NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 0151

STATE OF LOUISIANA

VERSUS

DARRIS SEYMORAY DORSEY

Judgment Rendered: June 11, 2010

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Appealed from the
Sixteenth Judicial District Court
In and for the Parish of St. Mary
State of Louisiana
Case Number 08-178419
Honorable John E. Conery, Judge

* * * * * *

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* * * * * *

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

GUIDRY, J.

Defendant, Darris Seymoray Dorsey, was charged by bill of information with one count of manslaughter, a violation of La. R.S. 14:31. Defendant entered a plea of not guilty and was tried before a jury. The jury unanimously found defendant guilty as charged. The trial court sentenced defendant to a term of ten years at hard labor.

Defendant appeals, citing the following issues for review:

> 1. Did the district court commit manifest error when it accepted the jury's guilty verdict even though the State's evidence could not dispute that Dorsey tried to avoid confrontation with Gobert before he resorted to using a weapon to defend himself against this hot-tempered teenager?
>
> 2. Was the district court's ten-year sentence against Dorsey excessive considering that this was Dorsey's first felony conviction and the facts leading to his arrest could not override Dorsey's need to use force against Gobert?

We affirm defendant's conviction and sentence.

FACTS

On October 30, 2008, Kim Gobert, the seventeen-year-old son of Melanie Carbin Gobert, asked his mother to take him to the store. Melanie called defendant, who had her vehicle, and asked him to return to her residence. Defendant had been living with Melanie and her two children, Kim and McKenzie, for the previous few years.

When defendant returned to the residence, Kim, McKenzie and Melanie got into the vehicle. Defendant and Kim were seated in the front, while Melanie and McKenzie sat in the back. At the outset, Kim challenged defendant's presence on the trip and made a comment that he only wanted to spend time with his mother. According to the State's witnesses, defendant replied that Kim would spend time with everyone.

Defendant and Kim began arguing. Both Melanie and McKenzie testified that the argument turned physical while defendant was driving, but it was unclear

who initiated the first blow. At some point, defendant stopped the vehicle, got out, and began walking. Melanie got into the driver's seat and noticed defendant had left his cell phone in the vehicle. She drove the vehicle a short distance and handed the phone to the defendant through the driver's side window.

When Melanie pulled up next to the defendant to hand him the cell phone, Kim got out of the vehicle. He confronted the defendant in front of his mother's vehicle. According to Melanie, when she next observed her son and the defendant, Kim was "slumped over" on the defendant. McKenzie's account of the incident differed slightly from that of her mother's. McKenzie testified that she got out of the vehicle immediately TO follow her brother. She said that she grabbed her brother's shirt, but he caused her to let go. The next thing she noticed was Kim lying on top of the defendant on the ground when the defendant stabbed him. Both witnesses stated that they did not observe either Kim or the defendant hitting each other outside of the vehicle. After he stabbed Kim, defendant pushed Kim from him and ran away.

Kim had to be helped back into the vehicle because he had been stabbed in the abdomen. Melanie took Kim to Teche Regional Medical Center in Morgan City; however, during surgery, Kim died as a result of the stab wound.

In the meantime, defendant had gone to the home of his aunt, Linda Turner. Melvin Turner, Linda's brother, was called inside the residence and told that the defendant had stabbed someone. Melvin observed defendant inside the residence and testified that defendant appeared "scared." According to Melvin, defendant asked him to take him to his mother's home. Melvin told him he would not and called the police. Defendant gave Melvin his knife, and Melvin gave the knife to his niece, who placed it in a cellophane bag. When the police arrived, Melvin gave the knife to the police, and defendant was taken into custody.

Defendant did not testify at trial.

