

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2013-KA-0955**
VERSUS *
TABARI J. BUTLER * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 511-381, SECTION "D"
Honorable Frank A. Marullo, Judge

* * * * *
JUDGE SANDRA CABRINA JENKINS
* * * * *

(Court composed of Judge Madeleine M. Landrieu, Judge Rosemary Ledet, Judge Sandra Cabrina Jenkins)

LEON A. CANNIZZARO, JR.
DISTRICT ATTORNEY OF ORLEANS PARISH
SCOTT G. VINCENT
ASSISTANT DISTRICT ATTORNEY OF ORLEANS PARISH
619 South White Street
New Orleans, LA 70119
COUNSEL FOR APPELLEE/STATE OF LOUISIANA

POWELL W. MILLER
LOUISIANA APPELLATE PROJECT
P.O. BOX 4121
New Orleans, LA 70178-4121
COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED; MOTION TO WITHDRAW GRANTED
MARCH 12, 2014

Tabari Butler appeals his convictions and sentences for two counts of second degree murder. Appellate counsel requests a review of the record for errors patent only and permission to withdraw. Finding no error, we affirm Mr. Butler's convictions and sentences. Appellate counsel's motion to withdraw is granted.

PROCEDURAL HISTORY

On April 19, 2012, the State of Louisiana obtained an indictment charging Mr. Butler with the second degree murders of Joseph Evans and Joseph Elliott, charges to which he subsequently pled not guilty.¹ The court heard and denied Mr. Butler's suppression motions on August 10, 2012. On March 21, 2013, at the conclusion of a three-day trial, a twelve-person jury found him guilty as charged on both counts. The court denied Mr. Butler's motions for new trial and for post-verdict judgment of acquittal on April 5, 2013. Counsel for Mr. Butler announced readiness for sentencing, and the State presented two victim impact witnesses. The court then sentenced Mr. Butler to a term of life imprisonment at hard labor

¹ The indictment also charged Joseph Tate with both murders, but the State later amended the indictment to charge him with accessory after the fact to the murders. He pled guilty to the amended charges and was sentenced to serve five years at hard labor on each count. He is not a party to this appeal.

without benefit of parole, probation, or suspension on each count. The court denied Mr. Butler's motion to reconsider sentence but granted his motion for appeal.

RELEVANT FACTS

Joseph Evans and his son Joseph Elliot (hereinafter, "Big Joe" and "Little Joe")² were shot and killed in the entryway of 2816 St. Louis Street in the early morning hours of January 8, 2012. Responding officers found both men lying in the hallway, as well as several .45 caliber casings in the area around the hallway, and one nine millimeter casing on the ground outside the hallway. Both men suffered multiple gunshot wounds to their bodies and heads from a .45 caliber gun fired from no closer than three feet. In addition, Big Joe had a blood alcohol level of .129. A comparison of the casings found at the scene and bullets retrieved from the autopsies of both men and on the scene revealed that the casings and the bullets had been fired from the same gun. The gun used in the shooting was not recovered.

Witnesses on the scene identified the defendant, Tabari Butler, and Joseph Tate as the two men who shot the victims. Several witnesses gave statements to the police and identified the defendant and Mr. Tate from photographic lineups. Mr. Tate surrendered later that day and gave a statement to the police.

Testimony from various witnesses established that the shooting arose from an altercation, initially between the defendant and his girlfriend, Ashley Cook, which then escalated to include the defendant's neighbor Sabrina Elliot. Ms. Elliot, who was Little Joe's mother and Big Joe's ex-girlfriend, testified that on the night of the murder, she and her children were upstairs in their apartment, which

² According to trial testimony, the victims were known as "Big Joe" and "Little Joe."

was next to that of Ms. Cook and the defendant, when they heard Ms. Cook and the defendant arguing in the street. They went to the window to watch, and Ms. Cook made some disparaging remarks that implied that the defendant was involved with Ms. Elliot's daughters, whom Ms. Cook referred to as "them bitches." Ms. Elliot and various children then went downstairs and joined in the argument. Ms. Elliot and Ms. Cook continued arguing as the defendant and Joseph Tate, who was also outside, left in Ms. Cook's car.

During this time, Big Joe and Little Joe arrived on the scene. Ms. Elliot denied that she called them; she insisted that they had arrived to pick up her younger son James and diapers for Elliot's infant son. Big Joe tried to get the women to stop arguing, but they continued their altercation. Ms. Elliot testified that the defendant and Mr. Tate reappeared and exited the car, and she stated that the defendant yelled at her. She stated that Big Joe continued to try to get her and her family back up the stairs to her apartment, and as she was going up the stairs, she heard gunshots. When the shots ended, Ms. Elliot saw the defendant running out of the hallway holding a gun. She found both Big Joe and Little Joe dead in the hallway.

