

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0401

STATE OF LOUISIANA

VERSUS

ORLANDO GRIFFIN

Judgment Rendered: February 8, 2008

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On Appeal from the 18th Judicial District Court
In and For the Parish of West Baton Rouge
Trial Court No. 06031

Honorable J. Robin Free, Judge Presiding

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BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

Whipple, J. concurs.

HUGHES, J.

Defendant, Orlando Griffin, was charged by grand jury indictment with one count of second degree murder (Count 1), a violation of LSA-R.S. 14:30.1, and one count of attempted second degree murder (Count 2), a violation of LSA-R.S. 14:27 and 30.1. After entering a plea of not guilty, the defendant was tried before a jury. The jury determined the defendant was guilty as charged.

The trial court sentenced the defendant to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence for his conviction of second degree murder (Count 1), and fifty years at hard labor for his conviction of attempted second degree murder (Count 2), with the sentences to be served concurrently.

After considering the defendant's appeal, we affirm his convictions and sentences.

FACTS

On November 27, 2005, there was a gathering of people at a club in Port Allen, Louisiana known as Bill's Place. William Henderson III, and his wife, Lacey, were among the guests. While the Hendersons were seated at a table, the defendant approached their table and made comments regarding how William had beat him at a pool game earlier that week. Defendant then stated, "I should have laid him down last week." Immediately after making this statement, the defendant raised his shirt and Lacey could see a gun tucked into the defendant's waistband. Lacey interpreted the defendant's comment as a threat. William did not take this comment seriously.

Defendant walked away from the Hendersons' table, but remained at the party. About thirty minutes later, he walked back toward the Hendersons' table and appeared to be friendly with them.

William Henderson briefly left the party to go to a nearby sports bar. When he returned to Bill's Place, he came across the defendant in the parking lot. Defendant told William, "Aw, man, you thought I forgot?" William asked the defendant, "Man, what's wrong with you?" As the defendant approached William, a nearby female cautioned William about getting into trouble and William proceeded inside the club.

Kendrick Walls, the brother of Lacey, and Kelvin Murphy, a cousin of Lacey, were also in attendance at the party. According to Walls, he and Murphy had been at the party for a while and then they decided to leave. Murphy walked out of the club first, with Walls behind him. Walls testified that as soon as Murphy opened the door of the vehicle parked outside, the defendant shot Murphy. Murphy grabbed his head and stumbled back into the club.

Walls turned to follow Murphy and was shot in the back. After being shot by the defendant in his side and leg, Walls fell in the parking lot. Walls denied that there was any type of physical struggle or confrontation between him, Murphy, and the defendant prior to the shootings. As a result of the gunshot wounds sustained, Walls was hospitalized for two weeks. Murphy died as a result of his gunshot wounds. Walls identified the defendant in court as the person who shot him and Murphy.

Detective Eric Frank of the Port Allen Police Department arrived at Bill's Place at approximately 1:30 a.m. following the shooting. Detective Frank learned that someone identified only as "Punkin" had committed the shooting. Detective Frank was familiar with the defendant and knew he went by the nickname of Punkin. Detective Frank contacted the defendant's family in an attempt to locate him. The following morning, the defendant turned himself in to officials at the West Baton Rouge Sheriff's Office.

Detective Frank attended the autopsy of Murphy and retrieved a plastic bag from Murphy's pocket containing suspected crack cocaine.

Dr. Gilbert Corrigan, who was accepted by the trial court as an expert in forensic pathology, performed the autopsy on Murphy. According to Dr. Corrigan, Murphy sustained gunshot wounds to his head, side, and leg. Murphy died as a result of the gunshot wound to his head. Dr. Corrigan testified that Murphy's wounds were "distant wounds" resulting from shots fired more than three to four feet away. Because there was no evidence of gun powder residue around Murphy's wounds, Dr. Corrigan indicated that Murphy was not wounded by a close-contact shot; the shooter fired from more than three or four feet away. Dr. Corrigan explained that when a gun is fired, "the pellet comes out [of] the barrel, but also coming out are the gases and the small unburned particles of gun powder, and those go for a foot, two foot ... [t]hey don't go any farther."

