

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2008 KA 0083**

**STATE OF LOUISIANA**

**VERSUS**

**ANTHONY JOHNSON**

*AMW*  
*Jus*

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**Judgment Rendered: June 6, 2008**

**Appealed from the  
Nineteenth Judicial District Court  
in and for the Parish of East Baton Rouge, State of Louisiana  
Trial Court Number 02-06-0296**

**Honorable Richard Anderson, Judge Presiding**

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

**WHIPPLE, J.**

The defendant, Anthony Johnson, was charged by grand jury indictment with second degree murder, a violation of LSA-R.S. 14:30.1. He pled not guilty and, following a jury trial, he was found guilty as charged. The defendant filed motions for a new trial and postverdict judgment of acquittal, which were denied. The defendant was sentenced to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. The defendant now appeals, designating four assignments of error.

We affirm the conviction and sentence.

**FACTS**

On December 11, 2005, between 3:30 p.m. and 4:00 p.m., four coworkers were riding together and heading southbound on River Road in Baton Rouge, when they observed a blue Jeep Cherokee stopped in the middle of the road, approximately a quarter of a mile away. The passenger in the back seat, later identified as Robert Edwards, exited the Cherokee and began walking southbound. The passenger in the front seat, later identified as the defendant, exited the Cherokee, walked around to the driver's side, pulled the driver, later identified as Daniel Magee, the victim herein, from the driver's seat and threw him on the side of the road. The defendant returned to the Cherokee, which was owned by Magee, and passed the four coworkers in their vehicle as he fled northbound on River Road in the Cherokee vehicle.

Carl Guillory, the coworker who was driving, pulled his truck near Magee. Edwards turned around and came back toward Carl's truck. Edwards asked Carl to please help Magee and then walked away. Carl exited his truck and approached Magee, who was gasping for air. Carl performed CPR on Magee for as long as he

could, but to no avail. Magee had been shot twice and died of his wounds.<sup>1</sup>

Two of the coworkers, Brandon Guillory and Scott Dupuy, gave statements to the police and identified Edwards in a photographic lineup. None of the coworkers identified the defendant. Edwards was later arrested by the police and identified the defendant as "Anthony." Edwards also pointed him out in a photographic lineup as the person who shot and killed Magee.

Sergeant Leonardo Moore, the officer with the East Baton Rouge Parish Sheriff's Office, in charge of the case, had been informed that Magee's Cherokee was found at an apartment complex located at 1658 Port Drive. Two fingerprints lifted from the Cherokee belonged to Edwards and the defendant. According to the information Sergeant Moore had received, defendant had been residing at a fourplex across the street from the Port Drive apartments. Sergeant Moore proceeded to the unit of the fourplex at which the defendant was supposed to be residing. The unit, which was virtually empty, had been abandoned by the tenants for nonpayment of rent. Sergeant Moore looked in a plastic garbage can right outside of the unit and found the murder weapon, a Hi-Point .380 semiautomatic pistol. The two bullet casings found in the Cherokee and the two bullets retrieved from Magee's body were shown to have come from the .380 pistol found by Sergeant Moore.

When the defendant was apprehended several days later, he gave a statement to Detective Chris Lechuga of the East Baton Rouge Parish Sheriff's Office. Sergeant Moore listened to the questioning from the interview booth. Because of problems with the equipment, Detective Lechuga's interview of the defendant was

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<sup>1</sup>Dr. Gilbert Corrigan, a forensic pathologist who performed the autopsy on Magee, testified at trial. Dr. Corrigan stated that Magee had sustained two gunshot wounds, which were horizontal and across his chest. One bullet entered through the right side of his chest, and the other bullet entered through his right arm. One bullet went through the major vessel of the right side of the heart, and the other bullet went through the major vessel of the left side of the heart. According to Dr. Corrigan, Magee would have been conscious for about five or ten seconds and would have died shortly thereafter. Both bullets were recovered from Magee's body. The cause of death was multiple gunshot wounds to the chest with massive internal hemorrhage.

not recorded. Sergeant Moore testified at trial that when Detective Lechuga started his interview of the defendant, the defendant denied any involvement in the murder of Magee. As the questioning progressed, the defendant admitted that he had been in Magee's vehicle in the front passenger seat, and that he, Edwards, and Magee had been riding around the Baton Rouge area drinking a few beers and looking for marijuana. The defendant had a gun in his hand. Edwards reached over the seat, and Edwards and the defendant began struggling over the gun. The gun discharged and Magee was struck.

Following Detective Lechuga's interview of the defendant, Sergeant Moore interviewed the defendant. This interview was recorded, and the recording was introduced into evidence at trial and played for the jury. In the interview, the defendant told Sergeant Moore that Magee had been driving, and that the defendant had been in the front passenger seat, with Edwards in the back seat. Edwards handed the defendant the .380 pistol with the safety off. The defendant told Edwards the safety was off, and Edwards grabbed the defendant's hand that was holding the gun, and told the defendant to give the gun back to him. A struggle over the gun ensued. The grabbing of the defendant's hand by Edwards caused the trigger to be squeezed. The gun discharged three times, and according to the defendant, Magee was accidentally struck and killed.