SUFFICIENCY OF THE EVIDENCE

In his first assignment of error, defendant contends the evidence is insufficient to support his conviction for manslaughter. Specifically, defendant argues the jury erred in rejecting his claim of self-defense. Defendant maintains the victim was the aggressor, and that he walked away from the victim's aggressive actions twice. Defendant further contends the victim was a young athlete with a possible future in professional sports, and that the victim had a less than cordial relationship with him.[1]

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 conclude that the state proved 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. Mussall, 523 So. 2d 1305, 1308-09 (La. 1988). When circumstantial evidence is used to prove the commission of an offense, La. R.S. 15:438 requires that assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence. See State v. Wright, 98-0601, p. 2 (La. App. 1st Cir. 2/19/99), 730 So. 2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So. 2d 1157 & 2000-0895

[1] Although the victim's mother, Melanie, described the victim as six feet, two inches tall and one hundred and ninety-eight pounds, the only references made to the victim's future as a professional athlete are contained in victim impact statements that were submitted into evidence at sentencing. Further, while the defendant did not testify at trial, a video recording of his police interview on the date the incident was played for the jury. In the interview, the defendant discussed three separate incidents in which the victim had shown similar antagonistic behavior towards him. According to the defendant, the first incident occurred about a year prior to the stabbing when the victim physically assaulted him (jumped on him) while the defendant was lying in bed because the victim had allegedly been told that the defendant had hit Melanie. The next incident occurred two weeks before the stabbing. The defendant and the victim's mother were in their bedroom arguing about the fact that Melanie had left the light on, when the victim began banging loudly on the bedroom door. When Melanie went to the door to see why the victim was banging on the door, the victim loudly questioned her about the defendant's right to object to her leaving the bedroom light on. The final incident occurred just a week prior to the stabbing. In that incident, the defendant and Melanie had gone to pick the victim up from work and while driving home, Melanie began reprimanding the victim. When they arrived home, the victim suddenly turned to the defendant and told him, "you better stop playing with my mom." In response to the victim's outburst, the defendant stated that he was going to leave Melanie's home, but Melanie persuaded him to stay.

(La. 11/17/00), 773 So. 2d 732. This is not a separate test to be applied when circumstantial evidence forms the basis of a conviction; all evidence, both direct and circumstantial, must be sufficient to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt. State v. Ortiz, 96-1609, p. 12 (La. 10/21/97), 701 So. 2d 922, 930, cert. denied, 524 U.S. 943, 118 S.Ct. 2352, 141 L.Ed.2d 722 (1998).

As previously noted, the defendant was charged with, and convicted of, manslaughter. Louisiana Revised Statute 14:31 defines manslaughter, in pertinent part, as follows:

> A. Manslaughter is:
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> (1) A homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed; or
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> (2) A homicide committed, without any intent to cause death or great bodily harm.
>
> (a) When the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Article 30 or 30.1, or of any intentional misdemeanor directly affecting the person[.]

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). 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. Graham, 420 So. 2d 1126, 1127 (La. 1982).

The fact that an offender's conduct is justifiable, although otherwise criminal, constitutes a defense to prosecution for any crime based on that conduct.

La. R.S. 14:18. At the time of the offense in question, La. R.S. 14:20(A) provided, in pertinent part:

> A homicide is justifiable:
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> (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.
>
> (2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.

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, 01-0944, p. 5 (La. App. 1st Cir. 12/28/01), 804 So. 2d 932, 939, writ denied, 02-0399 (La. 2/14/03), 836 So. 2d 135. For the defendant's actions to be justified, the force used must be reasonable under the circumstances and apparently necessary to prevent an imminent assault. State v. Nelson, 34,077, p. 6 (La. App. 2d Cir. 12/6/00), 775 So. 2d 579, 584. On appeal, the relevant inquiry is whether, 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. Fisher, 95-0430, p. 3 (La. App. 1st Cir. 5/10/96), 673 So. 2d 721, 723, writ denied, 96-1412 (La. 11/1/96), 681 So. 2d 1259.

In this case, the defendant does not deny that he intentionally stabbed the victim. He insists, however, that the homicide was justifiable because he acted in self-defense to avoid further serious bodily injury to himself from the victim during the fight. Defendant claims that at all relevant times, the victim was the aggressor, and when he retreated, the victim pursued him. According to defendant's brief, the victim used his athleticism, pushed defendant to the ground,

and began pounding him until defendant got his pocket knife and stabbed the victim.

