

STATE OF LOUISIANA

*

NO. 2000-KA-0127

VERSUS

*

COURT OF APPEAL

CEDRIC L. DENT

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

*

*

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 393-154, SECTION "L"
HONORABLE TERRY ALARCON, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge
David S. Gorbaty)

HARRY F. CONNICK, DISTRICT ATTORNEY
JULIET CLARK, ASSISTANT DISTRICT ATTORNEY
NEW ORLEANS, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

YVONNE CHALKER
LOUISIANA APPELLATE PROJECT
NEW ORLEANS, LA 70196-1665
COUNSEL FOR DEFENDANT/APPELLANT

On November 13, 1997, the defendant, Cedric Dent, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. He was arraigned and pled not guilty on November 25, 1997. A twelve member jury found defendant guilty as charged on May 18, 1999. He filed a motion for new trial, which was denied. The defendant was sentenced on May 25, 1999, to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. He now appeals

ERRORS PATENT

A review of the record for errors patent reveals none.

STATEMENT OF FACTS

Dr. Paul McGarry was the pathologist that conducted the autopsy of the victim, Anthony Milton. Dr. McGarry testified that Milton was shot in the back of the head and died from that wound. The bullet entered above and behind the right ear and traveled slightly upward. The wound was not a contact wound. Urine tests were positive for marijuana.

Detective Michael Buras responded to the shooting on September 2, 1997, at the corner of Josephine and St. Thomas Streets. A witness, who

had been with the victim when the shooting occurred, returned to the scene and gave a statement. The victim's mother gave the name of a potential suspect. Buras showed the witness a photographic lineup, and the witness identified the defendant as the shooter.

Detective Chris Billiot said the defendant turned himself in and said, "Just because someone said I murdered somebody does that mean it's true" and "I wasn't even around there that day, I was at a movie, 'Hoodlum' on the day of the murder."

Jerry Hamilton, cousin of the victim, said he was with the victim when he was shot. He said they went to the Jackson Supermarket. Hamilton left to go to another store. When he returned, he saw the defendant standing in front of the victim in the checkout line. The defendant checked out and went outside of the store to stand near a pay phone. He was looking at Hamilton. Hamilton and the victim left the store. They had traveled about a hundred feet, when Hamilton heard a gunshot. He turned to see the defendant pointing a gun at him. The defendant stood there for about ten seconds, and then ran between two buildings. Hamilton identified the defendant in a photographic lineup. He did not know the defendant's name.

On cross-examination, he said he did not know the defendant prior to the incident. He did not know whether the victim knew him. He did not see

the defendant and the victim have a conversation in the store. He said when he initially heard the gunshot, he was not sure of the location of the shooter.

ASSIGNMENT OF ERROR

The defendant argues the evidence was insufficient to support the conviction for second degree murder. When assessing the sufficiency of evidence to support a conviction, the appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979); State v. Jacobs, 504 So. 2d 817 (La. 1987).

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. State v. Shapiro, 431 So. 2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. La. R.S. 15:438 is not a separate test from Jackson v. Virginia but rather is an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a

defendant guilty beyond a reasonable doubt. State v. Wright, 445 So. 2d 1198 (La. 1984). All evidence, direct and circumstantial, must meet the Jackson reasonable doubt standard. State v. Jacobs, 504 So. 2d 817 (La. 1987).

La. R.S. 14:30.1 defines second degree murder as “the killing of a human being . . . when the offender has a specific intent to kill or to inflict great bodily harm.” Specific criminal intent is defined as “that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act.” La. R.S. 14:10(1). Specific criminal intent need not be proven as a fact, but may be inferred from the circumstances of the transaction and the actions of the defendant. State v. Maxie, 93-2158 (La. 4/10/95), 653 So. 2d 526, 532.

Here, the victim’s cousin saw the defendant standing in a checkout line next to the victim. He saw the defendant walk out of the store and wait by a pay phone. He heard a gunshot and turned to see the defendant pointing a gun. The victim’s mother gave the name of the defendant as the perpetrator, and the eyewitness identified him in a photographic lineup and again at trial. The defendant argues there were inconsistencies in the eyewitness’s testimony, but a reading of the transcript reveals no

inconsistencies. Moreover, the credibility of the witnesses is an issue for the trier of fact. State v. Rosiere, 488 So.2d 965 (La. 1986). The trier of fact's determination of credibility is not to be disturbed on appeal absent an abuse of discretion. State v. Cashen, 544 So. 2d 1268 (La. App. 4 Cir. 1989).

The defendant suggests he should have been convicted of manslaughter. Manslaughter is a homicide that would be either first or second degree murder, but the killing is committed in "sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection." La. R.S. 14:31(A) (1). "Sudden passion" and "heat of blood" are not separate elements of the offense but are mitigating factors that exhibit a degree of culpability less than that present when the homicide is committed without them. State v. Lombard, 486 So. 2d 106 (La. 1986). Because they are mitigating factors, the defendant must establish them by a preponderance of the evidence. State v. Heck, 560 So. 2d 611 (La. App. 4 Cir. 1990), writ denied 566 So. 2d 395 (La. 1990). Here, the defendant put forth absolutely no evidence to carry his burden. In fact, his statement to police was that he was not even at the scene.

After reviewing the record, we find that the evidence was sufficient to support the conviction for second degree murder.

This assignment is without merit.

PRO SE ASSIGNMENT

The defendant repeats the insufficiency of evidence argument urged by defense counsel.

He also recites some law under the Fourth and Fifth Amendments, alleging violations of both. However, the evidence admitted at trial did not include anything seized from defendant and the only statement by defendant that was admitted was exculpatory.

This assignment is without merit.

For the reasons stated above, we affirm the defendant's conviction and sentence.

AFFIRMED