#### **ASSIGNMENT OF ERROR NO. 1**

In his first assignment of error, the defendant argues that the trial court abused its discretion in allowing the introduction of gruesome photographs of the autopsy. Specifically, the defendant contends that the prejudicial effect greatly outweighed any probative value the photographs may have had.

Prior to trial, a motion to suppress hearing was held on the admissibility of the autopsy photographs. The State sought to introduce exhibits S-7 through S-13. Except for S-12, which was an x-ray of the victim's arm, the other exhibits were

photographs of the bullet wounds to the victim's arm and chest and close-ups of the tissue damage caused by the bullets. The trial court ruled that the seven autopsy photographs were admissible.

On appeal, the defendant asserts that the "[b]loody pictures" from the autopsy were not necessary to show how the victim died, nor did they aid in proving any other material facts which were at issue. According to the defendant, the way in which the victim died could have been explained by the coroner "without showing blood."

The admission of gruesome photographs will not be overturned unless it is clear the prejudicial effect of the evidence outweighs its probative value.<sup>2</sup> Admission of such evidence will not be found in error unless the photographs are so gruesome as to overwhelm the jurors' reason and lead them to convict the defendant without sufficient other evidence. Gruesomeness of photographs does not, in and of itself, prevent admissibility. See State v. Huls, 95-0541, pp. 23-24 (La. App. 1st Cir. 5/29/96), 676 So. 2d 160, 176, writ denied, 96-1734 (La. 1/6/97), 685 So.2d 126. Generally, photographs of a victim's body which depict the fatal wounds are relevant to prove the *corpus delicti*, to establish the identity of the victim, the location, severity and number of wounds, and to corroborate other evidence of the manner in which the death occurred. State v. Eaton, 524 So. 2d 1194, 1201 (La. 1988), cert. denied, 488 U.S. 1019, 109 S. Ct. 818, 102 L. Ed. 2d 807 (1989). Moreover, the defendant cannot force the State to use drawings or other evidence instead of photographs. The defendant cannot deprive the State of the moral force of its case by offering to stipulate to what is shown in photographs. See State v. Perry, 502 So. 2d 543, 559 (La. 1986), cert. denied, 484 U.S. 872, 108 S. Ct. 205, 98 L. Ed. 2d 156 (1987).

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<sup>2</sup>Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. LSA-C.E. art. 403.

We find that the photographs were relevant and probative in establishing that the victim had been shot twice at close range and killed. They assisted the State in proving that the defendant had the specific intent to kill or to inflict great bodily harm upon his victim. They proved *corpus delicti*, corroborated the cause of death, the type of weapon used, and the locations and severity of the wounds. See Perry, 502 So. 2d at 559. Moreover, the trial court was correct in finding the probative value of the photographs outweighed any possible prejudicial effect which may have resulted from their display to the jury. See Eaton, 524 So. 2d at 1202; see also LSA-C.E. art. 403. As such, the trial court did not abuse its discretion in allowing the photographs into evidence.

This assignment of error is without merit.

#### **ASSIGNMENTS OF ERROR NOS. 2, 3 & 4**

In his second, third, and fourth assignments of error, the defendant argues the evidence was insufficient to support a conviction for second degree murder. Specifically, the defendant contends that: (1) the evidence was insufficient to show that the shooting was intentional and not accidental; and (2) the evidence was insufficient to show that a robbery had occurred merely because he left the scene of the shooting in the decedent's vehicle. As such, the trial court erred in denying his motions for new trial and postverdict judgment of acquittal.<sup>3</sup>

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 or not, 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

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<sup>3</sup>In his brief, the defendant combines the second, third, and fourth assignments of error into a single argument "due to their interrelation." The defendant argues in the second assignment of error that the evidence was insufficient. Defendant argues in the third and fourth assignments of error that the trial court erred in denying the defendant's motion for a new trial and motion for postverdict judgment of acquittal, respectively.

reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979). See also LSA-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 v. Virginia 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, LSA-R.S. 15:438 provides that 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 Statute 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; or

(2)(a) When the offender is engaged in the perpetration or attempted perpetration of . . . armed robbery . . . even though he has no 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. LSA-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. Due to the difficulty of presenting direct evidence as to the defendant's state of mind, the trier of fact may infer intent from the facts and circumstances of a transaction and the defendant's actions. The existence of specific intent is an ultimate legal conclusion to be resolved by the trier of fact. State v. McCue, 484 So. 2d 889, 893 (La. App. 1st Cir. 1986). See also State v. Graham, 420 So. 2d 1126, 1127-28 (La. 1982). Because we find the evidence was sufficient to prove the defendant had the specific intent to kill or to inflict great bodily harm on Magee, we pretermitt discussion of whether or not the record supports the

conviction under the felony-murder provision of LSA-R.S. 14:30.1(A)(2)(a).

