

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 KA 2272

STATE OF LOUISIANA

VERSUS

DARRIN RAIFORD

Judgment Rendered: May 8, 2009.

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On Appeal from the
22nd Judicial District Court,
in and for the Parish of Washington
State of Louisiana
District Court No. 06 CR5 95313

The Honorable Elaine DiMiceli, Judge Presiding

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Walter P. Reed
District Attorney
H. Gregory Briese
Assistant District Attorney
Franklinton, La.

Kathryn Landry
Special Appeals Counsel
Baton Rouge, La.

Frank Sloan
Baton Rouge, La.

Counsel for Appellee,
State of Louisiana

Appellate Counsel for
Defendant/Appellant,
Darrin Raiford

* * * * *

BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

Handwritten signatures and initials in the left margin, including what appears to be 'WPR', 'HGB', and 'KSL'.

CARTER, C.J.

The defendant, Darrin Raiford, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. The defendant entered a plea of not guilty. After a trial by jury, the defendant was found guilty as charged. The trial court denied the defendant's motion for new trial. The defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, assigning error as to the sufficiency of the evidence. For the following reasons, we affirm the conviction and the sentence.

STATEMENT OF FACTS

On June 28, 2006, between 4:00 p.m. and 5:00 p.m., Dagrlick Moses, the victim, was shot to death while operating an Isuzu sport utility vehicle (SUV) in the Sunset Acres apartment complex in Bogalusa, Louisiana. As the victim drove through an area commonly referred to as the "Horseshoe" at the apartment complex, the shooter signaled for him to stop. A male individual gave the shooter a handgun, and the shooter fired the gun into the SUV approximately four times. After the shooting, the victim's vehicle crashed through the exterior wall of an apartment before stopping. The victim suffered four gunshot wounds including lethal artery, lung, and head injuries.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant contends that the evidence in support of the second degree murder conviction is insufficient. Specifically, the defendant contends the evidence was insufficient to establish his identity as the shooter. The defendant notes that State witness

Gemilia Henry was the only witness who testified to seeing someone fire a gun into the victim's car. Henry identified the shooter as "Wop." The defendant argues that the State failed to establish that he was known as Wop. The defendant concludes that the circumstantial evidence presented by the State on the identification issue failed to negate a reasonable probability of misidentification.

In response, the State submits that the defendant did not contest this issue during the trial and, therefore, did not preserve the issue for appeal. In addressing the merits of the defendant's argument, the State argues that it is obvious from a review of the entire trial transcript that the witnesses were referring to the defendant when using the nickname "Wop." Henry testified that Wop shot the victim, and the State concludes that there was sufficient evidence to negate any reasonable probability that Wop was not the defendant.

In reviewing the sufficiency of the evidence to support a conviction, a Louisiana appellate court is controlled by the standard enunciated by the United States Supreme Court in **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). That standard of appellate review adopted by the Legislature in enacting La. Code Crim. P. art. 821 is whether the evidence, when viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt. **State v. Brown**, 2003-0897 (La. 4/12/05), 907 So.2d 1, 18, cert. denied, 547 U.S. 1022, 126 S.Ct. 1569, 164 L.Ed.2d 305 (2006). 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. Graham**, 2002-1492 (La. App. 1 Cir. 2/14/03), 845 So.2d 416, 420.

An appellate court is constitutionally precluded from acting as a “thirteenth juror” in assessing what weight to give evidence in criminal cases; that determination rests solely on the sound discretion of the trier of fact. **State v. Azema**, 633 So.2d 723, 727 (La. App. 1st Cir. 1993), writ denied, 94-0141 (La. 4/29/94), 637 So.2d 460. As the trier of fact, a jury is free to accept or reject, in whole or in part, the testimony of any witness. **State v. Richardson**, 459 So.2d 31, 38 (La. App. 1st Cir. 1984). Moreover, where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. **Richardson**, 459 So.2d at 38. Thus, the fact that the record contains evidence that conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **Azema**, 633 So.2d at 727.

When a case involves circumstantial evidence and the trier of fact reasonably rejects a 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). Additionally, where the key issue 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 carry its burden of proof. **State v. Smith**, 430 So.2d 31, 45 (La. 1983). Positive identification by only one witness may be sufficient to support the defendant's conviction.

State v. Hayes, 94-2021 (La. App. 1 Cir. 11/9/95), 665 So.2d 92, 94, writ denied, 95-3112 (La. 4/18/97), 692 So.2d 440.

State witness Henry was the only eyewitness to the shooting who testified at the trial. Henry lived in Sunset Acres in apartment number thirty-two at the time of the incident. Henry heard some commotion outside of her apartment, walked to her doorway, and witnessed the shooting. Henry estimated that her apartment was located ninety feet away from the area of the shooting.

