

STATE OF LOUISIANA

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NO. 2000-KA-0664

VERSUS

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COURT OF APPEAL

CHRIS HILL

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 401-395, SECTION "H"
HONORABLE CAMILLE BURAS, JUDGE

JUDGE MICHAEL E. KIRBY

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

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The defendant, Chris Hill, was charged by bill of indictment on September 10, 1998, with second degree murder, a violation of La. R.S. 14:30.1. At his arraignment on September 15th, he pleaded not guilty. The trial court found probable cause and denied the motions to suppress the evidence, confession, and identification on January 5, 1999. After a two-day trial on May 19 & 20, 1999, a twelve-member jury found defendant guilty of the lesser-included offense of manslaughter. Defendant was sentenced on September 20th to serve twenty-five years at hard labor. His motion to reconsider the sentence was denied and his motion for an appeal was granted.

Deborah White, the victim's sister, testified at trial that her brother, Willie White, was killed on July 5, 1998, in her kitchen at 3026 Alvar Street. She heard the bullets but did not see the shooting. She said her brother did not have a gun in the apartment that night. She admitted, however, that she knew he had had a gun in the past, and she knew he used drugs.

Dr. Alvaro Hunt, an expert in forensic pathology, testified that he performed the autopsy on Willie White and found that White suffered five gunshot wounds. All were on the left side of his body. The fatal bullet wound was to his chest cavity; it pierced both his lungs, his heart, and his liver. Another bullet produced a large tear in his liver, and he had three

bullet wounds to his left arm. Dr. Hunt opined that that the gun was at least two feet from the victim. Tests showed the presence of both alcohol and cocaine in White's system.

Officer Nathan McGhee testified that on July 4, 1998, he investigated a burglary of the apartment of Rose Hill and her son, Chris Hill, at 3106 Alvar Street, Apartment A. The burglar had entered through a wall in an adjacent abandoned apartment. Mrs. Hill reported a VCR and jewelry stolen. Later Chris Hill reported that a Daewoo 9 millimeter handgun, a gold ring, and a gold chain were missing.

Officer Edward Prater testified that when he investigated the shooting of Willie White, he noticed bullet holes in the kitchen door. The officer spoke with Don Juan White, a nephew of the victim, who was in the kitchen when the shooting occurred. Don Juan White gave the officer the name "Jeff" as a suspect. Three spent bullets and four spent casings were retrieved from the apartment. Expert testimony established that all the bullets were fired from the same 9 millimeter weapon; additionally all the cartridge cases were fired from the same 9 millimeter weapon.

Don Juan White, the sixteen-year-old nephew of the victim, testified that about 1 a.m. on July 5th he was sitting at the kitchen table with his uncle when someone knocked at the door. Willie White asked who was there, and

Don heard someone answer “Jeff” or “Jacob.” White opened the door and asked, “Who you want?,” and the answer was “We want Willie.” White responded, “I don’t know you,” and tried to close the door. Don saw only a person’s leg in the doorway, but he got up and ran from the room during the exchange because he suspected that something was going to happen. While he was running down the hall, he heard gunshots. Don hid in his grandmother’s room, and Willie White followed him into the room seconds later, collapsing on the floor. Under cross-examination, Don was asked if he gave the investigating officer the name of the man at the door as “Jeff” or “Jeffery,” and Don could not remember.

Michael White, the twelve-year-old cousin of Don Juan White, testified that before midnight on July 4th he was shooting firecrackers in the driveway near his apartment, when he saw Chris Hill and another man standing near a dumpster. Michael White, who lives with Deborah White and Don Juan, recognized the defendant because he is a neighbor. Michael White was in bed when he heard the shots. Sometime later at a photographic lineup, he selected the defendant’s picture and named him as the man seen standing near the dumpster shortly before the shooting.

Kevin Edgar, who testified as a result of an immunity agreement, told the court he did not wish to testify because he was not at the scene of the

crime. He explained that Chris Hill and Jeffery Hill told him of the offense after it happened. Edgar said both men were friends, but Jeffery Hill was a better friend because he had known him longer. The night of July 4th Jeffery Hill, Chris Hill and Edgar were out together when Chris Hill received a phone call telling him his mother's apartment had been burglarized. The three men went to her apartment, saw the hole in the wall, and discussed what was missing. Then Chris Hill said to Jeffery Hill, "Let's go take a walk," and they left for about thirty minutes. They returned to Rose Hill's apartment and were preparing to leave when a woman came up to them and said, "I had nothing to do with it. The man on the first floor did it." Jeffery and Chris Hill left again, and Edgar, who had stayed in the apartment, heard gunshots. Jeffery and Chris Hill returned immediately, and Chris Hill said, "Let's go." They left in Chris Hill's car, and Edgar reported that, once they were in the car, Jeffery Hill said, "You heard him? You heard him? He said, 'Give me my gun.' And that's when Jeff said he started shooting." Edgar maintained that he did not see either man with a gun that night. They drove to Jeffery Hill's house so that he could change his shirt, and then went to a nightclub. At that point Edgar got someone to give him a ride home. Kevin Edgar was arrested with the Hill cousins for this offense. Edgar said he knew the gun used belong to Chris Hill.

