

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 0668

STATE OF LOUISIANA

VERSUS

QUENTIN LEVAR JAMES

JPK
WAW
JEK by *JPK*

Judgment Rendered:

NOV - 9 2011

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit number 468225

Honorable Allison H. Penzato, Presiding

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

GUIDRY, J.

The defendant, Quentin L. "Black" James, was charged by bill of information with one count of aggravated flight from an officer (count I), a violation of La. R.S. 14:108.1(C), and one count of armed robbery (count II), a violation of La. R.S. 14:64(A), and pled not guilty on both counts. Following a jury trial, he was found guilty as charged on both counts. Thereafter, the State filed a habitual offender bill of information against the defendant, alleging, in regard to count II, that he was a second-felony habitual offender.¹ The defendant admitted to the allegations of the habitual offender bill, and was adjudged a second-felony habitual offender. On count I, he was sentenced to two years at hard labor. On count II, pursuant to a plea agreement, he was sentenced to sixty-five years at hard labor without benefit of probation or suspension of sentence to run concurrently with the sentence imposed on count I. He now appeals, contending the evidence was insufficient to support the conviction on count II. For the following reasons, we affirm the conviction and sentence on count I and the conviction, habitual offender adjudication, and sentence on count II.

FACTS

On March 23, 2009, at approximately 4:00 p.m., the victim, Ann Melerine, was eating her lunch in her car at the Home Depot in Covington. A car parked directly behind her, and a man, later identified as Kelly "Duke" McGee, approached her and asked for her money. The victim refused, and McGee lifted up his shirt and pulled out a gun. He stated, "I think you will[,]" and the victim surrendered the money from her wallet. McGee also demanded the victim's wallet, and she asked if

¹ Predicate #1 was set forth as the defendant's November 20, 2007 guilty plea, under Twenty-first Judicial District Court Docket #109934, to simple burglary.

she could keep her driver's license. McGee allowed the victim to keep her driver's license, and left with her money and wallet. He came "right back again[,]” however, and demanded her purse. The victim surrendered her purse to McGee, and he returned to the car, which immediately drove off, suggesting to the victim that the car had a separate driver. The victim wrote down the license plate number of the car and called the police to report the robbery. She also tried to follow the car, but lost sight of it in heavy traffic.

St. Tammany Parish Sheriff's Office Deputy Nick Tranchina responded to the call concerning the robbery. He located a car matching the description of the suspect vehicle, and saw that it was occupied by two men. The car was stuck in traffic, and as Deputy Tranchina moved closer in his marked vehicle, he could see that the men were "getting excited." The men sat up higher, looked at each other, and looked around "as though they were looking for an avenue of escape." After another police officer arrived to assist Deputy Tranchina, the suspect vehicle pulled onto the shoulder and drove off at high rate of speed. Deputy Tranchina activated his emergency lights and siren and, along with other marked police vehicles, pursued the suspect vehicle.

Following a chase with speeds reaching 125 miles per hour, during which a police vehicle crashed and the suspect vehicle traveled into on-coming traffic, the suspect vehicle crashed. The defendant, the driver of the suspect vehicle, fled into a wooded area and hid under an apartment. He was captured with the assistance of a canine, which he punched in the face and neck. McGee also fled and was captured.

In a telephone conversation that occurred while the defendant was in jail, which announced it was subject to monitoring and recording, the defendant claimed he only went with McGee on the day of the incident to fill out applications. The

defendant stated McGee wanted to go to Ponchatoula and they needed gas-money. The defendant stated McGee drove to the Home Depot and approached the victim. The defendant stated, “[McGee] was talking to her trying to get the money, but she never gave it to him, so then he pulled out the gun.” The defendant claimed he jumped into the driver’s seat because he was going to leave McGee, but McGee returned to the car before he could leave.

In closing argument, the defense claimed the defendant had no knowledge McGee was armed during the robbery and, after the robbery, was intimidated by McGee and his gun.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues the evidence was legally insufficient to support a conviction for armed robbery, because the State did not prove that he knew that McGee intended to use a gun during the robbery. He argues he should have been convicted of only simple robbery. He does not challenge his conviction on count I.

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,” every reasonable hypothesis of innocence is excluded. 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 488.

Armed robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon. La. R.S. 14:64(A).

The defendant argues, under State v. Doucet, 93-1523 (La. App. 3d Cir. 5/4/94), 638 So. 2d 246, that in order to be convicted as a principal to armed robbery, the defendant must be shown to have known that the perpetrator intended to commit a robbery while armed with a dangerous weapon. The State correctly points out, however, that in State v. Smith, 07-2028, p. 8 (La. 10/20/09), 23 So. 3d 291, 296 (per curiam), the Louisiana Supreme Court held that Doucet failed to take into account “a general principal of accessorial liability that when two or more persons embark on a concerted course of action, each person becomes responsible for not only his own acts but also for the acts of the other, including ‘deviations from the common plan which are the foreseeable consequences of carrying out the plan.’”

