

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 1420

WBN

STATE OF LOUISIANA

VERSUS

JAMES SIBLEY

*B.J.C. by jmm
jmm*

Judgment Rendered: February 9, 2007

**Appealed from the
Nineteenth Judicial District Court
in and for the Parish of East Baton Rouge, State of Louisiana
Trial Court Number 03-02-0095**

Honorable Bonnie Jackson, Judge Presiding

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BEFORE: CARTER, C. J., WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

Defendant, James Sibley, was charged by grand jury indictment with one count of second degree murder, a violation of LSA-R.S. 14:30.1. Defendant entered a plea of not guilty and was tried by a jury. The jury found defendant guilty as charged. The trial court sentenced defendant to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence.

Defendant appeals. After reviewing the record and applicable law, we affirm his conviction and sentence.

FACTS

Ronnie Lomas, the victim, owned and operated the Silvermine Lounge on North Acadian Thruway in Baton Rouge. On the evening of January 24, 2002, Lomas was seated at the bar of the lounge, talking with several customers. Lomas's wife, Earline Lomas, was working as a bartender. At approximately 10:00 p.m., Emma Stalling came in with defendant, her boyfriend of nineteen years. The couple ordered drinks but did not stay in the lounge very long. Stalling later returned to the lounge, sat in a corner of the bar and ordered a drink. A short time later, defendant entered the lounge and stood near a wall. Thereafter, defendant suddenly walked over to where Stalling was seated and hit her. Stalling got up and started throwing ashtrays and bottles at defendant.

The victim stood up and told Stalling and defendant to stop and to take their activities outside of the lounge. As defendant got ready to leave, Earline Lomas noticed that he had a gun in his hand. According to Earline Lomas, defendant pointed the gun at her husband and shot him once in the stomach and once in the chest. The victim died as a result of the gunshots. Defendant walked out of the lounge, and the police were then notified of the

events. Several days later, the defendant was arrested and identified by Earline Lomas as the person who shot her husband.

The defendant did not testify at trial; however, Emma Stalling testified on his behalf in support of his claim that the shooting was in self-defense. According to Stalling, the victim had grabbed defendant as he was attempting to leave the lounge after his altercation with her.

SUFFICIENCY OF THE EVIDENCE

In his first assignment of error, defendant argues that the evidence is insufficient to sustain his conviction for second degree murder because the state failed to prove beyond a reasonable doubt that defendant did not act in self-defense. Defendant's second assignment of error is the alternative argument that the evidence is insufficient to sustain the conviction because the mitigating circumstances surrounding defendant's actions required a verdict of manslaughter.

The standard of review for the sufficiency of evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the state proved the essential elements of the crime beyond a reasonable doubt. LSA-C.Cr.P. art. 821; Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

Second degree murder is defined, in pertinent part, by LSA-R.S. 14:30.1A(1) as "the killing of a human being: [w]hen the offender has a specific intent to kill or to inflict great bodily harm[.]" Specific intent is defined as "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). Specific intent need not be proven as a fact and may be inferred from the circumstances present

and actions of the defendant. State v. Williams, 2001-0944, p. 5 (La. App. 1st Cir. 12/28/01), 804 So. 2d 932, 939, writ denied, 2002-0399 (La. 2/14/03), 836 So. 2d 135. In the instant case, defendant does not deny shooting the victim or that the victim died as a result of the wounds inflicted. Instead, defendant argues that he shot the victim in self-defense after he felt his life was threatened.

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. Louisiana Revised Statute 14:20(1) provides that a homicide is justifiable 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 him from that danger. On appeal, the relevant inquiry is whether or not, 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. Williams, 2001-0944 at pp. 5-6, 804 So. 2d at 939.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. State v. Williams, 2001-0944 at p. 6, 804 So. 2d at 939.

The guilty verdict in this case indicates the jury rejected defendant's claim that he shot the victim in self-defense. Viewing the evidence in the

light most favorable to the prosecution, we find that it supports the jury's conclusion. The state presented testimony from James Barnes, an eyewitness, who stated that when the defendant returned to the lounge, he was holding a gun in his hand as he approached Stalling. The testimony of Earline Lomas indicates that although the victim was wearing a handgun, as was his custom in the lounge, he never pulled the weapon on defendant. Moreover, Lomas's testimony directly contradicted Stalling's claim that the victim grabbed defendant and prevented him from leaving the lounge. Earline Lomas testified that there was never any argument between defendant and the victim prior to defendant shooting the victim.

Finally, the state was able to show that Stalling's trial testimony differed from her initial statement to the police. Specifically, Stalling's trial testimony indicated that she could see the handle (presumably of a weapon) in the victim's belt when he confronted defendant; however, Stalling made no mention of such to the police in her initial statement. The jury also obviously rejected Stalling's claim that defendant was not carrying a weapon when he reentered the lounge and began the confrontation with her. Stalling's claim that defendant took her weapon from her purse likewise was obviously rejected by the jury in evaluating her credibility.

Considering the testimony presented, we find the state established beyond a reasonable doubt that the defendant did not act in self-defense. Thus, we find no error in the jury's rejection of defendant's claim of self-defense. The state's evidence indicated that defendant reentered the lounge openly holding a weapon in his hand, approached Stalling, and struck her. As their confrontation escalated, the victim ordered them to leave, and the defendant used the weapon he was carrying to fatally shoot the victim. According to the evidence presented by the state, the victim had not pulled

his weapon on defendant, nor had he impeded defendant's leaving the bar at the time he was shot.

Defendant alternatively argues that the evidence is insufficient to support a second degree murder conviction because the mitigating circumstances required a verdict of manslaughter. Louisiana Revised Statute 14:31A(1) defines manslaughter as follows:

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[.]

"Sudden passion" and "heat of blood" are not elements of the offense but, rather, are factors in the nature of mitigating circumstances that may reduce the grade of homicide. Moreover, provocation is a question of fact to be determined by the trier of fact. The state does not bear the burden of proving the absence of mitigating factors beyond a reasonable doubt. Consequently, the issue is whether or not any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found that the mitigating factors were not established by a preponderance of the evidence. State v. Williams, 2001-0944 at p. 8, 804 So. 2d at 941.

Here, the jury reasonably could have found that provocation sufficient to deprive an average person of his self-control and cool reflection was not established by a preponderance of the evidence. As noted above, provocation is a question of fact. The jury was presented with two differing eyewitness accounts to the actual shooting. Obviously, the jury chose to believe the account provided by Earline Lomas and rejected the account given by Stalling. As the trier of fact, the jury's factual finding that there

was not sufficient provocation rested on a credibility determination between the testimony of Lomas and Stalling. Such a credibility determination cannot be disturbed on appeal. The assignments of error lack merit.

Accordingly, we affirm the defendant's conviction and sentence for second degree murder.

CONVICTION AND SENTENCE AFFIRMED.