them about the shooting. Butler testified that he ran to the home of his "Nanny" to call 911.

Larry was interviewed at the scene and again a few hours later at the sheriff's office. Explaining that he did not want to get them involved, Larry confirmed that he did not initially inform the police at the scene that Johnson and the victim's brother were present at the time of the shooting, but he did inform the police of their presence during his interview at the sheriff's office later that day. According to Larry, Johnson and Butler were back at the scene within approximately five minutes. Johnson testified that after he alerted the victim's family members, he returned to the scene along with the victim's other brother, Charles Butler. According to Johnson and Butler, when they returned to the scene they told the police they were present at the time of the shooting. They gave a statement to the police later that day. During cross-examination, Butler confirmed that his brother (the victim) had numerous tattoos, including one on his back reading "Thug Life," which he said meant, "Just a person in the ghetto just struggling, you know, trying to make it . . . ."

The defendant's cousin, Kirk Edmond, who was also present at the time of the shooting, testified that the defendant used their grandfather's rifle. Kirk Edmond stated that the defendant first fired into the air and then

fired another shot, after which the victim fell to the ground. He did not see any other gun. Kirk Edmond further stated that he and the defendant were drinking beer the night of the shooting and were intoxicated. He also testified that, when the defendant was using the cell phone, he heard someone in the background say that they were going to bring a gun.

Detective Gary Driskill of the St. Mary Parish Sheriff's Office arrived at the scene at about 1:20 a.m. When he arrived, a few other people were there along with first responders. Detective Driskill testified that Larry was present when he arrived at the scene, but he did not see Johnson or Butler, adding that he was doing the photography and measurements.[4] Detective Driskill confirmed that while Larry was at the scene, he did not inform the police that Johnson and Butler were present at the time of the shooting, although Larry did so when he was interviewed at the sheriff's office. Detective Driskill was not aware of Johnson and Butler volunteering to come forward, noting that the police looked for them, and that they did give a statement to Detective Howard Rogers of the St. Mary Parish Sheriff's Office the day of the shooting. Detective Rogers confirmed that Johnson and Butler came to the sheriff's office the day of the shooting to be interviewed.[5] Consistent with their trial testimony, during statements to the police, Larry said that he knew the defendant had a gun, while Johnson and Butler did not indicate that they were aware of that fact before the shooting.

[4] The victim was deceased when the first responders and ambulance arrived on the scene. On cross-examination, Detective Driskill testified that upon his arrival, he quickly ascertained that the victim had been shot in the front, not in the back. Also, during cross-examination, Detective Driskill testified that the phrase tattooed on the victim's back, "Thug Life," meant that he was involved in a gang.

[5] Detective Rogers testified as the sole defense witness. However, the defense withdrew the line of questioning when the State objected to the attempt to elicit specific testimony regarding the interviews of Johnson and Butler.

The defendant's aunt consented to a search of the home and assisted the police with the recovery of the rifle.

Dr. Susan Garcia, the Jefferson Parish assistant coroner and forensic pathology expert witness, performed the victim's autopsy.[6] Dr. Garcia explained the four categories or classifications of gunshot wounds referenced in an autopsy: (1) a "contact" wound means the muzzle of the weapon was in contact with skin at the time of discharge; (2) a "close range" gunshot wound indicates the muzzle was within inches of the body when the weapon was discharged; (3) an "intermediate range" wound occurs between one and three feet of the discharged weapon and results in a pattern called stippling (little red dots on the skin caused by unburned powder and lead fragments that exit the muzzle); and (4) a "distant range" wound exceeds the maximum "intermediate range" distance of three feet, though the distance between the muzzle and the body at the time of the discharge cannot be further estimated. In this case, there was no stippling or evidence of a "contact" or "close range" wound, and Dr. Garcia concluded that the victim was shot at "distant range." The victim had gunshot wounds on his chest and back, since the bullet entered his chest and exited his back. Dr. Garcia confirmed that the gun was being pointed at the victim when it was fired, and she specifically noted that the course and track of the wound was front to back, with virtually no deviation to the left or right, and was essentially horizontal.

