NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 KA 1201

STATE OF LOUISIANA

VERSUS

CURTIS MATHEW LILLY

Judgment Rendered: MAR 2 7 2009

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 10-06-0179

Honorable Todd Hernandez, Judge

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State – Appellee

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Attorney for
Defendant – Appellant
Curtis Mathew Lilly

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

WELCH, J.

The defendant, Curtis Mathew Lilly, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. The defendant entered the dual plea of not guilty and not guilty by reason of insanity. Following a jury trial, the defendant was found guilty as charged. He was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

FACTS

On September 9, 2006, at about 6:45 p.m., Monita Overstreet drove to Southern University with several people to watch a football game with her fiancé, Freddie Jackson. Jackson had been at Southern most of the day tailgating with friends. Jackson had parked his Chevrolet S-10 Blazer on the grassy area between the northern side of the Teacher's Federal Credit Union parking lot and Harding Boulevard.

When Overstreet arrived, Jackson backed up his Blazer so that Overstreet could park her vehicle where the Blazer had been. As Overstreet was preparing to back up, the defendant, a security officer, approached Overstreet and informed her she could not park there. Overstreet began to pull away. Jackson exited his vehicle and approached the defendant. Jackson told the defendant it was a public parking area and that he was just going to park there for a little while. The defendant and Jackson began arguing about Overstreet not being allowed to park. Without warning, the defendant drew his handgun. Jackson quickly raised his hands. The defendant shot Jackson in the abdomen, and Jackson fell to the ground. As eyewitnesses began to approach, the defendant stood over Jackson, raised his gun, and said "[w]ho else wants some?" Shortly thereafter, police officers arrived and disarmed the defendant. Jackson died from the gunshot wound.

Several eyewitnesses to the shooting testified at trial. According to these witnesses, Jackson had no weapon, nothing in his hands, and did not provoke the defendant. Five witnesses testified that when the defendant pulled his gun, Jackson's hands went up. Three of these five witnesses further testified that Jackson made no movement toward the defendant. Jackson and the defendant were several feet apart from each other when the defendant shot Jackson. According to Dr. Gilbert Corrigan, the pathologist who performed the autopsy on Jackson, the gunshot wound was not a contact wound. Several witnesses also testified that Overstreet would not have been in the parking lot or blocking the parking lot if she had parked in the spot where she was trying to park. The defendant did not testify at trial.

ASSIGNMENT OF ERROR NUMBER 1

In his sole assignment of error, the defendant argues the evidence was insufficient to support a conviction for second degree murder. Specifically, the defendant contends he suffers from paranoid schizophrenia and, as such, was incapable of distinguishing between right and wrong when he shot Jackson. In the alternative, the defendant argues that even if he was not legally insane at the time of the shooting, his mental condition precluded him from forming the specific intent to kill. The defendant does not deny that he shot and killed Jackson.

The proper procedural vehicle for raising the sufficiency of the evidence is by filing a motion for post-verdict judgment of acquittal before the trial court. See La. C.Cr.P. art. 821. Nevertheless, despite the defendant's failure to file such a motion, we will consider a claim of insufficiency of the evidence which has been briefed pursuant to a formal assignment of error. See **State v. Williams**, 613 So.2d 252, 255 (La. App. 1st Cir. 1992).

A conviction based on insufficient evidence cannot stand as it violates due process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of

review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); see also La. C.Cr.P. art. 821(B); **State v. Ordodi**, 2006-0207, p. 10 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988). The **Jackson** standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that in order to convict, the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001-2585, pp. 4-5 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

Louisiana Revised Statutes 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 a 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 the defendant. **State v. Graham**, 420 So.2d 1126, 1127 (La. 1982).

