NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-0444**
VERSUS	*	**COURT OF APPEAL**
DARRELL C. GOFF	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 391-000, SECTION "B"
Honorable Patrick G. Quinlan, Judge
* * * * * *

Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones, and Judge Dennis R. Bagneris, Sr.)

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COUNSEL FOR DEFENDANT/APPELLANT

CONVICTION AND SENTENCE AFFIRMED

Darrell C. Goff was charged by bill of indictment on July 24, 1997, with second-degree murder in violation of La. R.S. 14:30.1. At his arraignment on August 14th he pleaded not guilty. The motion to suppress the statement was denied after a hearing on October 10, 1997, and a twelve-member jury found him guilty of the responsive verdict of manslaughter after trial on November 19, 1998. He was sentenced on August 31, 1999, to serve thirty-five years at hard labor. The defendant was granted an out-of-time appeal on July 13, 2000.

At trial Officer Osceola Scanlan testified that on June 14, 1997, about 5 a.m., he responded to a call at the Glenrose Motel at 7930 Chef Menteur Highway. When he arrived there, a woman flagged him down and told him that someone had been shot. As the officer pulled into the parking lot, he saw a man lying on his back on the ground in front of Room 22. The wounded man was bleeding from his head. The door to the motel room was open, and the room was empty. The defendant was arrested a short time later about two blocks from the scene of the crime.

Officer James Gahagan of the crime lab testified that he collected the evidence found at the crime scene near the Glenrose Motel. The officer

identified a rubber car mat found in the driveway in front of Room 22. The mat came from a car parked in the 7900 block of Chef Menteur Highway. A black T-shirt found in an alley in the 7700 block of Chef Menteur Highway was also offered into evidence. Three bullet casings from a .380 automatic weapon were found on the ground at the scene of the crime and two fired .380 bullets were recovered when the victim, Tirrell Washington, was autopsied.

Officer Cassandra Anderson of the NOPD Communications Department testified concerning a police printout showing that at 5:06 a.m. on June 14th information about a shooting at 7930 Chef Menteur Highway was transmitted to the police department by David Dillon. He reported that the perpetrator's name was "Darrell," he lived at 3918 Hamburg Street, Apartment C, and was described as a "brown skinned male, white teeth, white t-shirt, dark jeans, two golds [sic] in mouth. Six foot tall." Officer Anderson could not identify David Dillon.

Officer Farrell St. Martin also responded to the call at 7930 Chef Menteur Highway. He described seeing a man lying in front of Room 22. He noticed that the room's front window was shattered and the door was open. A witness named Janice Rollins was present and gave a statement. The defendant was arrested that morning.

Detective Jerry London investigated the homicide on June 14, 1997. By the time he arrived on the scene, the defendant was already in custody, and about 8 a.m. he made a statement to the detective. The defendant's taped statement was played at trial for the jury. No weapon was ever recovered. The victim was shot twice, once from a distance and once at close range. The victim's car was parked in front of Room 22. The defendant's car was parked on the street near the motel.

Dr. Paul McGarry, an expert in forensic pathology, performed an autopsy on the victim, Tirell Washington, who suffered two gunshot wounds. The fatal shot entered his left temple in front of his left ear, traveled through the brain, and lodged behind the right ear. Heavy gunpowder deposits on the victim indicated that the gun was close to the victim's head when it was fired. Such a wound would not produce a splash of blood and would not result in bloodstains on the gunman, the doctor opined. The other bullet entered the back of the victim's left thigh an inch and one-half below the buttock; the bullet hit the thigh bone, broke the bone, and came to rest in the deep tissue in the lower part of the thigh. The doctor speculated that the victim fell as a result of the injury to his thigh; bruises on both his knees indicated a fall on a rough surface. The victim also had extensive abrasions on his face and shoulders as well as deep scrape marks

on the palms of his hands. The doctor could not explain the source of those cuts. Marijuana was found in the victim's urine but no alcohol or drugs were found in his blood.

