

**STATE OF LOUISIANA**

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**NO. 2016-KA-0479**

**VERSUS**

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**COURT OF APPEAL**

**KHOI Q. HOANG**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**LOVE, J., CONCURS AND ASSIGNS REASONS**

I concur in the decision to reverse Defendant’s conviction and vacate his sentence as a multiple offender. I agree that the State failed to establish sufficient evidence to support Defendant’s conviction of obstruction of justice. I write separately to express my views of the evidence.

In the State’s theory of the case, Ms. Nguyen became romantically involved with Defendant, and together, they conspired to have Lien Nguyen killed and to thwart the efforts of police in their investigation of his death. The State presented evidence that Defendant and Ms. Nguyen had an intimate relationship, which they tried to keep secret. The State also presented testimonial evidence that they approached Joseph Hoang, requesting that he kill Mr. Nguyen for them. The evidence showed Defendant borrowed Ms. Booker’s truck the same day Mr. Nguyen was murdered and that a vehicle matching the truck’s description was seen fleeing from the scene where Mr. Nguyen was found. Ms. Booker’s truck was returned sometime after Mr. Nguyen was murdered. Further, the evidence showed that Ms. Nguyen gave numerous conflicting accounts of what happened to Mr. Nguyen. The State offered her most recent account of events as evidence of Defendant’s guilt; at trial she denied conspiring to kill Mr. Nguyen but suggested that Defendant killed the victim over money.

“A reviewing court affords great deference to a...jury’s decision to accept or reject the testimony of a witness in whole or in part. *State v. Hopkins*, 39,730, p. 6 (La. App. 2 Cir. 8/17/05), 908 So.2d 1265, 1272 (quoting *State v. Gilliam*, 36,118 (La. App. 2 Cir. 8/30/02), 827 So.2d 5080. Thus, we are precluded from assessing what weight to give the evidence. Moreover, where circumstantial evidence forms the basis of a conviction, the circumstances must be so unmistakably proven that they point not to the mere possibility of guilty, but to the moral certainty of guilt. *State v. Shapiro*, 431 So.2d 372, 385 (La. 1982).

The State’s theory of obstruction of justice rests largely on circumstantial evidence. The State alleges that the testimony of Ms. Booker and Detective Hamilton in conjunction with the evidence the State presented in support of the substantive charges is sufficient to support Defendant’s obstruction of justice conviction. I agree with the majority that the evidence presented at trial was sufficient to demonstrate a connection between Defendant and Ms. Nguyen. In the same way, the evidence is sufficient to establish that the license plate and surveillance system may have been removed. However, in both instances, the timeframe within which they were removed was left open-ended as both witnesses could only speculate as to when they thought these incidents occurred. Without knowing when these items were removed, the State relied on speculation to carry its burden of proving that the surveillance camera was removed just before the victim’s murder and that the license plate was removed before Ms. Booker’s truck was returned to her by an unknown black male.

Relying on evidence to draw factual inferences, of which the jury could not agree, the dissent indicates that it would be an “extraordinary coincidence” for Defendant not to be connected to the tampering of evidence in this case. Even still, the evidence indicates another logical inference. Testimony shows that Ms. Booker loaned her truck to a number of people, that an eye witness saw three black

males fleeing from the scene in a truck similar to Ms. Booker's, and an unknown black male returned the truck to Ms. Booker. Likewise, the neighbor's video surveillance camera failed to show that Defendant was present when the truck arrived at the victim's house. Also, Ms. Booker testified that when she realized the license plate was missing, she learned that several license plates belonging to others had gone missing.

Further, the State relied on Ms. Nguyen's testimony. However, there are a number of inconsistencies with her testimony. She first told police that she knew nothing about Mr. Nguyen's murder. She later claimed an unknown black male took the victim from their home. At trial, she recanted her previous accounts claiming Defendant was responsible for Mr. Nguyen's death. The State did not exclude the logical inference that someone other than Defendant may have removed the license plate and the surveillance camera. Thus, I find the evidence is not sufficient to connect Defendant to their removal without relying on speculative testimony and evidence that the jury deemed insufficient for support of requisite factual conclusions essential to its ability to reach a verdict (of any kind) relative to Defendant's guilt on the substantive charges. I find the jury's verdict was an apparent attempt to reach a compromise where it could not reach a verdict on the substantive charges and where the evidence which goes to the State's obstruction theory was scarce.

Therefore, I find this case rests on circumstantial evidence that is insufficient to convict Defendant of obstruction of justice. The State failed to present evidence sufficient to exclude every reasonable hypothesis of Defendant's innocence. Accordingly, I concur in the decision to reverse Defendant's conviction and vacate his sentence as a multiple offender.