

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2000-KA-1392**
VERSUS * **COURT OF APPEAL**
JUAN A. SMITH * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
*
*
*
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 378-343, SECTION "D"
Honorable Frank A. Marullo, Judge
* * * * *
Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Judge Charles R. Jones, and Judge Dennis R. Bagneris,
Sr. and Judge Max N. Tobias, Jr.)

Harry F. Connick
District Attorney
Juliet Clark
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Laura Pavy
LOUISIANA APPELLATE PROJECT
P.O. Box 750602
New Orleans, LA 701750602

COUNSEL FOR DEFENDANT/APPELLANT

CONVICTIONS AND SENTENCES AFFIRMED **STATEMENT OF CASE**

Juan Smith was indicted on August 31, 1995 with five counts of first-degree murder, violations of La. R.S. 14:30. He was arraigned and pled not guilty on September 11, 1995. On October 31, 1995 the court denied the defendant's motions to suppress the evidence and identification. On December 7, 1995, the defendant was tried by jury and found guilty as charged on all five counts.

On December 15, 1995, the court sentenced the defendant to life imprisonment, without benefit of parole, probation or suspension of sentence on each count, sentences to run concurrently. The court subsequently granted his motion for appeal.

STATEMENT OF FACT

On March 1, 1995, Rebe Espadron, her sister, Shelita Russell, and cousin, Robert Simon, were at their home on N. Roman Street, awaiting the arrival of several friends. At approximately 6:00 p.m., Ian Jackson, James Jackson, William Leggett, Larry Boatner and Reginald Harbor arrived at the Espadron house to play cards. Ms. Espadron and Reginald Harbor retired to her bedroom to watch television; the others remained in the kitchen. Shortly

after 7:00 p.m., Larry Boatner heard a car stop in front of the house. As he opened the front door and looked out, Juan Smith, Phillip Young and another armed man entered the house demanding drugs and money. Smith ordered Ms. Russell, Robert, Ian, James, William, and Larry to lie on the kitchen floor, and to surrender their money. A short while later, Ms. Espadron went to the kitchen door to investigate the noise. As she opened the door, a man wearing a hat and a bandana over his mouth and nose pointed a gun in her face, and ordered her to lie on the floor. Ms. Espadron ran back into her bedroom and as she did, shooting erupted in the kitchen. She and Harbor cowered in the bedroom. When the gunfire stopped, Harbor made his way into the kitchen/living room area where he found five bodies on the floor. Ms. Espadron ran outside, and flagged down passing police officers. As she re-entered the house, she found Robert Simon's body lying on top of Phillip Young in the living room, and Shelita Russell, James Jackson and William Leggett on the floor in the kitchen.

Officers Joseph Narcisse and Errol Lavasseur were dispatched to Ms. Espadron's residence to investigate a complaint of gunfire and aggravated burglary. As the officers entered, they found three victims in a pool of blood in the kitchen and two others in the adjoining living room. Shelita Russell, one of the victims found in the kitchen, was conscious but unable to provide

any information on the incident. The other two victims in the kitchen, James Jackson and William Leggett, exhibited no signs of life. Phillip Young, one of the assailants, who was conscious but unable to move, was lying face down in the living room with Robert Simon lying partially on top of him. When emergency medical personnel arrived, they rolled Robert Simon's body off of Phillip Young, who was clutching a .25 caliber pistol in his left hand. The EMS personnel pried the loaded and cocked weapon from Young's grip. As the officers secured the premises, they found Larry Boatner in the bathroom. He had not been shot but was suffering from a severe head laceration. Officers Narcisse and Lavasseur discovered the body of Ian Jackson in the alley.

Homicide Detective John Ronquillo found numerous 9-millimeter and AK-47 shell casings at the scene and bullet riddled living room and kitchen floors, walls and windows. He directed the crime scene technicians to photograph and dust the area for fingerprints. Officers discovered a pager on Phillip Young, and retrieved the telephone numbers stored in the unit. One of the numbers was registered to Kintad Phillips at his 2046 Rousseau Street residence. Detective Ronquillo presented a photographic lineup to Larry Boatner from which Boatner identified Juan Smith as one of the assailants.

Detective Kenneth Leary, the State's expert firearms examiner, tested the .25 caliber weapon seized from Phillip Young, and determined that the gun fired three bullet casings retrieved at the scene. He also identified 9-millimeter and AK-47 semi-automatic rifle ammunition fired at the scene.

Drs. William Newman and Alvaro Hunt, experts in autopsy pathology, performed autopsies on the five victims. All of the victims died from multiple gunshot wounds delivered execution style as they lay face down on the floor. Blood toxicological tests on Shelita Russell and James Jackson were negative for alcohol and commonly abused drugs. However, the other victims' blood exhibited the presence of cannabinoids and excessive levels of alcohol. Dr. Newman opined that Ian Jackson's leg wounds suggested he attempted to flee the attackers, which would explain his body being found in the alley, rather than in the house. The doctors retrieved bullets and bullet fragments from the victims' bodies during the autopsies.

ERRORS PATENT

A review for errors patent on the face of the record reveals none.

ASSIGNMENT OF ERROR NUMBER 1

In his first assignment, the defendant argues that his conviction must be reversed because the trial court erred in denying his motion to suppress

the identification.