Over twelve hours after the shooting occurred, the defendant was arrested when he turned himself in to the police; he gave a video-recorded interview, conducted by Detective Driskill and Detective Artis Jackson (also

[6] Dr. Garcia testified that she performed the autopsy, even though the offense occurred in St. Mary Parish, since the Coroner of St. Mary Parish, Dr. Metz, elected to use Jefferson Parish facilities.

of the St. Mary Parish Sheriff's Office). During the interview, the defendant admitted to calling Larry before the shooting, stating that he only wanted to talk to him. The defendant initially denied committing the shooting. He repeatedly stated that one of the approaching men had a gun, that he felt threatened, and that he left the scene on foot before any shooting occurred. He indicated that he did not know which man had a gun. The defendant stated that he passed a casino, while still on foot, and that he called his wife, who came to pick him up. After the detectives told him that they would be able to obtain video surveillance footage from the casino, the defendant admitted that he did not pass a casino while on foot. After the detectives informed the defendant that his wife was being questioned, he admitted that his wife did not pick him up.

The defendant ultimately admitted to firing a single shot before leaving the scene, stating that he just wanted to scare the group of people away, but that he was not trying to shoot anyone. He initially stated that he did not know what type of gun he used, but later indicated it was a rifle. The defendant stated that he was unaware of the fact that someone was hit when he fired the rifle. The defendant indicated that eight to ten individuals were approaching him when he fired the rifle, including Terrence Johnson (who the defendant called "Terrence Bartley"), Keenan Larry, and other unknown individuals. He stated that he aimed the rifle "up" above the heads of the approaching individuals. He estimated that the individuals were about ten to twelve feet away when he fired the rifle. However, Detective Driskill testified that he personally measured the distance, in accordance with the specific positioning indicated by the defendant, as depicted in a diagram created during his interview (placing himself in the driveway behind a vehicle and the other men between the defendant's yard and another house at

the corner, in the middle of the road), and determined the distance to be seventy feet.

The defendant had called the police on May 3, 2009, four days before the shooting, to report his claim that there was a collision in which Johnson forced his vehicle off the road. Detective Driskill and deputies of the sheriff's office investigated the claim, by checking the scene of the alleged incident, the defendant's vehicle, and Johnson's vehicle; they found no evidence of such an incident. However, the defendant was arrested at that time for an unrelated incident. The defendant did not testify at the trial.

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. Thus, an appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Williams**, 804 So.2d at 939. 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. **State v. Morris**, 2009-0422 (La. App. 1 Cir. 9/11/09), 22 So.3d 1002, 1009 (citing **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam)).

The guilty verdict in this case indicates the jury rejected the defendant's claim that he shot the victim in self-defense. Much of the testimony presented during the trial indicated that the defendant was the aggressor in the incident, and, with the plan to shoot in mind, he insisted that

Johnson and Larry come to his residence. It is uncontested that neither the victim nor any of the other individuals present were physically attacking the defendant before he fired his weapon at "distance range." There was no evidence, outside of the defendant's self-serving statement, that anyone else in the group actually had or produced a weapon. Moreover, the defendant's omissions and actions after the shooting (of failing to report the shooting, fleeing from the scene, and subsequently lying to the police) are inconsistent with a theory of self-defense. See **State v. Emanuel-Dunn**, 2003-0550 (La. App. 1 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. 1 Cir. 1992), writ denied, 614 So.2d 1253 (La. 1993). Further, the defendant lied to the police several times during his recorded interview. He repeatedly denied committing the shooting, stating that he left the scene on foot before any shooting took place. While he ultimately admitted that he fired a shot, he stated that he fired the rifle at an upward angle. However, the evidence clearly indicated that the gun was being pointed directly at the victim when it was fired and that the victim was shot at a horizontal angle. A finding of purposeful misrepresentation, just as in the case of flight following an offense, reasonably raises the inference of a "guilty mind." Lying has been recognized as indicative of an awareness of wrongdoing. **State v. Captville**, 448 So.2d 676, 680 n.4 (La. 1984).

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 (La. 11/29/06), 946 So.2d 654, 662. Considering the evidence presented in the light most favorable to the prosecution, we conclude that a rational juror could have found that the State

established beyond a reasonable doubt that the defendant did not act in self-defense. The sole assignment of error lacks merit.

REVIEW FOR ERROR

The defendant asks that this court examine the record for error pursuant to LSA-C.Cr.P. art. 920. This court routinely reviews the record for such errors, whether or not such a request is made by a defendant. Under LSA-C.Cr.P. art. 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings, without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See **State v. Price**, 2005-2514 (La. App. 1 Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

CONVICTION AND SENTENCE AFFIRMED.