Ms. Elliot stated that she did not actually see the shooting because she was going up the stairs when it happened. She admitted that she told the police that she saw the defendant shoot her son and his father, but she explained that she was "excited" when she gave her statement and viewed the lineup with his photograph. Instead, she insisted that she saw the defendant produce a gun and slam it down on a table while she and Ms. Cook were arguing. She stated that Mr. Tate picked up the gun, and the defendant took it back before he and Mr. Tate left prior to the shooting. She denied that either she, or her family members, or either of the

victims had a gun that night. Ms. Elliot admitted that she threw a stick and hit Ms. Cook during the altercation, but she insisted that Ms. Cook had taken a swing at her.

Gloria Craft was in Ms. Elliot's apartment just prior to the shooting. She first noticed Ms. Cook and the defendant arguing in the street, and she stated that Mr. Tate and someone named Paul were also out in the street. She stated that once Ms. Cook noticed her and others in the apartment watching the argument, Ms. Cook yelled something about the defendant having sex with the "whores" upstairs. At that point, Ms. Elliot and others in the apartment went downstairs, and Ms. Cook and Ms. Elliot started arguing. Ms. Craft stated that at some point, Mr. Tate drew a gun and slammed it down on a table. He and the defendant then left the scene. Soon thereafter, Big Joe and Little Joe arrived, and Big Joe tried to get Ms. Cook and Ms. Elliot to stop arguing. She stated that the defendant and Mr. Tate returned, and the defendant and Ms. Elliot exchanged vulgarities. Little Joe told the defendant not to disrespect his mother, and the defendant pulled a gun. Ms. Craft testified that she and some of Ms. Elliot's children then ran up the stairs, and she heard gunshots while on the stairs. She stated that although she did not see Mr. Tate shoot anyone, she saw the defendant shoot Big Joe in the face. She admitted that she told the police that she saw Mr. Tate shoot the victims, but she explained that she was nervous when she made the identification. She insisted that she saw both men with guns. She admitted that she saw Ms. Elliot throw a stick and hit Ms. Cook.

Joeneka Elliot, the teenaged daughter of Ms. Elliot and Big Joe, was also living with Ms. Elliot at the time of the shooting and saw the events leading up to it. Her testimony was similar to that of Ms. Craft and Ms. Elliot. She stated that

when she and the others went downstairs, she saw the defendant, Ms. Cook, Mr. Tate, and their friend Paul. She stated that Mr. Tate put the gun on the table, picked it back up, and he and the defendant left. She stated that after Big Joe arrived, he tried to get the women to stop fighting. She testified that when Mr. Tate and the defendant returned, the defendant had a gun. Big Joe told the defendant that it did not have “to go down like this,” and he tried to get the women back inside Ms. Elliot’s apartment. She stated that she had started going inside when she saw the defendant shoot Big Joe on the left side of his face. She testified that Little Joe was standing next to her father at that point. She denied seeing her mother throw a stick at Ms. Cook.

Joseph Tate admitted that he had also initially been charged with the murders of Bog Joe and Little Joe, but the week before trial he agreed to testify against the defendant in exchange for his guilty pleas to two counts of accessory after the fact to second degree murder and maximum five year sentences. He insisted that the State promised him nothing else in exchange for his testimony, and he had no prior felony convictions.

Tate testified that prior to the shooting, he was with the defendant and Ms. Cook at her apartment, watching a football game and drinking. His friend Paul and Ms. Cook’s brother DeMichael were also there, and the men were making T-shirts to sell on Bourbon Street. After the game and as the men were getting ready to leave, the defendant and DeMichael got into an argument. The argument moved outside, and Ms. Cook and the defendant continued the argument. When Ms. Cook noticed that Ms. Elliot and her family were watching the argument, she made remarks that caused Ms. Elliot and her family to come downstairs, and the women then began arguing. Mr. Tate testified that he feared that Ms. Elliot and Ms. Cook

were about to begin fighting, and he took a .45 caliber gun out of his pocket and placed it on a table because he did not want it in his possession if the women began fighting. He stated that Ms. Elliot called someone on her cellphone and told that person that Mr. Tate had pulled a gun on her and to come to the scene; he theorized that she had called Big Joe. He testified that he told the defendant that they needed to get another gun. He stated that the defendant grabbed the .45 caliber gun off the table and gave it to Paul, who had merely been standing there during the argument. The men drove to Mr. Tate's cousin's house, where they obtained a nine millimeter gun. They then drove back to the scene.

By the time they arrived, Big Joe and Little Joe were there. Mr. Tate testified that he exited the car with the nine millimeter gun. He stated that he decided that he and Little Joe would have a fistfight, and he gave the nine millimeter gun to the defendant to hold for him while he fought with Little Joe. He stated that Big Joe tried to break up the fight, pointing out that they were all neighbors. In response, Ms. Elliot said something vulgar to the defendant, who then replied in kind. Little Joe told the defendant not to disrespect his mother, and Big Joe admonished Ms. Elliot not to speak that way. Mr. Tate testified that he approached Little Joe, and Ms. Elliot threw a stick that hit Ms. Cook. He stated that the defendant then shot the nine millimeter gun, but it jammed after the first shot. Ms. Elliot and her family ran towards the stairwell to her apartment. Mr. Tate stated that the defendant then retrieved the .45 caliber gun from Paul. Mr. Tate stated that Little Joe asked him if he was going to kill him; he replied that he was not, but they were going to fight. He stated that the defendant then fired a shot over his (Mr. Tate's) shoulder, hitting Big Joe. At that point, Mr. Tate ran. He testified that he saw the defendant shoot both Big Joe and Little Joe.