The State bears the burden of proving beyond a reasonable doubt each element of the crime necessary to constitute the defendant's guilt. La. R.S. 15:271. However, a defendant is presumed sane at the time of the offense; the State is not required to prove sanity. La. R.S. 15:432. A defendant who wishes to negate the

presumption must put forth an affirmative defense of insanity and prove his insanity by a preponderance of the evidence. La. C.Cr.P. art. 652. In order to establish that he should be exempt from criminal responsibility, the defendant must show that, because of a mental disease or mental defect, he was incapable of distinguishing between right and wrong with reference to the conduct in question. La. R.S. 14:14; **State v. Pravata**, 522 So.2d 606, 613 (La. App. 1st Cir.), writ denied, 531 So.2d 261 (La. 1988).

After the State rested its case-in-chief, the defendant called three doctors to testify. Dr. Donald Hoppe, a clinical psychologist who was not the defendant's treating physician, interviewed the defendant at prison and reviewed his prison medical records.[1] According to Dr. Hoppe, the defendant's medical records indicated he had been diagnosed as a paranoid schizophrenic and had experienced mental problems since 1983. At trial, defense counsel asked Dr. Hoppe whether the defendant was legally insane at the time of the offense. Dr. Hoppe responded that was "a hard call to make" given that he was not able to speak with the defendant at the time of the offense[2] and because there was very little information available from other sources as to what his behavior or thinking was like. However, Dr. Hoppe ultimately concluded that, given the limited information, the defendant did not appear to meet the legal definition of insanity at the time of the offense. Dr. Hoppe further opined the defendant "was medically insane at the time of the offense," but "he did not meet the legal definition of insane." While the defendant suffered from a mental illness that affected his functioning, Dr. Hoppe explained, such an illness did not "appear to have caused him to not be able to differentiate right from wrong."

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[1] Prior to trial, the trial court appointed a sanity commission, which consisted of Dr. Hoppe and Dr. Robert Blanche.

[2] Dr. Hoppe first spoke with the defendant about eight months after the defendant shot Jackson.

According to Dr. Hoppe, the defendant, who was taking medication for his mental illness, told Dr. Hoppe that he had not taken his medication at the time of the offense. Subsequently, the following colloquy between the prosecutor and Dr. Hoppe took place:

> Q. Okay. So, once again, my question becomes: if he missed this one medication, would he have an inability to determine right from wrong?
>
> A. Probably not.
>
> Q. So, he could tell right from wrong, just missing one medication?
>
> A. He most likely could, yes.

Dr. Krishna Yalamanchili, a psychiatrist who had been treating the defendant since 1995, was the second doctor called by defense counsel to testify. Dr. Yalamanchili did not offer an opinion at trial about whether he thought the defendant was sane or insane at the time of the offense. He testified the last time he saw the defendant in July of 2006, the defendant was taking Stelazine, an anti-psychotic, and Wellbutrin, an anti-depressant. When asked by defense counsel if missing one dose of Stelazine would have any effect on his paranoid state, Dr. Yalamanchili responded that he did not think missing one dose would change his paranoid state. In his July 2006 report on the defendant, about two months before the shooting, Dr. Yalamanchili stated the defendant is "doing better, mood stable, not paranoid, no side[-]effects, working as a security guard, enjoying it, six months follow-up."

The third doctor called by defense counsel was Dr. Robert Blanche, a psychiatrist who evaluated the defendant pursuant to a court ordered sanity evaluation. Dr. Blanche testified that, while he was convinced the defendant had a psychotic illness, he was not convinced the defendant was a paranoid schizophrenic. It was Dr. Blanche's opinion the defendant was sane at the time of the commission of the offense. In his written report prepared for the sanity

evaluation, Dr. Blanche stated, "[the defendant] reports that he was taking medications at the time of the incident, though recalls skipping a dose (this would have no clinical significance)." When asked at trial to explain what he meant by "no clinical significance," Dr. Blanche explained that antipsychotic medications have a cumulative effect and work over time rather than having a direct, immediate antipsychotic effect. Thus, missing one or even two doses of an antipsychotic drug is not going to have any impact on the status of the patient's condition. According to Dr. Blanche, "[m]issing a dose is not a big deal." Dr. Blanche concluded in his testimony there were no signs of active psychosis and the defendant knew the difference between right and wrong at the time of the commission of the offense.