On the day in question, Henry saw the victim (whom she referred to as Tube) driving through the Horseshoe two times within an approximate twenty-minute interval. The first time Henry saw the victim, the shooter—identified by Henry as Wop—told the victim to come back, and the victim said he would return. When asked if Wop was Darrin Raiford, Henry stated that she did not know the shooter's real name; she only knew him as Wop. According to Henry, Wop was standing on the walkway between apartment number twenty-eight and twenty-nine when he instructed Tube to come back. Henry observed Tube when he came back and drove by her apartment. According to Henry, Tube was driving at a slow rate through the Horseshoe and when he made the turn Wop flagged him down. An individual known to Henry as Danky was with Wop at the time. When asked whether Danky was Wop's brother or cousin, Samuel Raiford, Henry responded positively. According to Henry, Danky gave Wop the gun. Wop walked to the passenger window of the SUV and fired the gun into the vehicle four times. The car then continued moving, hitting the exterior wall of apartment number sixty.

Danky and Wop then entered Felicia Raiford's apartment before leaving the complex with Felicia in her car. Henry also observed State witness Jacqueline Meyers simultaneously leave in a separate vehicle.

Meyers lived in apartment number thirty-one of the complex. Meyers had a sexual relationship with Samuel Raiford, whom she knew as Sam or Danky. On the day in question, Meyers observed the victim driving through the Horseshoe in the morning and two subsequent times. The second time the victim drove through the Horseshoe, Meyers heard words exchanged, "I guess in anger." Near the time of the shooting, Meyers allowed Felicia Raiford to use her cellular telephone. After she heard gunshots, Meyers got in her vehicle and followed Felicia as she drove out of the complex. Meyers testified that she wanted to retrieve the cellular telephone and was unaware of who was in the vehicle with Felicia. At some point, Felicia pulled over and Darrin (the defendant) and Sam got into Meyers's vehicle. Meyers testified that Sam had what appeared at a glance to be a handgun. Meyers dropped the defendant and Sam off at a trailer in Franklinton, Louisiana. When specifically asked if Wop and Danky exited her vehicle at a trailer park, Meyers stated, "Yes." Meyers recovered the cellular telephone before returning to Bogalusa. On June 30, 2006, Meyers gave a recorded statement to the police. In her statement, Meyers said that both the defendant and Sam had weapons when they entered her vehicle. However, Meyers testified at trial that she did not actually see the defendant with a gun. Meyers contended that she was being pressured and threatened by the police at the time of her recorded statement.

LaTonya Nicole Moses, the victim's sister, also testified as a State witness. LaTonya had a sexual relationship with Samuel Raiford and referred to him as Danky. LaTonya lived in the complex in apartment number sixty-eight. The victim was operating LaTonya's SUV at the time of the shooting. According to LaTonya, approximately ten minutes after the victim left, he came back through the Horseshoe and she heard "four or five" gunshots. LaTonya called the police and reported the shooting. The State asked LaTonya the following question: "Do you know the relationship between Darrin, who's called Wop, and Samuel Lester Raiford?" LaTonya responded as follows, "They're brothers, cousins, I don't know."

Lieutenant Tommie Sorrell of the Bogalusa Police Department was among the officers reporting to the scene of the shooting. Shortly after his arrival, Lieutenant Sorrell had to leave the scene to go to another crime scene involving a drive-by shooting. The victims of the drive-by shooting included Samuel Raiford's mother, Nellie Brooke, and extended family members. According to Brooke, just prior to the drive-by shooting, she received a telephone call from a female with death threats in retaliation for the murder of her brother. Brooke instructed everyone in the home to get down just before a weapon was fired from a passing vehicle. Brooke identified Eric Lucas as the drive-by shooter.

The defense did not present any witnesses. Throughout the trial, the defendant was interchangeably referred to by the State as Darrin and Wop. As the State questioned its witnesses and used the two names interchangeably, none of the witnesses were confused as to who Wop was and clearly associated the name with the defendant. There was never any

objection regarding the use of the name Wop in reference to the defendant. The eyewitness to the shooting, Henry, specifically testified that she observed Wop fire four gunshots into the vehicle in question. When asked if she also knew Wop as Darrin Raiford, Henry said she didn't know his real name. Without objection, the next question by the State referred to the defendant as "Wop, or Darrin." During cross-examination, the defense did not question Henry regarding the clear assumption that Wop was indeed the defendant.

Further, the victim's sister, LaTonya Moses, testified that she referred to Samuel Raiford as Danky. Henry's testimony clearly established that the defendant was with Danky at the time of the shooting. She stated that Danky gave Wop the gun. According to Henry, after the shooting, Wop and Danky left the scene in Felicia Raiford's car. Jacqueline Meyers testified that Darrin (the defendant) and Sam exited Felicia's vehicle and entered her vehicle armed with a gun just after the shooting took place. A thorough review of the entirety of the testimony presented at trial reveals that the State established the defendant's identity as Wop and as the shooter. Thus, we are convinced that the evidence presented herein negated any reasonable probability of misidentification. Viewing all of the evidence in a light most favorable to the prosecution, any rational trier of fact could have found that the State proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of second degree murder and the defendant's identity as the perpetrator of the offense. For the above reasons, the assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.