

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 2355

STATE OF LOUISIANA

VERSUS

OLONZO M. JACKSON

DATE OF JUDGMENT: May 4, 2007

ON APPEAL FROM THE TWENTIETH JUDICIAL DISTRICT COURT
(NUMBER W-05-12-407), PARISH OF WEST FELICIANA
STATE OF LOUISIANA

HONORABLE WILLIAM G. CARMICHAEL, JUDGE

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Olonzo M. Jackson

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Olonzo Jackson, defendant, was charged by grand jury indictment with one count of second degree murder, a violation of La. R.S. 14:30.1. After entering a plea of not guilty, defendant was tried before a jury. The jury returned a verdict of guilty to the responsive offense of manslaughter, a violation of La. R.S. 14:31. The trial court sentenced defendant to serve thirty years at hard labor. We affirm.

FACTS

On September 18, 2005, Katina Coates Mims died. Following an autopsy performed by Dr. Dorothy Hayden,¹ Mims's death was determined to have been caused by pulmonary emboli, complication from a gunshot wound inflicted on August 28, 2005. According to Dr. Hayden, Mims had been shot in the mid-back and the bullet traveled downward and lodged in her lower back. Dr. Hayden testified that at the time of Mims's death, she was immobilized from the wound and the emboli were direct complications from that wound.

The August 28, 2005 incident in which Mims sustained her gunshot wound occurred at the Feliciana Hills Apartments in West Feliciana Parish. Sometime between 2:00 and 4:00 a.m., a fight erupted between two groups of men. Hostilities began when Desmond Roundtree walked from the Hardwood area to the parking lot of the Feliciana Hills Apartments to retrieve his vehicle. After a few minutes, Roundtree returned to the Hardwood area claiming that some men had tried to jump him. During this initial altercation, Roundtree lost his keys. Roundtree sought help to return to the parking lot to locate his keys.

¹ Dr. Hayden was accepted at trial as an expert in pathology.

Roundtree returned to the parking lot accompanied by Shon Hodges, Antonio Haile, Derrick Emmery, and defendant. Defendant carried a stick. Once this group arrived at the area, Roundtree and Anthony Nixon had a confrontation that escalated into a physical fight.²

Amid the escalating tensions, Bobby Coates and Travis Vessel began fighting with defendant. At one point, Bobby Coates and Vessel were both on top of defendant as he lay on the ground in an area below the parking lot near the road. After Bobby Coates and Vessel got off of defendant, defendant realized that he had been stabbed in his upper left arm and was bleeding heavily.

Angered by the fact he had been stabbed, defendant approached Haile and obtained a gun that Haile had tucked into his waistband. Defendant fired the gun into the air twice, pointed the gun towards the crowd, and as he walked toward the crowd, began firing. Approximately 20-30 people were in the area, including Katina Mims, Rianna London, and Lakania Coates, who had all been trying to break up the fight.

Many in the crowd near the parking lot sought shelter behind some vehicles. Mims was shot in the mid-back and fell face-forward near the parking lot. After Mims was shot, London heard her say that she could not feel her legs. Defendant continued to fire the weapon until there were no bullets left.

Nixon and Bobby Coates also sustained non-fatal gunshot wounds during the shooting. The police investigation concluded that more than one weapon had

² Joshua Harris admitted at trial that he also was fighting with Roundtree at this time.

been discharged and that as many as fifteen shots had been fired during the incident.

Lieutenant Ontario McKneely of the West Feliciana Parish Sheriff's Office investigated this incident. According to Lieutenant McKneely, the evidence at the crime scene corroborated the witnesses' statements, placing defendant with a gun in his right hand, while bleeding from his left side as he walked toward the parking lot. Empty 9 mm bullet casings were found along the same path as defendant's blood trail.³ The police recovered six Winchester 9 mm Luger cartridge casings and one Remington Peters 9 mm Luger casing, all of which were determined to have been fired from the same weapon. According to Patrick Lane, a ballistics expert from the Louisiana State Police Crime Lab, two other casings recovered from the crime scene were determined to have been fired from a different weapon.