The defendant in Smith and Raul Jorge Castro were charged with armed robbery. Castro pled guilty, and the defendant was convicted following a jury trial. Smith, 07-2028 at p. 1, 23 So.3d at 292. The victim was robbed of her purse in a Wal-Mart parking lot. Smith, 07-2028 at p. 2, 23 So. 3d at 292. The purse was on

top of her purchases from the store in a shopping cart. Smith, 07-2028 at p. 2, 23 So. 3d at 292-293. Castro, the defendant's boyfriend, jumped out of a stolen car driven by the defendant, grabbed the victim's purse, and fled in the car. Smith, 07-2028 at p. 2, 23 So. 3d at 292-293. Cody Duos, the defendant's cousin, and his younger brother Dillon were in the back seat of the vehicle. Smith, 07-2028 at p. 2, 23 So. 3d at 293. Cody indicated that as the defendant "cruised" the parking lot, the defendant and Castro discussed that the victim would be an "easy snatch." Smith, 07-2028 at p. 3, 23 So. 3d at 293. The victim could not tell whether or not Castro had anything in his hand during the incident but, in connection with his guilty plea, he admitted he had been armed with a small black powder handgun. Smith, 07-2028 at p. 2, 23 So. 3d at 293. He also indicated that the defendant knew he intended to rob someone at Wal-Mart. Smith, 07-2028 at p. 5, 23 So. 3d at 294. Following her arrest, the defendant denied any knowledge that Castro had used a gun during the offense. Smith, 07-2028 at p. 4, 23 So.3d at 294. At trial, however, she testified Castro got out of the car with a gun in his hand. Smith, 07-2028 at p. 4, 23 So.3d at 294

The Second Circuit Court of Appeal found the evidence insufficient to establish that the defendant had any knowledge or intent that Castro would arm himself with a dangerous weapon and modified the defendant's conviction from armed robbery to simple robbery. Smith, 07-2028 at p. 6, 23 So. 3d at 295. The Louisiana Supreme Court, however, reversed that decision and reinstated the conviction and sentence for armed robbery. Smith, 07-2028 at p. 13, 23 So. 3d at 300. The court noted:

In the present case, the evidence at trial showed, and defendant does not dispute, that she and Castro drove around the Wal-Mart parking lot looking for "an easy snatch." Although by implication they were looking for targets of easy opportunity that did not call for

excessive force, the offense they contemplated, purse snatching, is a crime of violence, R.S. 14:2(B)(24) that entails misappropriation by the use of force. La. R.S. 14:65.1. Defendant was therefore accountable for Castro's decision to arm himself with the black powder pistol before he stepped from the car even if she did not know at any point before Castro got out of the car and approached the victim that he had a weapon and would have it in hand when he snatched the victim's purse, and even if she remained behind in the car while Castro rushed towards the victim's shopping cart. Castro's decision to take the gun to increase the odds of success in the event the victim offered unexpected resistance was an entirely foreseeable consequence and inherent risk of the original plan to commit a crime of violence by snatching [the victim's] purse. The crime escalated from purse snatching to armed robbery when the armed Castro rushed at the victim and snatched her purse in a face-to-face confrontation.

Smith, 07-2028 at pp. 10-11, 23 So. 3d at 298-99 (footnotes omitted).

In the instant case, even assuming, arguendo, that the defendant did not know that McGee would use a gun during the offense, he was accountable for McGee's decision to use the weapon. Simple robbery is a crime of violence that entails misappropriation by the use of force or intimidation. La. R.S. 14:2(B)(23); La. R.S. 14:65(A). McGee's decision to take the gun with him in committing the offense as a tool for intimidating the victim and overcoming her resistance was an entirely foreseeable consequence and inherent risk of any original plan to commit simple robbery.

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, all of the elements of armed robbery and the defendant's identity as a perpetrator of that offense against the victim. The jury rejected the defendant's theory that he was unaware that McGee was armed during the offense, and only drove the getaway vehicle thereafter because he was intimidated by McGee. 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. Additionally, the verdict rendered against the defendant indicates the jury accepted the testimony offered against him and rejected his attempt to discredit that testimony. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The testimony of the victim alone is sufficient to prove the elements of the offense. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. State v. Lofton, 96-1429, p. 5 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. 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.

**CONVICTION AND SENTENCE ON COUNT I AFFIRMED;
CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND
SENTENCE ON COUNT II AFFIRMED.**