Detective Roger Bateman, who investigated the murder, testified that when he arrived on the scene an emergency medical team was caring for the victim who was taken to Charity Hospital, where he died. The detective spoke with several young people in the apartment and developed a suspect, Chris Hill. The detective went to his apartment and spoke to his mother, Rose Hill. After showing Rose Hill a search warrant, the apartment was searched. In Chris Hill's bedroom, the detective found a black plastic Daewoo gun case and a glass jar containing .38 caliber ammunition. During the search, Chris Hill entered the apartment, and Detective Bateman told him he was under investigation for a homicide. After being advised of his rights, Hill gave a statement to the detective at the police station. Hill's statement was played for the jury. Under cross-examination, the detective said that Chris Hill has no prior convictions. Through his investigation, the detective learned that Jeffery Hill used Chris Hill's gun to shoot Willie White while Chris Hill stood nearby.

In a single assignment of error, the defendant argues that the evidence was insufficient to prove that he had the specific intent to kill the victim.

In evaluating whether evidence is constitutionally sufficient to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of

fact could have found the defendant guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979); State v. Green, 588 So. 2d 757 (La. App. 4th Cir. 1991). The reviewing court is not permitted to consider just the evidence most favorable to the prosecution but must consider the record as a whole, because that is what a rational trier of fact would do. State v. Mussall, 523 So. 2d 1305 (La. 1988). However, the determination of credibility is a question of fact within the sound discretion of the trier of fact and will not be disturbed unless clearly contrary to the evidence. State v. Vessell, 450 So. 2d 938 (La. 1984).

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 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).

The defendant was charged with second-degree murder of Willie White. Because he was not accused of any of the offenses listed in the second-degree murder statute, the State charged the defendant under Par. A (1) of that statute, in which the offender “has a specific intent to kill or commit great bodily harm.” La. R.S. 14:30.1. The jury concluded that the homicide was committed in sudden passion and thus returned a verdict of manslaughter. The State’s proof therefore must support a finding of specific intent to kill or commit great bodily harm. La. R.S. 14:31A(1).

La. R.S. 14:24 defines "principals" as: "All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime...." See State v. Brooks, 505 So. 2d 714 (La. 1987), certiorari denied, Brooks v. Louisiana, 484 U.S. 947, 108 S.Ct. 337 (1987); State v. Watson, 529 So. 2d 94 (La. App. 4 Cir. 1988), writ denied 535 So. 2d 740 (La. 1989). However, to support a defendant's conviction as a principal, the State must show that the defendant had the requisite mental state for the crime. Brooks, supra; State v. Spotville, 583 So. 2d 602 (La. App. 4 Cir. 1991), writ denied 585 So.2d 577 (La. 1991).

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.

In recent cases, the driver of the getaway car has been found to be a principal to the felony another committed. In State v. Bellamy, 599 So.2d 326 (La. App. 2 Cir. 1992), writ denied, 605 So. 2d 1089 (La.1992), the defendant made a statement wherein he admitted to being with the robbers for several hours before the offense, during the offense, and fleeing the scene with them, but maintained his innocence by denying that he knew that the men were going to commit a robbery. The Second Circuit found that the jury could reject the defendant's argument that he was unaware that a robbery was going to be committed, and affirmed his conviction.

In State v. Bowman, 95-0667 (La. App. 4 Cir. 7/10/96), 677 So. 2d 1094, writ denied, 96-2070 (La. 1/31/97), 687 So. 2d 400, the defendant and his partner were both indicted for second degree murder. Bowman was driving and his partner, who was next to him in the front seat, was arguing with a man in another car. Bowman turned the car around and stopped next

to the victim's car, and his partner began shooting. This Court held that the defendant intended to take part in frightening the victim, and he was a principal in the commission of the crime.

Similarly, in the instant case, the defendant made a statement in which he admitted that he and Jeffery Hill went looking for the person who burglarized his apartment; moreover, either Chris or Jeffery Hill was carrying Chris's gun. When they arrived at the victim's apartment, Jeffery Hill used the gun to shoot the victim. Chris Hill was standing on the walkway outside the door of the apartment. When he saw Kevin Edgar after the shooting, Chris Hill told Edgar not to worry because "[y]ou ain't do [sic] nothing. You wasn't with us." Afterward Chris Hill drove to Old Gentilly Road and threw his gun away. Although Chris Hill may not have intended to kill the victim, a jury could reasonably infer from these circumstances that he intended to inflict at least great bodily harm.

This assignment is thus without merit.

Accordingly, for reasons cited above, the defendant's conviction and sentence are affirmed.

AFFIRMED