Ashley Camel testified on behalf of defendant. At the time of this incident, Camel was seventeen years old. According to Camel, after Roundtree returned to the parking lot with the other men, he began fighting with Joshua Harris. A bigger fight, involving more men, began. The fighting went on for a couple minutes, until Camel heard Haile tell his friends, "Come on y'all, let's go before we get in trouble." The men, who had arrived with Roundtree, began walking back to Hardwood. Then Bobby Coates and Vessel ran at defendant. According to Camel, Vessel pulled a knife from his back pocket and stabbed defendant in the

³ Haile testified the weapon he gave to defendant was either a .45 or a 9 mm. Only 9 mm casings were recovered from the crime scene.

back of his arm. Defendant fell, and then Vessel and Bobby Coates kicked defendant down a ditch and into the road.

Camel testified that she saw Dave Coates (Bobby's brother) and Nixon wrestling over a gun. These two men were standing near some bushes by the fence bordering the water pump, which was an area above where the defendant was. Camel testified that Mims fell after the first gunshot was fired. According to Camel, Bobby Coates was firing a gun as he walked down the hill away from the parking lot.

Defendant, who testified on his own behalf, denied that he obtained a gun from Haile or that he shot Mims. He admitted that he had carried a stick with him to the scene and to having been involved in the fight.

SUFFICIENCY

Defendant first asserts that the evidence was insufficient to support the verdict of guilty of manslaughter. He specifically argues that the physical evidence contradicts the testimony of the State's witnesses.

The standard of review for the 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 that the State proved all the essential elements of the crime beyond a reasonable doubt. La. C.Cr.P. art. 821. The *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), standard of review incorporated into Article 821 is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. Furthermore, to the extent that circumstantial evidence was presented herein, we note that 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. Delco*, 06-0504, p. 3 (La. App. 1st Cir. 9/15/06), 943 So.2d 1143, 1146.

La. R.S. 14:31(A)(1) defines manslaughter in pertinent part as:

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....

In reviewing the record, we note the State presented testimony from five witnesses, who provided eyewitness accounts describing that they had seen defendant obtain a gun from Haile, fire it twice into the air, point it toward the crowd, and fire it as he walked from the tree area near the road toward the parking lot where Mims stood in the crowd that was being fired upon. The State sufficiently established that defendant's actions were as a result of his reaction after he discovered that he had been stabbed during a fight, although at the time he fired the weapon, his attackers had ceased fighting with him.

Moreover, the record reflects the physical evidence at the scene corroborates the eyewitness testimony. Ballistics expert Lane testified that all seven of the casings found in the area of the tree were fired from the same weapon. Captain Spence Dilworth, who also investigated this matter for the West Feliciana Parish Sheriff's Office, testified that a cartridge trail was found at the scene leading from the oak tree near the road towards the parking lot of the apartments. He also testified about the blood trail that was found directly to the left of the

cartridge trail, explaining the significance of this finding because it indicated the shooter was firing a weapon while bleeding from his left side while the shell casings were discharging on the shooter's right side.

The witnesses established that defendant was bleeding profusely from his left arm. And London testified that no one else on the scene had been bleeding heavily before the shots were fired.

Defendant attempts to convince this court that a second shooter fired the bullet that struck Mims. The record indicates that shell casings were found in the parking lot, on the north side of the parked vehicles and north of where Mims fell. Thus, the shooter was positioned south of that location. And the evidence established that when defendant fired on the crowd, he was south of the parking lot, near an oak tree, where the crowd was located. Further, Mims, who was seen moving away from defendant toward the parking lot, was shot in the back.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. When there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of a witness, the matter is one of the weight of the evidence, not its sufficiency. The court of appeal will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. *State v. Jones*, 97-1687, p. 8 (La. App. 1st Cir. 5/15/98), 714 So.2d 819, 823, *writ denied*, 98-1597 (La. 10/30/98), 723 So.2d 975. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. *State v. Captville*, 448 So.2d 676, 680

(La. 1984) Viewing the evidence in the light most favorable to the prosecution, we find the evidence sufficiently supports the verdict of manslaughter.

This assignment of error is without merit.

FAILURE TO GRANT IMMUNITY

Defendant asserts next that the trial court erred in not granting testimonial immunity to Roundtree, who had no charges pending until the date of trial, since it was apparent that many who had witnessed the encounter and testified for the State had received lenient sentences in exchange for pleas. Thus, defendant urges, the trial court's failure to grant immunity to Roundtree deprived defendant of his constitutional right to compulsory process.