The question of whether the defendant has affirmatively proven his insanity and thus should not be held responsible for his actions is one for the jury. All of the evidence, including both expert and lay testimony, and the conduct and action of the defendant, should be considered by the jury in determining sanity. When a defendant who affirmatively offered the defense of insanity claims that the record evidence does not support a finding of guilty beyond a reasonable doubt, the standard for review by an appellate court is whether any rational factfinder, viewing the evidence in the light most favorable to the prosecution, could conclude the defendant had not proved by a preponderance of the evidence that he was insane at the time of the offense. **Pravata**, 522 So.2d at 614; see also **State v. Peters**, 94-0283, p. 8 (La. 10/17/94), 643 So.2d 1222, 1225.

The jury was presented with sufficient evidence upon which it could conclude the defendant did not prove he was insane at the time of the offense. Two medical experts called by the defense testified it was their opinion the defendant was sane at the time of the commission of the offense. These opinions were not negated by any other expert testimony. See **Pravata**, 522 So.2d at 614. Further, the defendant's taped statement to the police only several hours after the

shooting revealed nothing to suggest an irrational, psychotic, or insane state of mind. The defendant calmly and accurately recalled the setting and the circumstances leading up to his shooting of Jackson. According to the defendant, Jackson defied him and showed him no respect. When asked why he shot Jackson, the defendant responded that Jackson, while cursing, walked toward him while his (Jackson's) hand was going into his pocket.

Dr. Blanche testified he listened to the recording of the defendant's statement to the police. Based on his evaluation of the defendant's statement, it was Dr. Blanche's opinion that the defendant's "mental illness was in remission and, thus, not active or acute at the time of the commission of the crime." Dr. Blanche testified that when the defendant gave his statement to the police, his thoughts were not disorganized, and he did not ramble. The defendant sounded anxious, which would be normal. Dr. Blanche further opined:

> But he was not agitated. He wasn't angry. He was really -- really giving an account to the officers like -- like he was accounting for -- I want to say almost like an officer would. He would -- he was giving an account of -- and it sounded very professional and organized, very coherent, in control. And he gave an accurate accounting of, you know, past events. So even given the stress that he was under at that time, he did not unravel. He -- he did not seem unraveled. I mean he was -- it was very -- it was pretty concise, clear accounting . . . of [a] traumatic event. So based on hearing his voice -- though I don't have the luxury of seeing him at the time -- hearing his voice, listening to his speech, analyzing his thought patterns, I could not detect any active or even chronic -- I couldn't detect anything being wrong with him, other than being kind of anxious and excited, which I think is -- would be normal considering the circumstances.

In light of the evidence presented by the State, the trier of fact could infer the defendant knew the difference between right and wrong at the time he shot and killed Jackson. Therefore, any rational trier of fact could find that defendant failed to prove by a preponderance of the evidence that he was insane at the time of the offense. See **Pravata**, 522 So.2d at 614.

The defendant also claims that, even if it is determined he failed to establish

his insanity, as a paranoid schizophrenic with a history of not taking his medication properly, his mental condition precluded his ability to form the specific intent to kill. Louisiana does not recognize the doctrine of diminished capacity. A mental defect or disorder short of legal insanity cannot serve to negate the specific intent and reduce the degree of the crime. Evidence of the defendant's mental condition was presented to the jury to determine whether he was insane at the time of the offense, rather than to determine whether he shot his victim with the specific intent to cause his death. See **Pravata**, 522 So.2d at 614-15; see also **State v. Jones**, 359 So.2d 95, 98 (La. 1978), cert. denied, 439 U.S. 1049, 99 S.Ct. 727, 58 L.Ed.2d 708 (1978).

After a thorough review of the record, we find the evidence supports the jury's verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant failed to prove he was insane at the time of the offense and that the essential elements of the crime were proven beyond a reasonable doubt.

The assignment of error is without merit.

CONCLUSION

Based on the foregoing, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.