NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 0911

STATE OF LOUISIANA

VERSUS

DWAYNE ADAM RACINE

Judgment Rendered: FEB 11 2011

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Appealed from the
Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Case Number 531,853

Honorable David W. Arceneaux, Judge

* * * * * *

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

The defendant, Dwayne Adam Racine, was charged by amended bill of information with one count of second degree battery (count I), a violation of La. R.S. 14:34.1, and one count of a hate crime (count II), a violation of La. R.S. 14:107.2, and pled not guilty on both counts.[1] Following a jury trial, he was found guilty as charged on both counts. On count I, he was sentenced to two years at hard labor, suspended, with two years of probation, subject to one year in parish jail. On count II, he was sentenced to an additional one year at hard labor, suspended, with two years of probation, subject to one year in parish jail. The court ordered that the sentences on counts I and II would run consecutively, but the terms and conditions of probation would be concurrent. The defendant now appeals, contending that there was insufficient evidence to establish that he was at the scene of the incident or, in the alternative, that he was a principal to second degree battery or a hate crime. For the following reasons, we affirm the convictions and sentences on counts I and II.

FACTS

The victim, Dedric Knight, an African-American male, testified at trial. On September 15, 2006, at approximately 11:30 p.m., he pulled into the parking lot of Bayou Express in Houma to change a flat tire. While waiting for his son to bring him the correct jack for his truck, he heard racial slurs coming from the area of the store. He heard, "Let's kill this n_____, let's get this n_____." He moved toward the back of his truck and saw two white males approaching him and spreading out. He then saw two more white males approaching, approximately eight feet behind the

[1] Charles Junius Brunet was charged by the same bill of information with the same offenses. He was a co-defendant at trial and was also found guilty as charged on both counts. He separately appealed to this court. See State v. Brunet, 10-0343 (La. App. 1st Cir. 9/13/10)(unpublished opinion).

first men. All four of the men addressed racial slurs to him. The victim indicated that Pete Billiot, one of the first two men, held a 9 millimeter handgun, while Dustin Boudwin,[2] the second of the first two men, distracted him. The other two men "cre[pt] in slowly. " The victim said he was scared, but "couldn't run against a gun." He told the men, "Y'all don't have to do this. I don't even know you guys." One of the men then knocked the victim unconscious.

The victim woke up when his sister and son arrived. None of his possessions had been taken, but he was lying in a puddle of blood. He suffered a shattered cheekbone, for which he received seven stitches under his left eye, and had titanium plates and screws placed into his face. He missed approximately ten months of work and had "extraordinary" medical bills. At the time of trial, he was continuing to have problems with his eye and cheek and had frequent headaches. Although the victim had previously identified Billiot and Boudwin in photographic lineups and in separate criminal proceedings instituted against them related to the attack, at the trial of the defendant, he initially misnamed Brunet and the defendant as Boudwin and Billiot. Nevertheless, despite his mistake in naming Brunet and the defendant, the victim stated that there was "no doubt" in his mind that they were present at Bayou Express at the time of the attack on him.

Pete Michael Billiot also testified at trial. At the time of trial, he was incarcerated for theft over $500. He had also been tried for his role in the attack on the victim and was aware that he "[could not] be punished any more for this offense." At the time of the incident, Brunet, whom Billiot referred to as his "stepdad," lived in the same house with Billiot and Billiot's mother and siblings. The defendant was Brunet's brother, who lived in a shed in the backyard of the house where Billiot lived. Billiot indicated he was fifteen years old at the time of the

[2] Due to court proceedings for the offenses, the victim was familiar with Billiot and Boudwin.

incident and had consumed an excessive amount of alcohol on the night of the incident. At that time, he lived on Gustave Lane, behind Bayou Express.

Billiot claimed that, after getting drunk, he walked alone to Bayou Express and encountered the victim. He claimed Boudwin arrived at Bayou Express about five or ten minutes later to "stop" him. Billiot claimed he had a gun and argued with the victim. He denied that the defendant had given him the gun. He claimed he had shown Brunet the gun before he left the house. He denied that he had shown the gun to the defendant. Billiot claimed the defendant was not with him in the parking lot, but conceded he had previously given a contrary statement to the police. He conceded he had previously told the police that the defendant struck the victim. He also claimed that Brunet was not with him in the parking lot, but conceded he had previously given contrary testimony at his trial. He conceded he had previously testified at his trial that Brunet had the gun at the scene. He also conceded that prior to the attack on the victim, he stated, "let's get the n_____."