Patrick Lane of the Louisiana State Police Crime Lab was accepted by the trial court as an expert in firearm ballistics. Lane examined four bullet casings recovered from the crime scene and one bullet recovered from Walls' body by a surgeon. According to Lane, all of these .380 caliber cartridges were fired from the same weapon. No weapon was ever recovered.

Trelris Griffin is the brother of the defendant and testified on his behalf. According to Trelris, he was also at Bill's Place that night. Trelris described how he noticed Walls following the defendant around the club the entire night. Trelris testified he watched the defendant go outside, followed by Walls and Murphy. Trelris went outside and observed the defendant in a confrontation or argument with Walls.

Trelris testified that Walls began hitting a garbage can, then turned toward the defendant in a "thrust" position, as if he was going to attack the defendant. At this point, Trelris heard a shot. After the first shot, Murphy rushed the defendant and he was also shot one time. Murphy then retreated inside the club.

Trelris testified that after the shooting, he walked to his truck, and left. A short time later, Trelris picked up the defendant and took him to their mother's residence in Baton Rouge. When the defendant got into Trelris's truck, he no longer had a weapon.

The defendant did not testify.

SUFFICIENCY OF THE EVIDENCE

In his first assignment of error, the defendant challenges the sufficiency of the evidence used to support his convictions for second degree murder and attempted second degree murder. Specifically, the defendant argues that the State failed to refute the possibility that he had acted in self-defense and failed to establish he had the necessary intent to kill or harm either victim.

The standard of review for the sufficiency of evidence is whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude the State proved 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, 573 (1979); LSA-C.Cr.P. art. 821. This standard of review, in particular the requirement that the evidence be viewed in the light most favorable to the prosecution, obliges the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. The reviewing court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact

finder's determination of guilt. **State v. Corkern**, 2003-1393, pp. 2-3 (La. App. 1 Cir. 9/17/04), 897 So.2d 57, 59-60, writ denied, 2004-2627 (La. 2/18/05), 896 So.2d 29.

Attempt is defined in LSA-R.S. 14:27(A) as follows:

Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

Second degree murder is defined in pertinent part as the killing of a human being when the offender has the specific intent to kill or inflict great bodily harm. LSA-R.S. 14:30.1(A)(1). Specific criminal intent is the state of mind that exists when the circumstances indicate the offender actively desired the prescribed criminal consequences to follow his act or failure to act. LSA-R.S. 14:10. Specific intent may be proved by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. **State v. Herron**, 2003-2304, p. 4 (La. App. 1 Cir. 5/14/04), 879 So.2d 778, 782.

An attempt to commit second degree murder requires that the offender possess the specific intent to kill and commit an overt act tending toward the accomplishment of that goal. **State v. Herron**, 2003-2304 at p. 5, 879 So.2d at 783. See also LSA-R.S. 14:27(A) and 14:30.1(A)(1). It has long been recognized that specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. **State v. Hoffman**, 98-3138, p. 48 (La. 4/11/00), 768 So.2d 542, 585, opinion supplemented by, 2000-1609 (La. 6/14/00), 768 So.2d 592, cert. denied, 531 U.S. 946, 121 S.Ct. 345, 148 L.Ed.2d 277.

When a defendant claims self-defense in a homicide case, the State has the burden of establishing beyond a reasonable doubt that he did not act in self-defense. See State v. Fisher, 95-0430, p. 3 (La. App. 1 Cir. 5/10/96), 673 So.2d 721, 723, writ denied, 96-1412 (La. 11/1/96), 681 So.2d 1259. A homicide is justifiable only 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 himself from that danger. LSA-R.S. 14:20(1); **State v. Lilly**, 552 So.2d 1036, 1039 (La. App. 1 Cir. 1989). It is justifiable to use force or violence or to kill in the defense of another person when it is reasonably apparent that the person attacked could have justifiably used such means himself, and when it is reasonably believed that such intervention is necessary to protect the other person. LSA-R.S. 14:22.

