

**STATE OF LOUISIANA**

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**NO. 2016-KA-0479**

**VERSUS**

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**COURT OF APPEAL**

**KHOI Q. HOANG**

\*

**FOURTH CIRCUIT**

\*

**STATE OF LOUISIANA**

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 517-663, SECTION "H"  
Honorable Camille Buras, Judge

\* \* \* \* \*

**Judge Roland L. Belsome**

\* \* \* \* \*

(Court composed of Judge Terri F. Love, Judge Roland L. Belsome, Judge Joy Cossich Lobrano)

**LOVE, J., CONCURS AND ASSIGNS REASONS**  
**LOBRANO, J., DISSENTS WITH REASONS**

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**CONVICTION AND SENTENCE VACATED**

**DECEMBER 21, 2016**

Defendant, Khoi Hoang, appeals his conviction for obstruction of justice and the mandatory life sentence imposed on him as a multiple offender. For the reasons that follow, we reverse Defendant's conviction for obstruction of justice and vacate the sentence.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On the night of April 23, 2013, the victim, Lien Nguyen, was shot multiple times and left on the side of the road in an isolated area off Old Gentilly Highway in New Orleans, Louisiana. He was still alive when he was found by James Mushatt. Mr. Mushatt called 911 and reported that the victim was bleeding from the mouth and neck and that his hands were tied behind his back. Mr. Mushatt also informed the 911 operator that he saw a silver Nissan Titan truck speeding away from the scene. During the 911 call Mr. Mushatt asked the victim who shot him, and the victim replied that it was his wife.<sup>1</sup> The victim died at the scene shortly thereafter.

After an investigation into the murder, police obtained arrest warrants for both Defendant and Ms. Nguyen on charges of conspiracy to commit second

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<sup>1</sup> Multiple witnesses refer to Lien Nguyen and Charity Nguyen as husband and wife, but it appears they were not legally married.

degree murder, solicitation to commit second degree murder, second degree murder, and obstruction of justice. When police went to execute the arrest warrants for Defendant and Ms. Nguyen, the two were found together at Ms. Nguyen's sister's home.

On September 26, 2013, the Grand Jury indicted Defendant, Khoi Hoang, with conspiracy to commit second degree murder, solicitation to commit second degree murder, second degree murder, and obstruction of justice stemming from the April 23, 2013 murder of Lien Nguyen.<sup>2</sup> The defendant pled not guilty on all charges at arraignment. Later, the court denied Defendant's motions to suppress evidence and witness statements.

Defendant proceeded to trial, and the jury found him guilty of the obstruction of justice charge but deadlocked on the other three counts. Subsequently, the court denied Defendant's motions for post-verdict judgment of acquittal and for a new trial. Defendant waived sentencing delays, and was sentenced to thirty-five years at hard labor. He filed a motion to reconsider the sentence, which was denied.

The State subsequently filed a Multiple Bill of Information, and a multiple offender hearing was held. Defendant was sentenced as a triple offender pursuant to La. R.S. 15:529.1 A(3)(b). The court denied Defendant's motion for downward departure and sentenced him to life imprisonment without the benefit of parole, probation, or suspension of sentence. This appeal followed.

On appeal, Defendant argues that there was insufficient evidence to support this conviction.

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<sup>2</sup> Charity Nguyen was also indicted on all counts except the solicitation charge. On October 20, 2015, the court severed the defendants.

## **LAW AND DISCUSSION**

The well settled standard of review for a sufficiency of the evidence claim is whether any rational trier of fact, after viewing the evidence in the light most favorable to the prosecution, 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. Williams*, 2011-0414, p. 15 (La.App. 4 Cir. 2/29/12), 85 So.3d 759, 769, writ denied, 2012-0708 (La. 9/21/12), 98 So.3d 326. On appeal, a reviewing court must consider the record as a whole as that is what a rational trier of fact would do. *State v. Santinac*, 1999-0782, p. 6 (La.App. 4 Cir. 6/14/00), 765 So. 2d 1133, 1137. While rational decisions to convict must be upheld, irrational decisions to convict should be reversed. *State v. Mussall*, 523 So.2d 1305, 1310 (La. 1988). “If the court finds that no rational trier of fact viewing all of the evidence from a rational pro-prosecution standpoint could have found guilt beyond a reasonable doubt, the conviction cannot stand constitutionally.” *Id.* at 1311.