Dustin Paul Boudwin also testified at trial. At the time of trial, he was incarcerated for his role in the attack on the victim. He had also previously entered guilty pleas to unrelated charges of forgery and burglary. He had known the defendant since the 1990s, and had known Brunet for a "couple of years." According to Boudwin, on the night of the incident, he followed Billiot into the parking lot of Bayou Express after Billiot stormed out of the house. Boudwin claimed that when he arrived, approximately a minute to a minute-and-a-half after Billiot, Billiot and the victim were already arguing. Boudwin claimed that he saw Billiot raise up a pistol, and he told him to put the gun down. Boudwin said Brunet was not in the same area as him and Billiot, but he heard Brunet stating, "y'all come on, y'all come on," from somewhere out of the area. Boudwin claimed that he never

heard any racial slurs and that he struck the victim so that Billiot would not shoot him or the victim.

Boudwin conceded that in his first statement to the police, he denied any involvement in the offenses, claimed that Billiot hit the victim, and claimed that Brunet bragged that his stepson had "knocked the guy out." In that statement, Boudwin also stated that Billiot called the victim a "n_____," and stated, "F___ all n_____s." Boudwin acknowledged that he was brought back to the police station twelve days later for an unrelated crime, but denied any memory of making another statement concerning the instant offenses. He conceded, however, that his signature appeared at the bottom of a second statement given that day concerning the offenses. According to the second statement, Boudwin stated that the defendant had hit the victim, and that Billiot was yelling, "n_____ this and n_____ that."

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues that the evidence was insufficient to support his conviction as a principal to the crimes.

The standard of review for 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 the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove," in order to convict, every reasonable hypothesis of innocence must be excluded. 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 and 00-0895 (La. 11/17/00), 773 So. 2d 732 (quoting La. R.S. 15:438).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. Wright, 98-0601 at p. 3, 730 So. 2d at 487.

All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals. La. R.S. 14:24. However, a defendant's mere presence at the scene is not enough to "concern" him in the crime. Only those persons who knowingly participate in the planning or execution of a crime may be said to be "concerned" in its commission, thus making them liable as principals. A principal may be connected only to those crimes for which he has the requisite mental state. State v. Neal, 00-0674, pp. 12-13 (La. 6/29/01), 796 So. 2d 649, 659, cert. denied, 535 U.S. 940, 122 S.Ct. 1323, 152 L.Ed.2d 231 (2002). However, "[i]t is sufficient encouragement that the accomplice is standing by at the scene of the crime ready to give some aid if needed, although in such a case it is necessary that the principal actually be aware of the accomplice's intention." State v. Anderson, 97-1301, p. 3 (La. 2/6/98), 707 So. 2d 1223, 1225 (per curiam).

Battery is the intentional use of force or violence upon the person of another. La. R.S. 14:33. Second degree battery is a battery committed without the consent of the victim when the offender intentionally inflicts serious bodily injury. La. R.S. 14:34.1 (prior to amendment by 2009 La. Acts, No. 264, § 1). A hate crime is committed when any person selects the victim of certain offenses,

including second degree battery, because of the victim's actual or perceived race. La. R.S. 14:107.2(A).

After a thorough review of the record, we are convinced that any rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was a principal to the second degree battery and hate crime committed against the victim. The verdict rendered against the defendant indicates that the jury rejected the defense theory that he was not present at the scene and accepted the theory of the State that he was one of a group of four individuals who attacked the victim. 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 that raises a reasonable doubt. State v. Moten, 510 So. 2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So. 2d 126 (La. 1987). No such hypothesis exists in the instant case. Further, 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, 06-0207, p. 14 (La. 11/29/06), 946 So. 2d 654, 662. 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.

CONCLUSION

After a thorough review of the record, we conclude that the evidence was sufficient to find the defendant guilty of second degree battery and acts constituting a hate crime. Accordingly, we affirm the defendant's convictions and sentences.

CONVICTIONS AND SENTENCES AFFIRMED.