

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 1130

STATE OF LOUISIANA

VERSUS

TEDDY L. SINGLETON, JR.

Judgment Rendered: February 11, 2011

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case Number 01-08-0144
Honorable Trudy M. White, Presiding

Gray
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AR

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

The defendant, Teddy L. Singleton, Jr., was charged by bill of information with first-degree robbery (count one), a violation of La. R.S. 14:64.1, and attempted forcible rape (count two), a violation of La. R.S. 14:42.1 and 14:27. The defendant pled not guilty. The defendant waived his right to a trial by jury and elected to be tried by the district court judge. At the conclusion of the bench trial, the defendant was convicted of the responsive offense of simple robbery on count one, a violation of La. R.S. 14:65. See La. C. Cr. P. art. 814(A)(23.1). He was convicted as charged on count two. The defendant was sentenced to imprisonment at hard labor for seven years on count one. He received a concurrent sentence of imprisonment at hard labor for twenty years on count two.¹ The defendant now appeals, raising a single assignment of error challenging the sufficiency of the state's identification evidence. Finding no merit in the assignment of error, we affirm the defendant's convictions and sentences.

FACTS

On November 1, 2007, at approximately 8:30 a.m., Van Tran, an employee at Vina Cleaners on Monterrey Boulevard in Baton Rouge, Louisiana, was seated at a sewing machine when a black male entered the establishment and inquired about the price to have a pair of pants altered. After receiving the price quote, the man turned around and placed a bandana over the lower portion of his face. He turned back around, removed an unidentified black object from his shoe, walked over to Tran, and demanded that she give him money. Tran immediately moved to the cash register. She opened the register and gave the man all of the money from it. The

¹ Under La. R.S. 14:42.1(B) and 14:27(D)(3), the trial judge was required to impose at least two years of the attempted forcible rape sentence without benefit of probation, parole, or suspension of sentence. However, because the trial court's failure to restrict parole eligibility was not raised by the state in either the trial court or on appeal, we are not required to take any action. See State v. Price, 05-2514, p. 22 (La. App. 1st Cir. 12/28/06), 952 So. 2d 112, 124-25 (en banc), writ denied, 07-0130 (La. 2/22/08), 976 So. 2d 1277. As such, we decline to correct the illegally lenient sentence.

man then told Tran that he was going to rape her and started pulling her towards the rear of the store. Tran struggled, pulling down racks of clothing. Ignoring Tran's pleas to be released, the man attempted to cover Tran's mouth and continued to drag her towards the rear of the store. Shortly thereafter, Reena Byrd, a regular customer at the cleaners, entered the front door, and Tran screamed, "help me, help me, he's trying to rape me, he's trying to rape me." In response, Byrd dropped the clothes that she had been holding and ran back out of the store. She returned to her vehicle, got in, and locked the doors. Moments later, Tran and the black man both ran out of the store. Tran ran toward a nearby nail salon and the man ran to a green Honda Accord parked in the parking lot. As the man drove away, Byrd recorded the license plate number from the green Accord and contacted the police. Meanwhile, Reverend Xavier Madison, who had been seated inside his vehicle in the parking lot, recorded the vehicle's license plate number and decided to follow the green Accord. However, for safety reasons, Reverend Madison later discontinued his pursuit.

Sergeant Devin Washington, of the Baton Rouge Police Department, was dispatched to Vina Cleaners to investigate the incident. Based upon the information he received from the victim and witnesses, Sergeant Washington issued a BOLO (be on the lookout) for the green Accord bearing the reported license plate number. In response to the BOLO alert, Officer Michael Thompson, also of the Baton Rouge Police Department, researched the license plate number. He learned that the vehicle was registered to a Tina Shelvin and was connected to a residence in Fox Hill Apartments, which was located less than two miles from Vina Cleaners. Officer Thompson immediately proceeded to Fox Hill Apartments. He arrived there at approximately 8:50 a.m. As Officer Thompson drove towards the rear of the apartment complex, he observed a green Honda Accord bearing the reported license plate number. There was a black male, subsequently identified as the defendant, seated inside the vehicle. Officer Thompson did not immediately approach the

vehicle. Instead, he passed the vehicle and waited for backup to arrive. However, after he passed the vehicle, Officer Thompson noticed the reverse lights of the vehicle illuminate. He turned around and stopped the defendant as he prepared to exit the apartment complex.

