

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2002-KA-0872**  
**VERSUS** \* **COURT OF APPEAL**  
**THEODORE MORGAN** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
\*  
\*  
\*  
\* \* \* \* \*

**APPEAL FROM**  
**CRIMINAL DISTRICT COURT ORLEANS PARISH**  
**NO. 423-879, SECTION "C"**  
**Honorable Sharon K. Hunter, Judge**  
\* \* \* \* \*  
**Judge David S. Gorbaty**  
\* \* \* \* \*

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

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

Mary Constance Hanes

LOUISIANA APPELLATE PROJECT  
P. O. Box 4015  
New Orleans, LA 70178-4015  
COUNSEL FOR DEFENDANT/APPELLANT

**AFFIRMED**

Defendant Theodore Morgan appeals his conviction for unauthorized use of a motor vehicle, a violation of La. Rev. Stat. 14.68.4, claiming that there was insufficient evidence to convict. For the following reasons, we affirm the conviction and sentence.

**FACTS AND PROCEDURAL HISTORY:**

Following his conviction by a six-member jury, the State filed a multiple bill charging Morgan as a second felony offender, and on February 8, 2002, after being advised of his rights, Morgan pleaded guilty to the bill and was sentenced to serve five years at hard labor under La. Rev. Stat. 15:529.1. His motion for an appeal was granted.

At trial Leo Carrier testified that he owned a 2000 burgundy Plymouth Voyager that was stolen on June 16, 2001, from the parking lot of Molar's Beauty College. The car was recovered about midnight on June 17. When Mr. Carrier went to a wrecking company in New Orleans East to get his car,

he found it was badly damaged and the steering column was broken.

Repairs to the car totaled more than \$6,000. Mr. Carrier stated that he did not know Theodore Morgan and never gave him permission to enter his car.

Officer Chad Perez testified that about 11 p.m. on June 17, he and his partner, Officer Nathan Gex, were traveling north on Washington Avenue near Broad Street in a marked police car when he noticed a maroon Plymouth Voyager speeding in the southbound lane of Washington Avenue. He pulled into the median and the Plymouth passed in front of him. When the traffic light at South White Street turned red, the Plymouth screeched to a halt. The officers turned so as to follow the Plymouth and they checked the auto license plate through the mobile data terminal and learned the car was stolen. Officer Perez said that when the car passed him, he “clearly saw” the driver, who was a black male wearing a white tank top; the officer could not see the passenger very well. The officers radioed for assistance and continued to follow the Plymouth as far as Martin Luther King Boulevard and South Galvez Street. At that point, the police lights were activated; however, the Plymouth did not stop but instead picked up speed and turned into the courtyard at the Calliope Housing Development, and finally stopped when it hit another vehicle. Both occupants immediately left the car and ran in different directions. Officer Perez chased the driver, and

Officer Gex, the passenger. Officer Perez lost the driver in front of the apartment building at 3330 Erato Street. Another officer, who had joined the chase, saw the driver run up into the stairwell at 3330 Erato Street. The officers set up a perimeter around the building so that no one could enter or leave. Two apartments in the building were checked, but in Apartment “D” three women were found and in Apartment “E” only two elderly men.

Meanwhile, Officer Gex caught the passenger and advised him of his rights. Officer Perez asked him for the name of the driver and was told the first name was “Teddy,” but the last name was unknown. The passenger also said the driver lived in Apartment “D.” Officer Perez and several other officers went to that apartment again. As they approached it, a man who said he lived there offered to let them in. He opened the door and the officers saw two men standing in the unit who had not been there before. One man was sweating profusely. He had on a yellow T-shirt over a white tank top. The man was very hostile. Officer Perez identified him as the driver of the Plymouth. The officer said it was the third time he had seen the defendant and he recognized him as the man driving the Plymouth and then exiting it. When Officer Perez asked him his name, he replied, “Man, what the f--- you want to know my name for?” A woman with him said, “Teddy, calm down.” Morgan was then arrested and given his *Miranda* rights. The

Plymouth was examined and found to have a defeated steering column and a screwdriver on the floor; there was also damage to the driver's side as a result of the collision when the car finally stopped. The officer stated that there was no doubt in his mind that the man identified as "Teddy" who was wearing a yellow T-shirt over a white tank top was the man driving the Plymouth.

Officer Nathan Gex testified to the same facts as Officer Perez. He stated that he got a look at the driver of the Plymouth as it passed the police car. Officer Gex said he had no doubt in his mind that Morgan and the man driving the Plymouth were one and the same man. When the car stopped, Officer Gex apprehended the passenger, who gave him a false name. The passenger also gave the officers the first name of the driver.

Brandon Morgan, a cousin of the defendant, testified that he pleaded guilty to unauthorized use of a motor vehicle. However, he stated that his cousin, Theodore Morgan, was not in the Plymouth on the night in question. He said that another cousin, Elton Morgan, was the driver. Brandon Morgan also denied telling the police that "Teddy" was the driver's name. Theodore Morgan lives with Brandon Morgan and his mother in Apartment "D" at 3330 Erato Street. When Brandon Morgan left with Elton about 9.p.m. for the ride that resulted in an arrest, Teddy remained at home; he and his

girlfriend, Sherletta, were sitting on the porch. Brandon Morgan said that Elton Morgan could not testify in court on the day of trial because he was in jail.

Sherletta Toney, Theodore Morgan's girlfriend, testified that her boyfriend lived with her at Apartment "E," 1304 South Johnson Street at the time of his arrest. She acknowledged that his family lived at the Erato Street address. From her porch, she could see the parking lot where the Plymouth stopped, and she testified that she observed Elton and Brandon Morgan jump out of the Plymouth and run from the police. She also stated that she never saw Theodore Morgan in the Plymouth. She had asked Theodore Morgan to go to a store on Jackson Avenue for her, and he was on that errand when the Plymouth came into the lot. She soon left to tell Morgan that the police were in his family's apartment. She found him walking with other cousins and a brother. The night was warm and the defendant was hot and as sweaty as if he had been running.

Under cross-examination Sherletta Toney said that she and three of her girlfriends were sitting on the porch drinking beer between 7 and 9 p.m., and then sometime later she sent Morgan to the store for more beer. After the Plymouth stopped in the parking lot, she walked toward the store to meet Morgan, and then he walked in front of the police cars where he could be

seen by the officers. He heard his mother scream and decided to go to Apartment “D” where he was subsequently arrested.

## **DISCUSSION:**

In a single assignment of error, Morgan maintains that the evidence is insufficient to support the conviction because the State did not offer evidence to refute the alibi evidence the defense presented.

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.

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.

In addition, when identity is disputed, the State must negate any reasonable probability of misidentification in order to satisfy its burden under *Jackson v. Virginia*. *State v. Edwards*, 97-1797, pp. 12-13 (La. 7/2/99), 750 So.2d 893, 902; *State v. Woodfork*, 99-0859, pp. 4-5 (La.App. 4 Cir. 5/17/00), 764 So.2d 132, 134.



Morgan was convicted of unauthorized use of a motor vehicle, a violation of La. Rev. Stat. 14:68.4. The State had to prove beyond a reasonable doubt that Morgan intentionally took or used a motor vehicle belonging to another either without the other's consent, or by means of fraudulent conduct, practices, or representations . . . .

Officer Perez testified that he saw Morgan three times. The officer had a clear view of Theodore Morgan when the officer's car was in the median and Morgan drove right in front of him. Again, the officer saw Morgan when he jumped out of the car and began to run. The third time the officer saw Morgan was in the defendant's apartment when he was wearing a yellow T-shirt over his white tank top. Officer Gex also testified that he got a good look at Morgan when he drove past the police car. Both officers testified that they were sure that Theodore Morgan is the man they saw driving the Plymouth.

Furthermore, Brandon Morgan first identified the driver as "Teddy." Moreover, Theodore Morgan was very agitated when the officer asked his name, and he was wearing a yellow T-shirt over his white tank top and sweating profusely when he was arrested.

Brandon Morgan and Sherletta Toney both testified that Theodore Morgan was not the driver of the Plymouth. The jury heard the testimony

and weighed the officers' credibility with that of the defendant's alibi witnesses. The jury found the officers to be more credible. The jury did not abuse its discretion in accepting the officers' testimony. "If credible, the testimony of a single witness may establish the elements of a crime beyond a reasonable doubt." *State v. Boudreaux*, 2000-0073, pp. 6-7 (La.App. 4 Cir. 12/20/00), 777 So.2d 596, 599; *State v. Allen*, 94-1895 (La.App. 4 Cir. 9/15/95), 661 So.2d 1078, 1084. Viewing all of the evidence in a light most favorable to the prosecution, any rational trier of fact could have found all of the essential elements of the crime of unauthorized use of a motor vehicle present beyond a reasonable doubt, and found beyond a reasonable doubt that the State negated any reasonable probability of misidentification.

Accordingly, for the foregoing reasons, Theodore Morgan's conviction and sentence are affirmed.

**AFFIRMED**