Ms Janice Rollins, a state's witness, admitted that at the time of trial she was in custody, but she denied that she had been offered anything for her testimony. Rollins said she has prior convictions for possession of cocaine with intent to distribute, crime against nature, and possession of cocaine in 1997; additionally, she has a conviction for possession of cocaine in 1996, and convictions for crime against nature in 1995 and 1994. (Rollins was sentenced in January of 1998 as a multiple offender to thirty months at hard labor). On June 14th about 5 a.m. Rollins was waiting for a bus near the Glenrose Motel on Chef Menteur Highway when she saw the defendant drive up over the curb and onto the sidewalk before parking near the motel. She became nervous and crossed the street. The defendant got out of the car and walked into the motel parking lot. Rollins next heard cursing and then saw the defendant shoot the victim in the motel parking lot. Frightened, she turned to walk away, and then she heard another shot and began to run. She heard footsteps behind her and saw that the gunman was running up the other side of the street. He dropped something as he ran. Rollins stopped running near a bowling alley, and the gunman crossed the street toward her.

She described him as “sweating so much… like he was in shock or something. He was saying he couldn’t believe he did it.” Rollins asked if he was all right, and when he told her he wanted a cold drink, she gave him change to buy a coke from a nearby machine. He took off his black t-shirt and dropped it in the grass. She commented that someone would see it there, but he just repeated, “I don’t believe I did this.” When a man on a bicycle peddled by, the defendant asked him to go by the motel and see what was happening there. A man Rollins knew drove by and offered her a ride, which she accepted. She passed the Glenrose Motel and noticed that the police were everywhere. She got out of the car and sat nearby with a friend. She commented to the friend,

> You know that nigger still standing up the street. …. You know he done killed that boy, and he’s still standing up there . . .. He ought to get away from here.

A police officer overheard her statement and asked her to repeat it. She pointed out that the gunman was in front of the bowling alley, and she described him as wearing a black shirt and jeans. When the officer found a man wearing a white shirt and jeans, she directed the officer to the spot where the black shirt could be found. On cross-examination, Rollins was asked why when she first gave a statement to the police she did not say that

she saw the shooting, and she answered that she did not want "to get him [the defendant] in trouble." Rollins was also asked if she had been "loaded" that night, and she admitted that earlier in the evening she had been but that she was not at the time of the murder. She stated that a few days after the crime she called Detective London and told him she had seen the crime. The defense attorney asked her what the district attorney was giving her in return for her testimony, and she denied being given anything. She said she had fifteen more months of jail time. Rollins admitted she was a "four time loser" but maintained that she did not deserve life imprisonment for being a drug addict.

The defendant's statement made to Detective London was played for the jury; the statement opens with the detective reading the Miranda rights to the defendant and asking the defendant if he understands those rights; the defendant signed a statement indicating he understood his Miranda rights. The detective then asked the defendant to explain what happened at the Glenrose Motel. The defendant said that he had gone to bed on the night of June 13th knowing his girlfriend was out but expecting her to return home by 2 a.m.; however, when he woke up at 4:15 a.m. and found that she was not at home, he beeped her, and she returned his call and mentioned "problems." He thought he heard someone trying to take the telephone from her. He left

his home on Hamburg Street, and, while driving at the corner of Dwyer and Downman Streets, he was carjacked. He described being beaten up by two men who took his car. He had no idea who the carjackers were, and he did not call the police. He walked two blocks to the Glenrose Motel where his girlfriend was. He found his car parked in front of the motel, and he described what happened when he arrived at the motel; he said:

> the window was broken . . . so I was trying to get in there to her . . . the dude was laying outside . . . and I was trying to get to her . . . and then she ran off and . . . then she just disappeared out the blue . . ..

The defendant called his mother and asked her to come get him. He walked a few blocks to the Jacks Motel where he bought a soft drink and spoke with a woman who gave him a cigarette. The police arrived just as the defendant's mother drove up. While the police were interviewing him, his girlfriend came by and "identified" him as "being a suspect." When asked if he knew the victim, the defendant answered that he did not, but he did recognize the man's red Cadillac and was aware that the victim was the former boyfriend of his girlfriend.

Ms Linda Goff, the defendant's mother, testified that on June 14, 1997, she received a telephone call from her son, Darrell. He told her that he

drove to a motel and “walked in on a murder.” Ms Goff explained that Darrell had left the house because of a telephone call from Monique, and Monique was on the scene when Ms Goff arrived. As she drove up to the motel, she saw the police arrest her son.

In a single assignment of error, the defendant maintains that the evidence is insufficient to support his manslaughter conviction because the testimony of Janice Rollins, the single witness, is unreliable and because no physical evidence connects him to the crime.

