

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 1507

STATE OF LOUISIANA

VERSUS

MUREL RAINEY, JR.

DATE OF JUDGMENT: February 9, 2007

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 386356 "B"), PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE ELAINE W. DIMICELI, JUDGE

* * * * *

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* * * * *

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Defendant, Murel Rainey, Jr., was charged by bill of information with aggravated flight from an officer, a violation of La. R.S. 14:108.1. Defendant entered a plea of not guilty. After a trial by jury, defendant was found guilty as charged. The trial court denied defendant's motion for new trial. Defendant waived sentencing delays and was sentenced to two years imprisonment at hard labor. The trial court denied defendant's motion to reconsider sentence. Defendant now appeals, assigning error as to the sufficiency of the evidence presented in support of the conviction. We affirm.

STATEMENT OF FACTS

On or about April 2, 2004, at approximately 3:00 p.m., Detective Keith Dowling of the St. Tammany Parish Sheriff's Office received a dispatch regarding a white male driving a white Ford F-150 truck on Highway 190 West in Lacombe, Louisiana. Defendant, a white male, was traveling in a Ford F-150 on Highway 190 West with a female complainant in pursuit of him.¹ At the time of the dispatch, Detective Dowling was in the area. After receiving the dispatch, Detective Dowling situated his unit on the side of the highway. Upon spotting defendant in his truck, Detective Dowling activated the lights and siren of his unit and attempted to pull out into traffic. Defendant increased his rate of speed. Before the detective could enter the highway, the complainant approached and began flagging the detective and signaling towards defendant. Detective Dowling began pursuing defendant, who was traveling westbound on Highway 190 towards

¹ The details of the complaint are not at issue.

downtown Lacombe. Detective Dowling ultimately lost sight of defendant as he traveled toward Fish Hatchery Road.

Trooper Robert Grimes² and Deputy Chad Risey, both of the St. Tammany Parish Sheriff's Office at the time of the offense, responded to a dispatch regarding the pursuit of defendant. The officers were traveling north of Highway 190 on Fish Hatchery Road at the time of the dispatch. Based on the information relayed in the dispatch, the officers began traveling south on Fish Hatchery Road. A vehicle, matching the description given earlier, crossed into their lane (the southbound lane) traveling northbound against oncoming traffic. As the officers were traveling southbound, with Trooper Grimes as the driver, they left the roadway to avoid a head-on collision. The Ford F-150 was traveling at 82 mph. After making a u-turn in an attempt to pursue the vehicle, the officers lost and did not regain sight of it. Defendant was arrested on a later date and charged with the instant offense.

ASSIGNMENT OF ERROR

In his only assignment of error, defendant avers that the evidence presented by the State is insufficient to support the conviction of aggravated flight from an officer. He contends that the State failed to prove that as the driver of the Ford F-150, he intentionally refused to stop the vehicle, endangered human life, or knew that he had been given a visual and audible signal to stop, all of which are required by statute to support his conviction.

² We refer to Grimes, a Louisiana State Police Trooper at the time of the trial, who formerly served as a deputy of the St. Tammany Parish Sheriff's Office, by his title at the time of the trial.

The constitutional standard for testing the sufficiency of evidence, enunciated in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime charged and defendant's identity as the perpetrator of that crime beyond a reasonable doubt. *See State v. Jones*, 596 So.2d 1360, 1369 (La. App. 1st Cir.), *writ denied*, 598 So.2d 373 (La. 1992). This standard is codified in La. C.Cr.P. art. 821. The *Jackson* standard of review 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 trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. *State v. Graham*, 02-1492, p. 5 (La. App. 1st Cir. 2/14/03), 845 So.2d 416, 420. 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).

La. R.S. 14:108.1C and D provide:

C. Aggravated flight from an officer is the intentional refusal of a driver to bring a vehicle to a stop, under circumstances wherein human life is endangered, knowing that he has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver has committed an offense. The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle.

D. Circumstances wherein human life is endangered shall be any situation where the operator of the fleeing vehicle commits at least two of the following acts:

(1) Leaves the roadway or forces another vehicle to leave the roadway.

(2) Collides with another vehicle.

(3) Exceeds the posted speed limit by at least twenty-five miles per hour.

(4) Travels against the flow of traffic.

Positive identification by only one witness may be sufficient to support the defendant's conviction. *State v. Hayes*, 94-2021, p. 4 (La. App. 1st Cir. 11/9/95), 665 So.2d 92, 94, *writ denied*, 95-3112 (La. 4/18/97), 692 So.2d 440. Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. *See State v. Emanuel-Dunn*, 03-0550, p. 5 (La. App. 1st Cir. 11/7/03), 868 So.2d 75, 79, *writ denied*, 04-0339 (La. 6/25/04), 876 So.2d 829.

During Detective Dowling's testimony, the State introduced a compact disc recording of the radio calls from the period in question. The dispatcher identified the subject of pursuit as "Rainey" and described his vehicle as a white Ford F-150 truck. Detective Dowling testified that he saw the vehicle earlier that day at defendant's residence. Shortly after the initial dispatch, Detective Dowling spotted the vehicle. Detective Dowling positively identified defendant as the driver in question. After the detective activated his lights and siren, defendant looked at the officer. Detective Dowling observed defendant as he looked at and then away from the officer and increased the speed of his vehicle. Detective Dowling was in uniform and was traveling in a marked white Sheriff's Office patrol unit with activated LED lights, a light bar on top of the vehicle, and a siren. The lights were red and blue, and the unit also had corner strobes and blinking headlights. The

State introduced a map of the area. As to the specific point where he lost sight of defendant, Detective Dowling testified as follows:

Once you, once I was approaching 434, there's a sharp turn on 190, you go over a little bridge, the Bayou Cane bridge and there's another sharp turn to the right, which is where Fish Hatchery and Lake Road is. And that's where I lost sight of him. When we made that turn, I lost sight of him. When I came out of the turn, I proceeded westbound thinking that he was continuing westbound.

