

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 1219

STATE OF LOUISIANA

VERSUS

CHRISTOPHER HAWKINS

Judgment Rendered: February 10, 2012

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 05-09-0424

The Honorable Bonnie F. Jackson, Judge Presiding

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

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GAIDRY, J.

The defendant, Christopher Hawkins, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. He pled not guilty and, following a jury trial, was found guilty as charged. The defendant filed a motion for a post-verdict judgment of acquittal, which was denied. The defendant was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. He now appeals, designating two assignments of error. We affirm the conviction and sentence.

FACTS

On the afternoon of January 17, 2009, Kendel Watson was shot and killed on Titian Avenue (Mall City area) in Baton Rouge. Detectives from the Baton Rouge Police Department spoke to several of the residents who lived in the Titian Avenue area in an attempt to establish leads, but no one came forward with any information about who killed Watson. A few days later, however, Sheila Lopez and Delilah Curtis gave statements to detectives that implicated the defendant in the murder of Watson.

Lopez testified at trial that she lived in an upstairs apartment on Titian Avenue. At about 2:00 p.m. on January 17, 2009, she was looking out of the window when she saw the defendant, whom she knew from seeing him around the apartment complex. She watched the defendant run up the stairs, get a gun, then run back downstairs. Lopez then saw the defendant get into the passenger side of Silas Tillman's car. Lopez had seen the defendant and Tillman together in the past, and had also seen the defendant in Tillman's car before. Lopez then observed Silas back his car out of the driveway. As Tillman was backing up, the defendant got out of the car with the gun still in his hand and ran down the street until Lopez lost sight of the defendant.

Moments later, Lopez heard at least five gunshots. Lopez then walked to the edge of the porch and saw Watson lying on the ground. She knew Watson because he was her son's friend. A few days later, on January 21, Lopez went to the police station and gave a statement to the police. She picked the defendant out of a photographic lineup and identified the defendant in court as the person she saw with a gun on January 17.

Delilah Curtis testified at trial that she lived in an apartment on Huron Street. At about 2:00 p.m. or sometime thereafter on January 17, 2009, Curtis was home alone when her son and his friends, the defendant and Tillman, "bust in the door." Curtis stated that her son and the defendant had been friends since elementary school and that the defendant had slept at her house the night before. After her son and friends came inside, Curtis observed the defendant go to the bathroom and wash his hands with bleach. The defendant explained that he was trying to get the gunpowder off of his hands. The defendant then took off his pants and shirt, and Curtis's son gave the defendant some other clothes to wear. The defendant took off his shoes, a pair of green and white Converse tennis shoes, and placed them into a yellow bag he had gotten from the kitchen. Curtis then saw the defendant go outside and throw his shoes into a Dumpster outside of her apartment. The defendant returned to the apartment. When Curtis asked the defendant what was going on, the defendant said "he had shot the MF." Curtis also testified the defendant said "I killed the MF." The defendant also told Curtis to watch the news at 5:00 and she would see what happened. Curtis watched the news, which aired a story about someone being shot and killed behind the mall. At this point, Curtis told her son to get the defendant and Tillman out of her house and to not bring them back. The defendant and Tillman left in Tillman's car. Curtis found behind her couch the clothes the defendant

had taken off. On January 19, Curtis went to the police station and gave a statement to the police. She picked the defendant out of a photographic lineup and identified the defendant in court as the person she saw and spoke to on January 17.

Detective Matt Johnson, with the Baton Rouge Police Department, found the defendant's Converse tennis shoes in a yellow bag in the dumpster as indicated by Curtis. DNA on one of the shoes matched the defendant's DNA. Three spent .380 auto bullets were found at the crime scene - one in the crack of the concrete, one in a nearby tree, and one in Watson's chest. All three bullets were determined to have been fired from the same gun. No gun was found. The defendant did not testify at trial.