For appellate purposes, the standard of review of a claim of self-defense is whether a rational trier of fact, after viewing the evidence in the light most favorable to the prosecution, could find beyond a reasonable doubt that the homicide was not committed in self-defense. **State v. Lilly**, 552 So.2d at 1039. However, Louisiana law is unclear as to who has the burden of proving self-defense in a non-homicide case, and what the burden is. In **State v. Freeman**, 427 So.2d 1161, 1163 (La. 1983), the Louisiana Supreme Court indicated, in dicta, that the defendant in a non-homicide case may have the burden of proving self-defense by a preponderance of the evidence without resolving the issue.¹ In previous cases dealing with this issue, this Court has analyzed the evidence under both standards. See State

¹ Other circuits have expressly held in accordance with the dicta in **Freeman**. See State v. Barnes, 491 So.2d 42, 47 (La. App. 5 Cir. 1986); **State v. Perkins**, 527 So.2d 48, 50 (La. App. 3 Cir. 1988); **State v. Mason** 499 So.2d 551, 555 (La. App. 2 Cir. 1986).

v. Barnes, 590 So.2d 1298, 1300-1301 (La. App. 1 Cir. 1991) (and cases cited therein).

In the present case, we find the evidence sufficiently negated the possibility that the defendant acted in self-defense with respect to either victim (regardless of who had the burden of proof on the issue of self-defense concerning the charge of attempted second degree murder). Walls testified that there was no confrontation involving the defendant before the shots were fired. Moreover, Dr. Corrigan found no stippling marks or powder burns near Murphy's wounds that would indicate Murphy was closer than three or four feet to the shooter when the weapon was fired at him. Finally, Trelris claimed the defendant only shot each victim one time, but the victims each had three gunshot wounds.

It is well settled that the trier of fact may 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 witnesses, the matter is one of the weight of the evidence, not its sufficiency. The reviewing court must defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. **State v. Fisher**, 95-0430 at pp. 4-5, 673 So.2d at 724.

Further, we find that a rational trier of fact could have inferred that the defendant possessed the specific intent to kill. The evidence showing that the defendant fired a lethal weapon at both Walls and Murphy, is clearly sufficient to prove he had the specific intent to kill. See State v. Allen, 94-1941, pp. 9-10 (La. App. 1 Cir. 11/9/95), 664 So.2d 1264, 1272, writ denied, 95-2946 (La. 3/15/96), 669 So.2d 433.

This assignment of error is without merit.²

SENTENCING

Defendant argues the trial court erred in sentencing him to a three-year sentence on an offense that was not mentioned in the bill of indictment or in the minutes from the sentencing hearing. Defendant contends this Court should vacate this sentence and remand the matter for resentencing.

The transcript of the defendant's sentencing reflects that he pled guilty to an unrelated charge of unauthorized entry of an inhabited dwelling, which was filed under docket number 053634, a separate bill. It is clear from the transcript, the trial court's three-year sentence on this conviction was separate from the defendant's instant convictions.

Accordingly, this assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.

² Defendant's brief addressing his argument of sufficiency of the evidence contains an assertion that this Court should reverse the trial court's ruling on his motion for new trial or enter (*sua sponte*) a judgment of conviction for the lesser-included offense of manslaughter. However, this is the only mention of reducing defendant's conviction to the lesser offense of manslaughter. Defendant makes no argument in his brief to support such an assertion. Accordingly, such reference is considered abandoned in light of defendant's failure to brief that issue. See Uniform Rules-Courts of Appeal, Rule 2-12.4.