During cross-examination, the defense questioned Detective Dowling regarding a portion of the dispatch recordings in which Detective Dowling's corporal asked if defendant was refusing to stop. According to the recording, Detective Dowling responded in the negative. During trial, Detective Dowling explained that the officers had lost sight of defendant by that time. Thus, the defendant had evaded the officers and his position was unknown. Detective Dowling confirmed that his unit was never positioned directly behind defendant.

Trooper Grimes and Deputy Risey responded to Detective Dowling's call about the pursuit. At the time of Detective Dowling's call, the officers were traveling north of Highway 190 on Fish Hatchery Road. Fish Hatchery Road is comprised of two lanes of travel, one northbound and one southbound, with narrow shoulders and ditches. The officers were in uniform and traveling in a marked Sheriff's Office patrol unit with overhead lights activated. Trooper Grimes and Deputy Risey gained sight of the vehicle matching the description provided by Detective Dowling when they approached Tag-A-Long Road. The truck crossed into the southbound lane in which the officers were traveling and began driving north. As the passenger in the patrol unit, Deputy Risey noted the vehicle's high rate of speed and glanced at the unit's radar, which indicated an

approximate speed of 82 mph. Deputy Risey testified that the speed limit on Fish Hatchery Road is 40 mph. Trooper Grimes, who was driving the patrol unit, left the roadway to avoid a head-on collision. Trooper Grimes testified that he partially entered the ditch, came out, and the vehicle swerved. Although Deputy Risey could not recall on the date of trial whether the unit had actually entered the ditch, he was certain that the unit had left the roadway. He responded positively when asked whether the unit bounced and added that "it didn't feel right." After they got back on the roadway, they turned around and attempted to pursue the vehicle. Due to the vehicle's high rate of speed, it had already traveled out of sight. While Trooper Grimes and Deputy Risey were able to conclude that the vehicle they had observed was a white Ford F-150 driven by a white male, which fit the description provided by Detective Dowling, neither officer had a significant opportunity to observe the driver. Thus, they were not able to identify defendant as the driver of the vehicle. During cross-examination, Trooper Grimes confirmed that numerous white males drove Ford F-150 trucks in the area.

The jury apparently rejected defendant's hypothesis that Trooper Grimes and Deputy Risey observed a different, unknown white male driver after Detective Dowling had lost sight of defendant. Based on our review of the testimony and exhibits, we find such a conclusion reasonable. Moments after Detective Dowling lost sight of defendant as he traveled in a white Ford F-150 truck toward Fish Hatchery Road at a high rate of speed, a white male driving a white Ford F-150 at a high rate of speed confronted Trooper Grimes and Deputy Risey as they traveled south on Fish Hatchery Road. Based on the close proximity of time and location and the matching descriptions, the jury was reasonable in concluding that

defendant was the driver observed by Trooper Grimes and Deputy Risey and was the same driver observed and pursued by Detective Dowling. After Detective Dowling activated the lights and siren of his unit, defendant looked at him and then accelerated his Ford F-150.

On appeal, defendant concedes the State proved, "beyond a reasonable doubt at trial, when one looks at the evidence in a light favorable to the prosecution" that the officer had reasonable grounds to believe defendant committed an offense. Defendant also concedes the evidence showed, "beyond a reasonable doubt" that when the driver encountered Trooper Grimes and Deputy Risey, he exceeded the posted speed limit by at least 25 mph. Thus, we will examine the remaining issues.

It is evident that defendant intentionally refused to bring his vehicle to a stop although he knew that he had been given a visual and audible signal to stop. According to Detective Dowling, it was *after* the detective activated the emergency lights and siren of his marked unit that defendant looked at him, increased his rate of speed, and refused to stop. From this, the jury could reasonably have inferred that the signals had attracted defendant's attention and that he knew they were directed at him.

The evidence also supports the jury's determination that human life was endangered under the circumstances. The level of traffic was heavy at the time of the offense; thus, the traveling public was at risk due to defendant's reckless driving. Along with exceeding the posted speed limit by at least 25 MPH, defendant's actions forced Trooper Grimes and Deputy Risey's unit to leave the roadway as he traveled against the flow of traffic. It is inconsequential whether

the officers' unit partially or fully entered a ditch during evasive maneuvers or whether defendant passed in a no-passing zone. The testimony of Trooper Grimes and Deputy Risey clearly indicates that they had to leave the roadway to avoid a head-on collision and defendant was driving northbound in the southbound lane against oncoming traffic, including the police unit driven by Trooper Grimes. Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find the essential elements of the crime charged and defendant's identity as the perpetrator of that crime beyond a reasonable doubt. The assignment of error lacks merit.

DECREE

For these reasons, we affirm the conviction of and sentence imposed against defendant, Murel Rainey, Jr.

CONVICTION AND SENTENCE AFFIRMED.