ASSIGNMENTS OF ERROR NOS. 1 and 2

In these related assignments of error, the defendant argues that respectively, the evidence was insufficient to support the conviction, and the trial court erred in denying the post-verdict judgment of acquittal. Specifically, the defendant contends that his identity as the shooter was not established at trial by the State.

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 reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See La. Code Crim. P. art. 821(B); *State v. Ordodi*, 2006-0207 (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 the factfinder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. See *State v. Patorno*, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144. Furthermore, when the key issue is the defendant's identity as the perpetrator, rather than whether the crime was committed, the State is required to negate any reasonable probability of misidentification. Positive identification by only one witness is sufficient to support a conviction. It is the factfinder who weighs the respective credibilities of the witnesses, and this court will generally not second-guess those determinations. See *State v. Hughes*, 2005-0992 (La. 11/29/06), 943 So.2d 1047, 1051; *State v. Davis*, 2001-3033 (La. App. 1st Cir. 6/21/02), 822 So.2d 161, 163-64.

Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. See La. R.S. 14:30.1(A)(1). 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 (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 existence of specific intent is an ultimate legal conclusion to be resolved by the trier of fact. *State v. McCue*, 484 So.2d 889, 892 (La. App. 1st Cir. 1986). Deliberately pointing and firing a deadly weapon at close range indicates specific intent to kill. See *State v. Robinson*, 2002-1869 (La.

4/14/04), 874 So.2d 66, 74, cert. denied, 543 U.S. 1023, 125 S.Ct. 658, 160 L.Ed.2d 499 (2004).

The defendant contends that the State's evidence failed to exclude every reasonable hypothesis of innocence. According to the defendant, it is not implausible that Curtis's son was "involved somehow in the shooting."

Testimony and evidence introduced at the trial established that Watson was shot twice in the right side of his back around 2:00 p.m. on January 17. The higher wound was lethal, which caused massive hemorrhaging and lacerations to his heart and lung. Shortly before the shooting, Sheila Lopez saw the defendant run to get a gun, get in and out of Silas Tillman's car, then run off toward the direction where Watson was shot. Moments after losing sight of the defendant, Lopez heard several gunshots. She then walked outside and saw Watson on the ground. Shortly after this, the defendant and Silas entered the apartment of Delilah Curtis. The defendant went to the bathroom, took off his clothes and shoes, and washed his hands to remove the gunpowder. The defendant put his shoes in a bag and threw the bag in a dumpster. When Curtis inquired about the defendant's actions, the defendant told her that he shot someone, and that the story of the shooting would be on the news that evening. Both Lopez and Curtis identified the defendant in a photographic lineup and identified him in court.

When a case involves circumstantial evidence and the trier of fact 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. See State v. Moten, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). The jury's verdict reflected the reasonable conclusion that the defendant shot Watson

while Watson may have been running from the defendant or had been unaware the defendant was approaching with a gun. The defendant then went to his friend's apartment and attempted to eliminate any traces of the shooting by washing his hands with bleach, removing and changing his clothes, and throwing his shoes away. In finding the defendant guilty, the jury clearly rejected the defense's theory of misidentification. See Moten, 510 So.2d at 61.

The jury heard the testimony and viewed the evidence presented to it at trial and found the defendant guilty as charged. The defendant did not testify and presented no rebuttal testimony. See Moten, 510 So.2d at 61-62. In the absence of internal contradiction or irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. *State v. Higgins*, 2003-1980 (La. 4/1/05), 898 So.2d 1219, 1226, cert. denied, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005). The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. 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 (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 (La. 10/17/00), 772 So.2d 78, 83.

After a thorough review of the record, we find that the evidence negates any reasonable probability of misidentification and supports the jury's unanimous 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 was guilty of the second degree murder of Kendel Watson. See *State v. Calloway*, 2007-2306 (La. 1/21/09), 1 So.3d 417, 422 (per curiam). Accordingly, the trial court did not err in denying the post-verdict judgment of acquittal.

These assignments of error are without merit, and the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.