Mr. Tate testified that the defendant caught up to him, and he, the defendant, and Paul ran from the scene. He testified that he took the .45 caliber gun from the defendant and threw it into a garbage can near a barroom. He called his sister, who picked up the men and drove them to Paul's home. He stated that he gave the nine millimeter gun to his brother the next day, and he did not know where it went after that. He stated that the defendant told him that he shot the victims to protect his family. Mr. Tate testified that he did not see Little Joe with a gun, and although he saw a bulge in Big Joe's clothing that may have been a gun, Big Joe never pulled a gun. He insisted that Big Joe was not an aggressor and only tried to stop the fight. Mr. Tate denied firing either gun. He admitted that when he gave a statement to the police later that day, he denied having a gun, and he did not tell the police that the defendant shot the victims. He also denied knowing that Little Joe's rap group, the Pop Stars, was a gang. He admitted that he carried a gun for protection because he sells marijuana. He stated that Big Joe was lying on the ground when the defendant shot him in the head.

Paul Robert testified that he was present for the shooting. His account of the events leading to the shooting was similar to those of the other witnesses. He stated that he heard Ms. Elliot call Big Joe, asking him to come over because Mr. Tate had threatened her with a gun. He testified that he saw the defendant pick up the gun from the table where Mr. Tate put it, and the defendant gave it to him to keep for him while he and Mr. Tate went to get another gun. While they were gone, Big Joe and Little Joe came to the scene, and Big Joe tried unsuccessfully to stop the argument between Ms. Elliot and Ms. Cook. Mr. Robert testified that when the defendant and Mr. Tate returned, Ms. Elliot went inside the hallway, returned with a stick, and threw it at Ms. Cook. At that point, the defendant shot

the gun that he and Mr. Tate obtained while they were gone. Big Joe tried to get his family up the stairs to Ms. Elliot's apartment. The gun jammed, and the defendant tried to grab the gun that he had given to Mr. Robert. Mr. Robert testified that he and the defendant struggled over it, and then the defendant freed it from his waistband. He stated that the defendant fired two times and then ran into the hallway. Mr. Robert heard more shots, and then the defendant ran out of the hallway and dropped the gun. He stated that Mr. Tate picked up the gun, and all three men ran from the scene. He testified that when he asked the defendant what happened (because he could not see inside the hallway), the defendant told him that he shot Big Joe and Little Joe. Mr. Robert admitted that he never told the police what happened, nor did the police interview him. He stated that the week before trial, an assistant district attorney and an investigator contacted him, and his sister convinced him to testify. He denied that Mr. Tate shot either weapon.

On cross-examination, Mr. Robert testified that a few months after the shooting, a woman approached him in a nightclub and asked him what happened. He told her to leave him alone, and when he left the club an hour later, he was shot in the back. He reiterated that he did not see the defendant shoot anyone. He admitted that he had been arrested a few months before trial for carrying a concealed weapon and for possession of marijuana, but he insisted that the State had offered him nothing in exchange for his testimony at the defendant's trial.

DISCUSSION

Defense counsel has requested only a review of the record for errors patent. Counsel complied with the procedures outlined by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this Court in State v. Benjamin, 573 So. 2d 528 (La. App. 4th Cir. 1990). Counsel filed a brief complying with State v.

Jyles, 96-2669 (La. 12/12/97), 704 So. 2d 241. Counsel's detailed review of the procedural history of the case and the facts of the case indicate a thorough review of the record. Counsel moved to withdraw because he believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Counsel reviewed the record and found no trial court ruling that arguably supports the appeal. Copies of counsel's brief was forwarded to the defendant, and this Court informed him of his right to file a brief in his own behalf. As he failed to so do, this Court's review is limited to a review of patent errors.

As per State v. Benjamin, this Court performed an independent, thorough review of the pleadings, minute entries, and the bills of indictment in the appeal records. The defendant, Tabari Butler, was properly charged by bill of indictment with two counts of second degree murder, violations of La. R.S. 14:30.1. The bill of indictment was signed by the foreman of the grand jury. The defendant was present and represented by counsel during arraignment, trial, and at sentencing. The jury's verdicts of guilty as charged of both counts of second degree murder are legal in all respects, as are the defendant's life sentences. Furthermore, a review of the trial transcript shows that the State provided sufficient evidence to prove beyond a reasonable doubt that the defendant was guilty of both counts of second degree murder.

CONCLUSION

Our independent review reveals no non-frivolous issue and no trial court ruling that arguably supports the appeal. Therefore, we affirm the defendant's convictions and life sentences. We also grant appellate counsel's motion to withdraw.

AFFIRMED; MOTION TO WITHDRAW GRANTED