01/15/02 “See News Release 004 for any concurrences and/or dissents.”

SUPREME COURT OF LOUISIANA

No. 00-KA-1529

STATE OF LOUISIANA

versus

ROY BRIDGEWATER

**On Appeal from the Twenty-Fourth Judicial District Court,
For the Parish of Jefferson, Honorable Kernan A. Hand, Judge**

VICTORY, J., dissenting.

I dissent from the majority’s holding that there was insufficient evidence presented at trial to support a first degree murder conviction. In reversing the defendant’s first degree murder conviction, the majority finds “merit to defendant’s contention that the state failed to exclude a reasonable hypothesis of innocence; namely, that Jacobs was the sole shooter and that defendant was merely present, neither advancing nor assisting Jacobs in shooting the victims.” Slip Op. at p. 9. However, viewed in the light most favorable to the prosecution, the circumstantial evidence proved, at a minimum, that the defendant was the leader, actually participated in the armed robberies resulting in two first degree murders, knew the details of the crimes, was present with Lawrence Jacobs in the bedroom with the victims when they were shot, participated in the shootings, drove the getaway car from the scene, and had possession of all the stolen objects recovered. All of the circumstantial evidence mentioned in this dissent was argued to the jury, which unanimously found this defendant guilty of first degree murder, showing its conclusion that this defendant had specific intent to kill or inflict great bodily harm on the two murder victims.

The defendant made four inconsistent statements to the police, summarized

below. All of these recorded statements were introduced into evidence and played for the jury. The first statement was taken after the defendant's picture was on television because of his involvement in the murders. He contacted the police and made a statement, denying any knowledge or involvement in the crime, and claiming he had been with a homosexual named "Mike," at the time of the murders. The defendant's first statement was clearly a complete fabrication.

In his second statement, given to the police the following day, the defendant stated that he was with Jacobs (who he claimed was armed with a .38 revolver), when they approached Mr. Beaugh outside of his house. However, he claimed that he "knew what [Jacobs] was bout to do," so he left and went home. He claimed that later, Jacobs arrived at his home with Mr. Beaugh's van and the stolen property and told him that he shot the victims. He then drove the van, with Jacobs as the passenger, to the Iberville projects, where he wiped all his prints off of the van. He also claimed that he purchased a keyboard stolen from the Beaugh's home from Jacobs. Almost all of the defendant's second statement was a fabrication.

In his third statement to the police, given minutes later, the defendant finally admitted being involved in the robbery, and gave his "story," in which he described all aspects of the crimes in great detail. He claimed Jacobs had a .38 pistol, but he had a broken BB gun. He claimed Jacobs forced Mr. Beaugh into the house with the gun, found Beaugh's mother in the kitchen and brought them into the living room Then, after Mr. Beaugh told them there was money in his son's room, they <u>all</u> went into the son's room there and found money in the dresser. Although the defendant claimed he then "left" (to go to the garage to be a lookout, only occasionally "peeking in" to see what Jacobs was doing), he was able to describe how Jacobs ran through the house, first to one room, then to the computer room,

and stated "we all went and got the safe." Although the defendant said that Jacobs took the victims to the bedroom, the defendant told the police exactly where the victims were positioned in the bedroom, Mrs. Beaugh at the foot of the bed and her son on the side of the bed toward the middle, which is where the bodies were found. According to the defendant, when he again "peeked in," Mr. Beaugh took out the jewelry box, yet the defendant opened two drawers of the dresser, took some things out and then went back to the garage, just in time to miss the shootings. He claimed that he thought Jacobs was just going to take the phones so the victims could not call the police. At one point in the statement he claimed to have seen Jacobs pick up the phone and then put it down; at another point in the statement he claimed to have heard, from the garage, Jacobs put down the phone. In any event, according to the defendant, Jacobs told him "I ain't gonna shoot them I'm just gonna take phone [sic]" and that "He put the phone down and that's when I heard the gun shots." So, while he claimed to have seen Jacobs pick up the phone and then put it down in the bedroom, he claimed to be in the garage when the shots were fired seconds later.