At the outset, we note defendant's assertions that the State's witnesses received lenient sentences in exchange for testimony is completely unsupported by the record. Haile⁴, Harris⁵, and Bobby Coates⁶ have been charged with various crimes in relation to this incident. Despite defendant's assertions to the contrary, each of these witnesses testified that they did not have any agreement with the State in exchange for testimony.

At the time of defendant's trial, there were pending charges against Roundtree. Roundtree's attorney informed the trial court that his client would assert his Fifth Amendment privilege against self-incrimination if called to testify.

⁴ Haile was originally charged with inciting a riot and disturbing the peace. Haile pled guilty to participation in a riot.

⁵ Harris pled guilty to inciting a riot.

⁶ Coates was charged with inciting a riot.

Defense counsel requested grant of immunity to Roundtree was then denied by the trial court.

Defendant acknowledges that there is no statutory authority for a court to grant a defense witness immunity absent a request from the attorney general together with the district attorney for the district in which the proceeding is or may be held. See La. C.Cr. P. art. 439.1. No such request was made in this case.

The concept of defense witness immunity has been found to have no basis in the compulsory process clause of the Sixth Amendment or the Louisiana Constitution. Moreover, the in *State v. Mattheson*, 407 So.2d 1150, 1160-61 (La. 1981), *cert. denied*, 463 U.S. 1229, 103 S.Ct. 3571, 77 L.Ed.2d 1412 (1983), the Louisiana Supreme Court stated that it did not consider the due process clause required that defense witness immunity must be ordered whenever it seemed fair to grant it. The essential fairness required by the Fifth Amendment guards the defendant against overreaching by the prosecutor and insulates him against prejudice. It does not create general obligations for prosecutors or courts to obtain evidence protected by lawful privileges.

Nevertheless, defendant argues that in *State v. Johnson*, 558 So.2d 325 (La. App. 3d Cir.), *writ denied*, 568 So.2d 1076 (La. 1990), the court adopted from a prior federal case,⁷ five prerequisites for the use of a judicially-created defense witness immunity. These prerequisites include: (1) immunity must be properly sought in the district court; (2) the defense witness must be available to testify; (3) the proffered testimony must be clearly exculpatory; (4) the testimony must be

⁷ *Gov. of Virgin Islands v. Smith*, 615 F.2d 964, 972 (3d Cir. 1980).

essential; and (5) there must be no strong governmental interests which countervail against a grant of immunity. *State v. Johnson*, 558 So.2d at 329-30.

We expressly point out that we disagree that *State v. Johnson* actually created a defense witness immunity using these prerequisites. Moreover, in the present case, the trial court reviewed a written statement by Roundtree and pointed out that evidence consistent with his written statement had already been introduced through other witness testimony. The trial court concluded that nothing in the statement was critical to defendant's defense and that the State had a valid interest in prosecuting Roundtree for his role in this incident. The trial court stated that even if the prerequisites enumerated in *State v. Johnson* were applicable, the conditions of that case had not been met. Accordingly, we find no error in the trial court's denial of defendant's motion to grant immunity to Roundtree. This assignment of error is without merit.

CONVICTION BY NON-UNANIMOUS VERDICT

Defendant lastly asserts that he was denied his Sixth Amendment right to a jury trial when his conviction was obtained by a non-unanimous verdict.

This argument has previously been rejected by this court in *State v. Caples*, 05-2517, pp. 15-16 (La. App. 1st Cir. 6/9/06), 938 So.2d 147, 156-57. In brief, defense counsel argues extensively against this court's reliance on *Apodaca v. Oregon*, 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972), because the holding (that a criminal conviction by less than unanimous jury does not violate a defendant's right to trial by jury specified by the Sixth Amendment and made applicable to the states by the Fourteenth Amendment) is only a plurality decision. We are not persuaded by such an argument.

For the reasons originally set forth in *State v. Caples*, 05-2517 at pp. 15-16, 938 So.2d at 156-57, we find the 10-2 verdict finding defendant guilty of manslaughter does not violate defendant's Sixth Amendment right to a jury trial.

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.