There is no dispute that the defendant had the gun in his hand when he shot Magee twice at very close range and killed him. When questioned by Detective Lechuga, the defendant initially denied any involvement in the shooting. After further questioning, the defendant admitted that he was in the front passenger seat of Magee's vehicle and was holding the gun. The defendant told Detective Lechuga, however, that Magee was shot because the defendant and Edwards began struggling over the gun, causing it to accidentally discharge. Following Detective Lechuga's interview of the defendant, Sergeant Moore interviewed the defendant. This interview was recorded on DVD, and the DVD, which was introduced into evidence at trial, was played for the jury.

A review of the DVD indicates that the defendant also told Sergeant Moore that when he had the gun, Edwards had reached from the back seat and grabbed the gun. During the ensuing struggle over the gun, it discharged three times, and Magee was struck and killed.

Sergeant Moore also took a statement from Edwards. According to Sergeant Moore, following the statement given to him by Edwards, he showed Edwards a photographic lineup. Edwards positively identified the defendant as the person in the front passenger seat of the vehicle who "fired and killed" Magee. Sergeant Moore testified at trial that Edwards told him that Edwards, the defendant, and Magee had been riding around drinking and looking for marijuana. They looked around the River Road area, but were unsuccessful. Sergeant Moore then described what transpired, according to Edwards, as follows:

It appeared that they were going in a direction that Johnson -- I mean that Edwards didn't want to go and he stated that he started feeling bad vibes. Apparently there was -- he didn't explain it. There must have been some kind of altercation between the victim and Johnson. At that time he requested to get out of the vehicle. As the vehicle was turning, I guess it was going slow enough for him to exit the vehicle. He exits the vehicle. The vehicle rolls a couple of feet and began



swerving. Next thing you know, Johnson gets out of the vehicle and beckons him, says, "Hey, hey, come help me, come help me." He said, "No. I don't want to have nothing to do with this," and leaves the scene. At that time Johnson proceeds to the rear of the vehicle, to the front driver's side and pulls the victim out, actually drags him out of the vehicle, lays him on -- well, he falls on the ground and he leaves the scene at a high rate of speed.

Charles Watson, Jr., a forensic scientist and expert in firearms examination with the Louisiana State Police Crime Lab, testified at trial. Watson test-fired the .380 pistol that killed Magee. According to Watson, the .380 pistol did not have a hair trigger. The pull on the trigger was equivalent to every other Hi-Point he had ever seen, *i.e.*, the trigger was neither exceptionally heavy nor exceptionally light.

When Magee was shot, the defendant made no attempt to help him, or to contact the police or emergency personnel. Instead, the defendant dragged Magee, who was still alive, out of the vehicle and dumped him on the side of the road. The defendant then fled the scene in Magee's vehicle. The defendant disposed of the gun that killed Magee, and the defendant evaded the police for days. When the defendant was finally apprehended, he initially lied to the police by denying any involvement in the death of Magee.

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. Lying has been recognized as indicative of an awareness of wrongdoing. State v. Captville, 448 So. 2d 676, 680 n.4 (La. 1984). The facts in the instant matter established acts of both flight and material misrepresentation by the defendant.

In this case, the defendant did not testify. The jury was presented with the theory by the defense that the shooting was accidental and the theory by the State that the shooting was intentional. In finding the defendant guilty of second degree murder, it is clear the jury rejected the claim of accidental shooting, and concluded that the defense version of the events preceding the fatal shots was a fabrication

designed to deflect blame from the defendant.

When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. State v. Moten, 510 So. 2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So. 2d 126 (La. 1987).

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. State v. Taylor, 97-2261, p. 5 (La. App. 1st Cir. 9/25/98), 721 So. 2d 929, 932. We are constitutionally precluded from acting as a “thirteenth juror” in assessing what weight to give evidence in criminal cases. See State v. Mitchell, 99-3342, p. 8 (La. 10/17/00), 772 So. 2d 78, 83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. State v. Quinn, 479 So. 2d 592, 596 (La. App. 1st Cir. 1985).

Based on the physical evidence and the testimony of Carl Guillory, Brandon Guillory, Scott Dupuy, Dr. Corrigan, Charles Watson, Jr., and Sergeant Moore, a rational trier of fact could have reasonably concluded that there was no struggle over the gun between the defendant and Edwards, and that the defendant intentionally shot Magee in an argument about drugs or in furtherance of the defendant’s efforts to rob him. Magee died as a result of two gunshot wounds to the right arm and right chest from pointblank range. The fact that the defendant shot Magee at such a close range indicates a specific intent to kill or inflict great bodily harm. See State v. Wallace, 612 So. 2d 183, 190 (La. App. 1st Cir. 1992), writ denied, 614 So. 2d 1253 (La. 1993). As such, the hypothesis of an accidental shooting by the defense falls.

After a thorough review of the record, we find that 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 beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant intentionally shot and killed his victim and, therefore, was guilty of second degree murder.

Having determined there was sufficient evidence to affirm the verdict of the jury, we find no error in the trial court's denial of the defendant's motions for a new trial and postverdict judgment of acquittal. Accordingly, these assignments of error are without merit.

**CONVICTION AND SENTENCE AFFIRMED.**