In this third statement, the defendant denied that they took a camcorder, stated that he did not know what Jacobs did with the jewelry after Jacobs threw it in the van, and stated that he did not take Mr. Beaugh's watch. However, the evidence showed that the police recovered the keyboard, and Mr. Beaugh's watch and ring from the defendant's residence. In addition, the police went back to the residence on two other occasions and other female residents gave them numerous other items of jewelry taken from the Beaugh's home, including more watches, rings, broaches, necklaces and earring. In his fourth statement, again taken minutes later, he suddenly remembered that in addition to the keyboard, he also had a

camcorder, and Mr. Beaugh's watch, items that he specifically denied taking in his third statement. Just as the defendant's third statement contained numerous lies about the stolen property, it was reasonable for the jury to find that his other statements, denying his guilt of the murders and placing the blame for the shootings on Jacobs, were lies.

Throughout these statements, the defendant corrected himself numerous times after he said "I" or "we" in describing the crime, indicating his personal involvement in the act, and then changed those prepositions to "he" or "Jacobs,"attempting to blame Jacobs alone. For instance, when asked "How long [after you saw the victims seated on the bed], when you walked out the room," the defendant replied, "I was, he was still in there talking so it had to be bout 2 maybe hitting bout 3 minutes he was in there talking to the people." Again, in describing the events, the defendant stated, "Then the man, after we got, after Lawrence got the money off the man," and "So, after that we, he went back in the [bed]room and I peeked on them." Throughout the defendant's third statement, which he claims to be the truth, the defendant described things going on inside the house, including events immediately before the shooting, that could only be known by someone inside the room where the events were taking place. The defendant's silly explanation that he "peeked in" from time to time was simply unbelievable to the jury. Even more incredulous was the defendant's story that he followed Jacobs into the son's bedroom to get money out his room in order "to watch out." There would be no need to be a lookout inside the garage, much less inside the house. Thus, the jury properly concluded the defendant was in fact inside the room with Jacobs when the shootings took place. The jury heard these recorded statements

and could judge for itself whether the defendant was ever telling the truth. The jury discredited the defendant's final "story," that he was near the garage while Jacobs unexpectedly shot the victims, in light of the constant web of lies contained in his statements. Not only should defendant's "story" be given no credence on that basis, but his "story" that he was a serving as a lookout from the garage is not reasonable, as there was no explanation proffered as to why a "lookout" would place himself in a garage. It was obvious to the jury that the defendant was a liar, and therefore it did not believe his "story."

In addition to the above evidence, other circumstantial evidence, taken as a whole, and seen in a light most favorable to the prosecution, proves that the defendant was a principal in the shooting. The majority emphasizes that there was no evidence that the defendant was armed, and thereby no specific intent, relying on Mrs. Menard's statement that she observed no weapons on either man. Slip Op. at p. 12. However, she stated that the defendant was fidgeting with the waistband of his pants, indicating the presence of a weapon. Further, the defendant admitted he was armed, though he claims it was with a harmless broken BB gun. This is not a "concession" by the defendant, but part of his self-serving "story," which was clearly rejected by the jury for several valid reasons.. If he really did have a BB gun, why did he get rid of it after the shootings? If it was not used to kill, why discard it? The admission by the defendant that he was armed was accepted by the jury, but it rationally chose to reject his denial that it was a real gun. This circumstantial evidence reasonably led the jury to conclude he had a real gun, used it to kill, and discarded it because it would incriminate him.

Second, if the defendant was not one of the shooters, why did he get rid of his shirt shortly after the crime? It was reasonable for the jury to conclude, as

argued by the state, that it was because the shirt may have been blood-spattered from shooting the victims at close range.

Third, although the state expert witnesses, forensic pathologist Dr. Susan Garcia, and firearms examiner Capt. Louise Walzer, could not say definitively how many guns were used to kill the two victims, Capt. Walzer did testify that different kinds of .38 ammunition were used, suggesting that more than one gun was used and that both defendants fired shots.

Fourth, the crime scene photographs and the testimony of Dr. Garcia regarding the position of the wounds suggest that both men fired the shots. Mr. Beaugh was shot three times as he sat on the bed, once through the right cheek from only one inch away, once above the left ear from two-four inches away, and once in the left shoulder. Mrs. Beaugh was shot once behind her right ear as she knelt at the foot of the bed. This evidence and the bullets tradjectories are consistent with two shooters, one standing at the foot of the bed and one standing to the right of the bed.