Viewing the evidence in the light most favorable to the State, we find the State negated the assertion this homicide was committed in self-defense. Both eyewitnesses testified that while the argument had turned physical in the vehicle, defendant later exited the vehicle and began walking away. After the defendant was given his cell phone, the victim exited the vehicle and approached the defendant. The victim was not carrying anything in his hands. According to both witnesses, the defendant did not retreat, but instead met the victim at the front of the car. Both witnesses testified that in a short span of time after victim confronted the defendant outside of the vehicle, defendant stabbed him. Under these circumstances, as presented by the State, the jury concluded that defendant's use of deadly force was not necessary nor was defendant's belief reasonable that he was in imminent danger of losing his life or receiving great bodily harm.

Accordingly, we find the evidence sufficiently supports defendant's conviction of manslaughter. 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. Calloway, 07-2306, pp. 1-2 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam). This assignment of error is without merit.

EXCESSIVE SENTENCE

In his second assignment of error, defendant contends the trial court imposed an excessive sentence in light of his lack of a criminal background, his need to defend himself, and his expression of remorse during the sentencing hearing.

The Eighth Amendment to the United States Constitution and article 1, section 20, of the Louisiana Constitution prohibit the imposition of excessive

punishment. Although a sentence falls within statutory limits, it may be excessive. State v. Sepulvado, 367 So. 2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it shocks the sense of justice. State v. Andrews, 94-0842, pp. 8-9 (La. App. 1st Cir. 5/5/95), 655 So. 2d 448, 454.

The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. See State v. Holts, 525 So. 2d 1241, 1245 (La. App. 1st Cir. 1988). On appellate review of a sentence, the relevant question is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. State v. Thomas, 98-1144, pp. 1-2 (La. 10/9/98), 719 So. 2d 49, 50 (per curiam).

Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of Article 894.1 need not be recited, the record must reflect that the trial court adequately considered the criteria. State v. Brown, 02-2231, p. 4 (La. App. 1st Cir. 5/9/03), 849 So. 2d 566, 569. The articulation of the factual basis for a sentence is the goal of Article 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with Article 894.1. State v. Lanclos, 419 So. 2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential

for rehabilitation through correctional services other than confinement. See State v. Jones, 398 So. 2d 1049, 1051-52 (La. 1981).

The penalty for a manslaughter conviction is imprisonment at hard labor for not more than forty years. La. R.S. 14:31(B). Defendant received a sentence of ten years at hard labor, a fourth of the sentence for which he was eligible.

The record reflects the trial court considered that defendant had no prior criminal history, and that his apology and remorse for the crime was sincere. The trial court stated it was convinced defendant tried to walk away from the victim, but noted there were more reasonable alternatives than stabbing the victim. The trial court further noted that the confrontation outside of the vehicle was not of such force or violence as to threaten defendant's life. Finally, the trial court noted that the sentence of ten years at hard labor was long enough to assist the family in its loss, but short enough to engage the family in the reconciliation process. [2]

Accordingly, after reviewing the record, we cannot say the trial court imposed an excessive sentence under the circumstances of this offense. This assignment of error is without merit.

CONCLUSION

Having thoroughly reviewed the record and considered the objections presented on appeal, we find the evidence supports the defendant's conviction and sentence. Accordingly, we affirm.

CONVICTION AND SENTENCE AFFIRMED.

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[2] Expressly, the trial court noted:

> So in a case like Mr. Dorsey's, the prison sentence has to be long enough to where time will heal some of the wounds; but short enough to be able to engage the family in this reconciliation process, so that when the Defendant is eventually released, the victim's family hopefully will no longer feel vengeful. They may not want anything to do with the man; but at least they won't want him strung up from the nearest post or tree every time they see him. That is a difficult concept for victims of [violent] crime, especially when you [lose] someone as young and as full of life and potential as Kim, ... and that is one reason why the sentence has to be long enough to enable time for the [victim's family] to try to come to that point.