After stopping the defendant, Officer Thompson ordered the defendant out of the vehicle and took him into custody. Another officer who had responded to the scene then conducted a pat-down search of the defendant and recovered a large number of bills (58 one-dollar bills and 5 five-dollar bills) and a pair of clippers, among other things, from the defendant's pocket during the stop. The amount and denominations of the money found on the defendant's person were consistent with the information Tran had provided regarding the money taken from the cash register. At the request of the investigating officers, Byrd and Tran separately arrived at Fox Hill Apartments, where they both indicated that the defendant matched the physical characteristics of the perpetrator, but there was something different about him. Both women advised the police that the perpetrator had hair, whereas at the apartment complex, the defendant was bald.

The defendant testified in his own defense at the trial. He denied ever going into Vina Cleaners. Regarding his physical appearance, the defendant testified that he did not shave his head on the day in question. He testified that he started shaving his head in 2006 and had maintained that same look since then. He denied having hair on his head on the day in question. The defendant also presented testimony from his aunt, Sheila James, and his mother, Sharon Julien, to corroborate his claim that he did not have hair on the date of his arrest. James claimed she saw the defendant approximately two days before he was arrested and he was bald. Julien testified that the defendant "always" kept his head shaved bald.

On rebuttal, the state called Cassandra Robbins, the defendant's parole officer. Ms. Robbins testified that she had been supervising the defendant for approximately

two and a half years. She noted that the defendant was required to report to her office monthly. Ms. Robbins further testified that she last saw the defendant in October 2007, less than one month prior to the date of the instant offenses. She explained that the defendant had hair at that meeting; he was not bald. Ms. Robbins further testified that prior to the time when she observed the defendant's picture in connection with his arrest in this case, she had never seen him with a bald hairstyle before. Ms. Robbins also noted that, as part of her job, she routinely recorded notes on any changes in physical appearance in the files of the individuals she supervises. There was no record of a change in hairstyle in the defendant's file, according to Robbins.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues the evidence presented at the trial was insufficient to support the convictions, because the less-than-certain identifications by Tran and Byrd were insufficient to prove his identity as the perpetrator.² Specifically, he argues that the state failed to negate every reasonable probability of misidentification.

The standard for appellate review of the sufficiency of evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found 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 (1979). See also La. C. Cr. P. art. 821(B); State v. Mussall, 523 So. 2d 1305, 1308-09 (La. 1988); and 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.

² Since defendant has only alleged that the state failed to prove he was the perpetrator of the crimes, we need not address the sufficiency of the evidence with respect to the statutory elements of simple robbery and/or attempted forcible rape.

The Jackson standard of review, incorporated in La. C. Cr. P. art. 821(B), 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 in order to convict, the fact finder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. State v. Hendon, 94-0516, p. 4 (La. App. 1st Cir. 4/7/95), 654 So. 2d 447, 449. When the key issue in a case is the defendant's identity as the perpetrator, rather than whether the crime was committed, the state is required to negate any reasonable probability of misidentification in order to meet its burden of proof. State v. Millien, 02-1006, pp. 2-3 (La. App. 1st Cir. 2/14/03), 845 So. 2d 506, 509. However, positive identification by only one witness may be sufficient to support a defendant's conviction. State v. Coates, 00-1013, p. 3 (La. App. 1st Cir. 12/22/00), 774 So. 2d 1223, 1225.

When a case involves circumstantial evidence and the trier of fact 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. The court does not determine whether another possible hypothesis has been suggested by defendant, which could explain the events in an exculpatory fashion. Rather, the reviewing court evaluates the evidence in the light most favorable to the prosecution and determines whether the alternative hypothesis is sufficiently reasonable that a rational factfinder could not have found guilt beyond a reasonable doubt. See State v. Captville, 448 So. 2d 676, 680 (La. 1984).

In the instant case, the facts and circumstances surrounding the commission of the offenses are essentially undisputed. As previously noted, the defendant does not contest that the offenses were committed. Rather, he challenges only the sufficiency of the evidence establishing his identity as the perpetrator.