The law regarding the admissibility of identification testimony was recently summarized in *State v. Thibodeaux*, 98-1673 (La.9/8/99), 750 So.2d 916, *cert. denied*, 529 U.S. 1112, 120 S.Ct. 1969, 146 L.Ed.2d 800 (2000):

As a general matter, the defendant has the burden of proof on a motion to suppress an out-of-court identification. La.Code Crim. Proc. art. 703(D). To suppress identification, a defendant must first prove that the identification procedure was suggestive. *State v. Prudholm*, 446 So.2d 729, 738 (La.1984). An identification procedure is suggestive if, during the procedure, the witness' attention is unduly focused on the defendant. *State v. Robinson*, 386 So.2d 1374, 1377 (La.1980). However, even when suggestiveness of the identification process is proven by the defendant or presumed by the court, the defendant must also show that there was a substantial likelihood of misidentification as a result of the identification procedure. *State v. Prudholm*, 446 So.2d at 738.

The Supreme Court held in *Manson v. Brathwaite*, 432 U.S. 98, 97 S.Ct. 2243, 2254, 53 L.Ed.2d 140 (1977), that despite the existence of a suggestive pretrial identification, an identification may be permissible if there does not exist a "very substantial likelihood of irreparable misidentification." Under *Manson*, the factors which courts must examine to determine, from the totality of the circumstances, whether the suggestiveness presents a substantial likelihood of misidentification include: 1) the witness' opportunity to view the criminal at the time of the crime; 2) the witness' degree of attention; 3) the accuracy of his prior description of the criminal; 4) the level of certainty demonstrated at the confrontation; and 5)

the time between the crime and the confrontation. *Id.*

In reviewing a trial court's ruling on a motion to suppress, an appellate court is not limited to evidence adduced at the hearing on the motion; it may also consider any pertinent evidence given at trial of the case. *State v. Nogess*, 98-0670, (La.App. 4 Cir.3/3/99), 729 So.2d 132, 137.

In this case, the defendant suggests that the witness', Larry Boatner's, identification is unreliable because Boatner made the identification while undergoing alcohol abuse treatment and after the defendant's picture appeared in the June 7, 1995, edition of the newspaper as a suspect in an unrelated homicide.

At trial, Detective Ronquillo testified that on June 28, 1995, he displayed a photographic lineup to Larry Boatner while he was in alcohol abuse treatment at Charity Hospital. Boatner was coherent, conversed effortlessly, and immediately identified the defendant as one of the armed assailants who shot his friends and who hit him in the head.

In his trial testimony, Boatner verified that he had seen the defendant's picture in the newspaper, and recognized him at that time as one of the killers. However, Boatner further stated that the newspaper picture had no bearing on the identification he made to Detective Ronquillo on June 28, 1995. Boatner denied drinking or ingesting any drugs the night of the

incident. He explained that he saw the defendant's face at the time the defendant entered Ms. Espadron's residence and for a few minutes thereafter, as the defendant engaged him in conversation before hitting him. In fact, Boatner claimed he would never forget the defendant's face.

It does not appear that the defendant proved Boatner's identification was suggestive, nor, even if it were suggestive, does it appear to have been proven unreliable. A trial court's ruling on the admissibility of identification evidence is entitled to great deference and will not be reversed barring an abuse of discretion. *State v. Bickham*, 404 So.2d 929 (La.1981). The trial court did not abuse its discretion in denying the defendant's motion to suppress. This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 2

In a final assignment, the defendant contends the evidence was insufficient to support the verdict.

The standard of appellate review for sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the State proved the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The reviewing court is to consider the record as a whole, not just the evidence favorable to the

prosecution; and, if rational triers of fact could disagree as to the interpretation of the evidence, the rational decision to convict will be upheld. *State v. Mussall*, 523 So.2d 1305, 1310 (La.1988).

Either direct or circumstantial evidence may prove the essential elements of the crime. With circumstantial evidence the rule is: "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." La.R.S. 15:438. This rule is not a separate test from the review standard established by *Jackson v. Virginia*, but rather it is an evidentiary guideline, which facilitates appellate review of the sufficiency of the evidence. *State v. Jacobs*, 504 So.2d 817, 820 (La.1987). Ultimately, to support a conviction, the evidence, whether direct or circumstantial or both, must be sufficient under *Jackson* to satisfy any rational trier of fact that the defendant is guilty beyond a reasonable doubt. *State v. Sutton*, 436 So.2d 471 (La.1983). Credibility determinations are within the discretion of the trier of fact and will not be disturbed unless clearly contrary to the evidence. *State v. Vessell*, 450 So.2d 938, 943 (La.1984).

La. R.S. 14:30 defines first degree murder as the "killing of a human being ... [w]hen the offender has specific intent to kill or inflict great bodily harm and is engaged in the perpetration or attempted perpetration of ...

armed robbery." Armed robbery is defined as "the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon." La. R.S. 14:64. Specific intent "is 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. Specific intent 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). It may be proven by direct evidence or inferred from the circumstances or the defendant's actions. *Id.* Larry Boatner, the only eyewitness to the incident, testified that the armed defendant forcibly entered Ms. Espadron's residence, demanding drugs and money. The defendant ordered Boatner and the five victims to lie on the floor. When Ms. Espadron surprised the defendant by opening the kitchen door, he and the other assailants shot the victims. The defendant concluded the rampage by hitting Boatner in the head with his gun. Other evidence at trial detailed the five victims' catastrophic injuries, delivered execution style, and the extensive bullet hole damage to the interior and exterior of Ms. Espadron's residence left by an AK-47 semi-automatic assault rifle.

The State produced sufficient evidence to sustain Smith's conviction

for first-degree murder. This assignment is without merit.

CONCLUSION

Accordingly, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED