

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * NO. 2010-KA-1025
VERSUS * COURT OF APPEAL
ARTHUR A. DEAN * FOURTH CIRCUIT
* STATE OF LOUISIANA

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 490-153, SECTION "I"
Honorable Karen K. Herman, Judge

Charles R. Jones
Judge

(Court composed of Judge Charles R. Jones, Judge Roland L. Belsome, and Judge Paul A. Bonin)

BONIN, J., CONCURS

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FEBRUARY 16, 2011

AFFIRMED

Arthur A. Dean appeals his conviction and sentence for the offense of armed robbery. Having reviewed and considered the record herein, we affirm his conviction and sentence.

The State of Louisiana filed a bill of information charging Arthur Dean with committing the offense of armed robbery (La. R.S. 14:64.3) of Brandon Dorrington. The bill of information also charged Louis C. ("L.C.") Hooker and Robert Hooker with the same offense. The State subsequently amended the bill of information, reducing the charges against Louis and Robert Hooker as accessories after the fact (La. R.S. 14:25). Subsequently, Dean was arraigned and entered a plea of not guilty. The State filed a motion to sever the trial of the three defendants. The district court granted the State's motion to sever the defendants' trial and the State chose to try Dean first.

After a jury trial, Dean was found guilty as charged. He appeared for sentencing, and at that hearing Dean filed a Motion for New Trial that was denied. After the assistant district attorney noted that he had been in negotiations with defense

counsel, he notified the district court that “the State is going to withdraw the firearm provision.” The district court then sentenced Dean to ten years imprisonment without the benefit of parole, probation or suspension of sentence. This appeal followed.

ERRORS PATENT

The State argues that the ten year sentence is illegally lenient because it does not conform to the sentence enhancement for armed robbery committed with a firearm pursuant to La. R.S. 14:64.3. Although the State is correct in that the jury returned a verdict of guilty of armed robbery with a firearm, the State’s argument attempts to negate an apparent compromise in the record.

At the sentencing hearing, the assistant district attorney informed the district court: “I have been in constant negotiations with Defense counsel in this particular matter.” Immediately thereafter, the same assistant district attorney informed the district court that the State “is going to withdraw the firearm provision.” This action indicates a deal was made by the State and Dean. The district court imposed the sentence based upon this action.

Thus, since the State originally “withdr[e]w” the firearm charge or provision at sentencing, and the withdrawal appears to have been pursuant to a deal between the State and Dean, the district court committed no error in sentencing. Therefore, based on our review of the record, we find no errors patent.

DISCUSSION

In his sole assignment of error, Dean argues that his conviction is not supported by sufficient evidence. First, he argues that Mr. Dorrington testified that the crime

occurred around 9:00 p.m., whereas¹ the testimony of Mr. Dwight Richards placed Dean at the scene of the crime between 9:45 and 9:55 p.m. Dean argues that, “[t]he times give[n] by Mr. Dorrington simply do not add up.” Dean then argues that testimony of Mr. Richards does not place him at 5800 Peoples Avenue when Mr. Dorrington went there after school. Dean also complains that Mr. Dorrington never testified that he called 911, and that he was not at the crime scene when the police initially responded to the 911 call, per the testimony of Det. Nigel Daggs. Dean argues that Dorrington was not sure of the identity of the perpetrator; that the evidence is inconsistent with his guilt; and that the State did not negate the possibility of misidentification. The arguments of Dean are woefully deficient of the standard required to overturn his conviction based upon an assertion that the evidence is insufficient to sustain his conviction. Instead of directing his argument to sufficiency, the arguments of Dean are directed to the weight of the evidence.

When assessing the sufficiency of evidence to support a conviction, the reviewing court must determine whether, viewing the evidence in the light most favorable to the prosecution, a rational fact finder could have found the defendant guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979). This review must include the whole record, as a rational fact finder does. State v. Mussall, 523 So.2d 1305, 1310 (La. 1988). If rational finders of fact could disagree as to the interpretation of the evidence, the rational trier’s view of all of the evidence most favorable to the prosecution must be adopted. Id. It is not

¹ Mr. Dwight Richards is the director of the electronic monitoring device company worn on Dean’s ankle. He testified at the trial of this matter.

the function of the appellate court to assess the credibility of witnesses or reweigh the evidence. State v. Johnson, 619 So.2d 1102, 1109 (La. App. 4 Cir. 1993), *citing* State v. Rosiere, 488 So.2d 965, 968 (La. 1986). Credibility determinations, as well as the weight to be attributed to the evidence, are soundly within the province of the fact finder. State v. Brumfield, 93-2404, p. 5-6 (La. App. 4 Cir. 6/15/94), 639 So.2d 312, 316. Moreover, conflicting testimony as to factual matters is a question of weight of the evidence, not sufficiency. State v. Jones, 537 So.2d 1244, 1249 (La. App. 4 Cir. 1989). Like all factual matters, credibility determinations are entitled to great weight and will not be disturbed unless contrary to the evidence. Id., *citing* State v. Vessell, 450 So.2d 938 (La. 1984). Absent internal contradiction or irreconcilable conflict with the physical evidence, a single witness's testimony, if believed by the fact finder, is sufficient to support a factual conclusion. State v. Marshall, 2004-3139, p. 9 (La. 11/29/06), 943 So.2d 362, 369. The evidence adduced at trial supports the armed robbery conviction of Dean. La. R.S. 14:64 defines armed robbery as "the taking of anything of value belonging to another from the person of another, by use of force or intimidation, while armed with a dangerous weapon."

The conviction of Dean may be sustained based upon the testimony of Mr. Dorrington alone, absent internal contradiction or irreconcilable conflict with the physical evidence. *See* Marshall, 2004-3139, p. 9, 943 So.2d at 369. The argument of Dean focuses on alleged inconsistencies in time frames of Mr. Dorrington. This argument goes to the weight and not the sufficiency of the evidence. Mr. Dorrington admitted at trial that he was not sure of specific times, only the general time and the

place where the crime occurred. This crime occurred on June 29, 2009. Dean makes no allegation that Mr. Dorrington confused dates, but focuses on specific hours.

Mr. Dorrington testified that he dropped the children of Kim² off and remained at the Peoples Avenue house for several hours after school ended at 3:30 p.m. He was in a back room, watching television. Mr. Dorrington originally estimated that it was sometime between 6 and 8 p.m., when Newman approached him and he agreed to give Dean and L.C. a ride home. On cross examination, defense counsel presented the record of Dean's electronic monitoring, which did not place Dean at Peoples Avenue until 8:39 p.m. Mr. Dorrington freely admitted that he was not clear on specific times, but knew it was dark. Mr. Dorrington testified that he stopped at a gas station after dropping L.C. and Dean off, and he returned to the Peoples Avenue house. Back at that house, Mr. Dorrington hung out and listened to music with Newman and another girl.

On cross examination, the testimony of Mr. Dorrington reveals that the electronic monitoring record placed Dean back at the Peoples Avenue house at 9:30 p.m. The testimony of Mr. Richards shows the electronic monitoring record also places Dean at the corner of Peoples Avenue and Athis Court between 9:45 and 10:02 p.m. The time between 8:39 p.m. and 9:30 p.m. is enough time for Dean to return to Peoples Avenue. This evidence does nothing to contradict the identification of Mr. Dean by Mr. Dorrington as the individual who robbed him. Mr. Dorrington testified that when he finished listening to the music with Newman and the girl, he began

² No last name was evident from the record.

exiting the back seat to his car. As he exited the car, he saw Dean point a gun at him and state, “You already know what this is.” Then, while maintaining his gun pointed at Mr. Dorrington, Dean reached under the front seat, removed the gun of Mr. Dorrington, and then told Mr. Dorrington to leave and return to his car. Considering this testimony in a light most favorable to the State, the jury was justified in arriving at the armed robbery conviction – the use of a dangerous weapon (the gun of Dean) while taking anything of value belonging to another (the gun of Mr. Dorrington) by use of force or intimidation. See La. R.S. 14:64(A). Though the stolen gun and the gun used to perpetrate the armed robbery were never recovered, the testimony of Mr. Dorrington establishes the elements of the crime. None of the evidence Dean points to clearly contradicts the testimony of Mr. Dorrington. Nor do the witnesses of Dean help his cause. Mr. Brown, a friend of Dean, did not recall June 29, 2009, only that he recalled “hanging out” with Dean during that general period of time. The fiancée of Dean, Ms. Ashley Ramsey, testified that Dean was in and out all day, but went out that night with Mr. Brandon Brown. She did not recall when Dean returned home that night, but recalled it was late. The testimony of Mr. Brown and Ms. Ramsey does nothing to contradict or discredit the testimony of Mr. Dorrington. Any inconsistency in times is attributable to admission of Mr. Dorrington that he was not sure of the exact timeframes. The evidence was considered and weighed by the jury.

The only notable inconsistency in the testimony of Mr. Dorrington concerns his testimony about what happened after the crime was committed. On direct examination, Mr. Dorrington testified that his friend Kim called him as he fled the

scene where he was robbed. On cross examination, he testified that it was Newman's mother, Mrs. Hooker, who called him. This inconsistent testimony may challenge Mr. Dorrington's credibility. However, the jury heard this testimony, and it was within its discretion to accept Mr. Dorrington's other testimony as credible. *See* Marshall, 2004-3139, p. 7, 943 So.2d at 368 (When the testimony of a witnesses is impeached in part, the trier of fact has discretion to accept credible portions of testimony).

Based on the record presented, Mr. Dorrington's testimony establishes the elements required to sustain Dean's armed robbery conviction. This argument merits no relief.

DECREE

For the foregoing reasons, we affirm the conviction and sentence of Arthur A. Dean.

AFFIRMED