At the trial, the state presented testimony from Tran and Byrd describing the defendant's physical attributes. Both women explained that when they arrived at Fox Hill Apartments in connection with the show-up identification procedures, they advised the officers that the defendant resembled the individual they saw inside the cleaners. Tran explained, however, that the defendant's hairstyle was different and this change made it difficult for her to be absolutely certain. Byrd, on the other hand, testified that when the officers asked her if the defendant was the same man that was involved in the crimes, she responded affirmatively. Byrd testified that she then advised the officers that it looked like the defendant had shaved his head. The defendant suggests that this less than certain identification testimony was insufficient to prove his identity as the perpetrator. While the aforementioned identification evidence, standing alone, may not have been sufficient to negate every possibility of misidentification, we note that the state did not rely solely on this identification evidence at the defendant's trial. The state also presented circumstantial evidence to prove the defendant's identity as the perpetrator of the instant offenses.

At the trial, the state presented evidence to support Tran and Byrd's identifications and their claims that the defendant's physical appearance changed between the commission of the offenses and the time of the show-up identifications. First, the defendant, a black male, was found seated inside a vehicle that matched the exact description of the one that the perpetrator drove away from the scene. The vehicle's license plate matched the license plate number of the vehicle the perpetrator drove, as provided by both Byrd and Reverend Madison. Officer Brian Higginbotham, of the Baton Rouge Police Department, testified that at the scene of the stop, the defendant admitted, in response to questioning, that he had been the only person driving the vehicle. No one else had been in the vehicle with him that day. Byrd also testified that she immediately and

positively identified that vehicle as the one she observed leaving the scene. Likewise, Reverend Madison testified that the vehicle in which the defendant was found at Fox Hill Apartments was the same vehicle that he followed away from Vina Cleaners.

The state also established that a large “wad” of cash (the denominations of which were consistent with the description of the money taken during the robbery) and some hair clippers (with hair on them) were recovered from the defendant’s pocket when he was stopped. A black t-shirt, which matched the clothing description provided by Byrd on the day of the offenses, was found on the front seat of the green Honda Accord.

It is the function of the factfinder to determine which witnesses are credible. It is obvious from the verdicts rendered that the judge in this case accepted the testimony of the state’s witnesses and weighed the circumstantial evidence in favor of the state. The judge apparently rejected the defendant’s theory of mistaken identity. On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder’s determination of guilt. See State v. Williams, 02-0065, pp. 6-7 (La. App. 1st Cir. 6/21/02), 822 So. 2d 764, 768, writ denied, 03-0926 (La. 4/8/04), 870 So. 2d 263.

In this case, the misidentification hypothesis of innocence urged by the defendant was sufficiently rebutted by the state’s evidence. The trial judge, faced with somewhat conflicting evidence of whether the defendant regularly kept his head shaved bald, obviously rejected the testimony of the defendant, his mother, and his aunt, and considered the presence of clippers in his pocket as corroboration for the eyewitness testimony that his hairstyle had changed after the commission of the offenses. Furthermore, the testimony of the defendant’s parole officer was in direct contrast to the claims made by the defendant and his witnesses, *i.e.*, that he had not recently altered his physical appearance, and weighed against the

credibility of the defense witnesses. This credibility evidence made the defendant's claim that he was in no way involved in the commission of the offenses less likely, and made the state's claim that the defendant robbed and attempted to rape the victim, more likely. Thus, any rational trier of fact would be justified in discarding every statement and/or explanation made by the defendant, including his final explanation of his whereabouts on the day of the offenses.

Viewing the evidence in the light most favorable to the state, we are convinced that the state's evidence was sufficient to negate any reasonable probability of misidentification and to prove beyond a reasonable doubt, and to the exclusion of any reasonable hypothesis of innocence, that the defendant was the perpetrator of these crimes.

This assignment of error lacks merit.

CONCLUSION

Having carefully reviewed the record, we find sufficient evidence was presented to prove beyond a reasonable doubt that the defendant was the perpetrator of the crimes charged. We, therefore, affirm the defendant's convictions of simple robbery and attempted forcible rape and the related sentences.

CONVICTIONS AND SENTENCES AFFIRMED.