Fifth, while the defendant claimed in his third statement that he was scared of Jacobs, he drove from the Beaugh house with Jacobs in the van, then drove him to the Iberville project, where, together, they dumped the stolen van shortly after the murders. They then played video games and ate together. The next night they went to a party together. Aside from showing that he was acting in concert with Jacobs all along, from before the crimes to long after the crimes, this evidence shows he was not scared of Jacobs. If he really did not know Jacobs was going to kill the victims and was scared Jacobs was going to kill him too, why didn't he report Jacobs to the police or at least get away from Jacobs? The reason is obvious, he was also a shooter.

Sixth, much of the evidence showed that not only was the defendant one of the shooters, he was the leader, in charge of the events of the day. All of the property that was taken from Mr. Beaugh's home that was recovered was found in the custody of the defendant, not Jacobs, including Mr. Beaugh's watch and ring, which Mr. Beaugh's daughter testified that he never took off, indicating that the defendant personally took it off his finger. Ms. Menard testified that the defendant was the more aggressive of the two men, the one who did all of the talking and the one that made her most afraid. Further, it was the defendant who lied to Ms. Menard, first stating that they were looking for someone named "Derrick," then stating that they were in the neighborhood for a painting job. Ms. Menard knew these statements were untrue and she told the defendant to get out of the neighborhood and go back to school. The state argued to the jury that Ms. Menard humiliated the defendant, which made him very angry and anxious to prove his toughness to Jacobs by engaging in the robbery-murders. Finally, the defendant stated that Jacobs liked to keep cars after stealing them, and in fact wanted to keep the van, but they got rid of the van at the defendant's insistence, further indicating the defendant was in charge and the leader.

In addition, the defendant admitted that he went into the Beaugh's home with Jacobs as Jacobs held a gun to Mr. Beaugh's head and forced him into the home. Further, he claimed he heard Jacobs tell Mr. Beaugh that he better start telling him where the money was or he was going to kill them. The defendant also heard Mr. Beaugh beg that no one be shot. In light of this evidence, the defendant's claim that he did not anticipate that Jacobs might shoot the victims is incredible.

Finally, the jury could have inferred that the defendant had the specific intent and the motive to kill the victims because the victims had seen him and could later

identify him had they not been killed. The defendant knew the position of the victims at death because he was there and helped kill the victims so they could not identify him. The jury heard all this evidence and gave credence to it, discrediting the defendant's self-serving rendition of the events.

Given these facts and circumstances, the jury properly concluded from the circumstantial evidence that the defendant possessed the requisite specific intent to kill, and that the defendant's claim of innocence, contained in his third statement, was unreasonable and just more lies to cover himself. When viewed in the light most favorable to the prosecution, the jury properly concluded beyond a reasonable doubt that the defendant's participation in these murders was major, and that he either shot one or both of the victims, or at the very least, specifically intended that they be killed. The jury rejected as unreasonable the defendant's silly tale that he was merely present as a lookout in the garage, and did not participate in their murders.[1] Considering that the defendant's claim (hypothesis) of innocence, as given in his third statement, is unreasonable and demonstrably false by other of the defendant's admissions and other circumstantial evidence, this Court should not upset the jury's verdict.

For all of the above reasons, I respectfully dissent.

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[1]The majority finds that the defendant was not a principal under La. R.S. 14:10(1) for his failure to act to prevent the shooting. The majority acknowledges that "silence in the face of a friend's crime will sometimes suffice when the immediate proximity of the bystander is such that he could be expected to voice some opposition or surprise if he were not a party to the crime," but then finds that "Defendant's statement that he was in the Beaugh's garage when the fatal shots were fired places him outside the 'immediate proximity.'" Slip Op. at pp. 11-12. However, the jury obviously did not believe the defendant's "story" that he was in the garage when the fatal shots were fired and the only evidence that the defendant was in the garage was his own self-serving statement. But, nonetheless, the majority treats this statement as if it were fact.