This court set out the well-settled standard for reviewing convictions for sufficiency of the evidence in State v. Ragas, 98-0011 (La. App. 4 Cir. 7/28/99), 744 So.2d 99, as follows:

> 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, 61 L.Ed.2d 560 (1979); State v. Green, 588 So.2d 757 (La. App. 4 Cir.1991). However, the reviewing court may not disregard this duty simply because the record contains evidence that tends to support each fact necessary to constitute the crime. State v. Mussall, 523 So.2d 1305 (La.1988). The reviewing court must consider the record as a whole since that is what a rational trier of fact would do. If rational triers of fact could disagree as to the interpretation of the evidence, the rational trier's view of all the evidence most favorable to the prosecution must be adopted. The fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process of law. Mussall; Green; supra. "[A] reviewing court is not called upon to decide whether it believes the witnesses or

> whether the conviction is contrary to the weight of the evidence." State v. Smith, 600 So.2d 1319 (La.1992) at 1324.
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> 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. This is not a separate test from Jackson v. Virginia, supra, but rather 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).

98-0011 at pp. 13-14, 744 So. 2d at 106-107, quoting State v. Egana, 97-0318, pp. 5-6 (La. App. 4 Cir. 12/3/97), 703 So. 2d 223, 227-228.

The defendant was convicted of manslaughter which is defined as a homicide which would be either first or second degree murder, “but the offense 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). The statute further provides: “Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender’s blood had actually cooled, or that an average person’s blood would have cooled, at the time the offense was committed . . ..” "Sudden passion" and "heat of blood" are not elements of the crime, but can be mitigating factors that the jury can infer from evidence. State v. Smith,

94-2588 (La. App. 4 Cir. 3/27/96), 672 So. 2d 1034. Manslaughter is a responsive verdict to the charge of second-degree murder. La. C.Cr.P. art. 814(A)(3). The defendant did not object to the jury's been instructed as to the elements of manslaughter prior to the time the jury retired to deliberate in this case.

The defendant relies on State v. Mussall, 523 So. 2d 1305 (La. 1988), for the proposition that the state did not introduce any evidence to corroborate the testimony of the incriminating and unreliable witness. However, Mussall is different from the case at bar in its most important aspect. In Mussall, the supposed victim accused the defendant of armed robbery although there was no corroborating evidence that the robbery actually occurred. In the instant case, there is no doubt that the crime occurred. Furthermore, the witness labeled as unreliable described seeing the defendant drive to the motel, park hurriedly on the sidewalk rather than on the street, shoot the victim, and then run away. The jury heard the witness admit she did not tell the police the fact that she saw the shooting when she first told her story; however, she gave the officers a complete account within a few days. Moreover, the defendant's own confused account of events indicates that he went to the Glenrose Motel at the time of the shooting because of a problem with his girlfriend, he recognized her former

boyfriend's car at the motel, and the defendant was arrested in the area by the officers shortly after the incident.

The defendant complains that his conviction rests on the testimony of a convicted felon. Yet it was clear from the record that the jury found Rollins' testimony credible. Furthermore, the testimony of one witness, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. State v. Marshall, 99-2176, p. 12 (La. App. 4 Cir. 8/30/00), 774 So. 2d 244, 252. While Rollins is far from a model citizen, we find no rational basis to conclude that the jury's assessment of her credibility is clearly wrong, and a fact-finder's credibility decision should not be disturbed unless it is clearly contrary to the evidence. State v. Harris, 99-3147, p. 6 (La. App. 4 Cir. 5/31/00), 765 So. 2d 432, 435.

The defendant also complains that no physical evidence links him to the crime. He is correct that the weapon was never found. However, his car was parked in front of the crime scene, and his shirt was found where the witness alleged he dropped it. Furthermore, this court has held witness testimony is sufficient to support a conviction when there is no physical evidence linking a defendant to a crime. State v. Jones, 97-2591, p. 7 (La. App. 4 Cir. 9/8/99), 744 So. 2d 165, 169, writ denied, 1999-3141 (La. 4/7/00), 759 So. 2d 91.

Considering all of the evidence in the light most favorable to the State, a rational trier of fact could have found the defendant guilty of manslaughter in this case beyond a reasonable doubt.

This assignment of error has no merit.

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

CONVICTION AND SENTENCE AFFIRMED