Where a conviction was based on circumstantial evidence, the evidence “must exclude every reasonable hypothesis of innocence.” La. R.S. 15:438. This test is not separate from the *Jackson* standard; rather, it simply requires that “all evidence, both direct and circumstantial, must be sufficient to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt.” *State v. Ortiz*, 96-1609, p. 12 (La. 10/21/97), 701 So.2d 922, 930. A reviewing court is not to determine whether a potential hypothesis suggested by the defendant could present an exculpatory explanation of the events. *State v. Davis*, 637 So.2d 1012, 1020 (La. 1994). Instead, the reviewing court determines whether the defendant’s hypothesis is “sufficiently reasonable that a rational juror could not have found proof of guilt

beyond a reasonable doubt under *Jackson*.” *Id.*; *State v. Calloway*, 2007-2306, p. 10 (La. 1/21/09), 1 So.3d 417, 422.

The obstruction of justice charge against Defendant arose from the State’s contentions that he removed the license plate from a black Nissan Titan truck allegedly used in the murder and that he removed a security system from the victim’s home.

To prove obstruction of justice, the State must show that a defendant altered, moved, or removed any object or substance “[a]t the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any [police] investigation.” La. R.S. 14:130.1(A)(1). The State must also prove that he committed such acts with the “specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding.” *Id.* “A verdict of guilt is justified only when the record shows that at least some evidence was before the trier of fact for each essential element of the offense.” *State v. Marcello*, 385 So.2d 244, 244 (La. 1980).

Defendant contends that the State failed to produce any direct evidence that he tampered with evidence related to the murder of Lien Nguyen. He further argues that any circumstantial evidence the State produced failed to exclude every reasonable hypothesis of Defendant’s innocence. With regard to the license plate obstruction, Defendant argues that the State failed to establish that he removed the license plate from the black Nissan Titan truck belonging to Ms. Irene Booker. As to the security system obstruction, Defendant argues that the only evidence presented was the speculative testimony of Detective Hamilton. While the

circumstantial evidence presented at trial established that these two events may have occurred, no reasonable juror could have determined that Defendant was the person responsible for either the removal of the license plate or the security system based on the scant circumstantial evidence presented by the State.

At trial, the State presented evidence that a dark grey Nissan Truck was likely used in the murder of the victim. Mr. Mushatt, the witness who found the victim, reported to the 911 operator that he saw a grey Nissan Titan occupied by three African American men speeding away from the scene. Detective Hamilton testified that video surveillance footage of the Nguyen residence from the night of the murder showed a dark-colored Nissan Titan truck pull into the Nguyens' driveway and shortly after drive off in the direction where the victim's body was found. The detective stated that he was unable to identify any of the individuals depicted in the video.

Detective Hamilton testified that during his investigation into the Nissan Titan, he learned that Ms. Irene Booker owned a similar truck that she loaned out to people in the neighborhood in exchange for narcotics. At trial, Ms. Booker testified that she loaned the truck to Defendant the afternoon of the murder, on April 23, 2013. She stated that he was supposed to return the truck to her by 5:30 that evening, but he did not. Ms. Booker was unable to recall exactly when the truck was returned, only that it was returned by someone other than Defendant well after midnight. Ms. Booker further testified that she did not know when the license plate went missing. She stated that she discovered the plate was gone at some point after Defendant allegedly borrowed the truck when she lent it to a friend, who informed her that the truck had no license plate on it. According to Ms. Booker,

after she learned the plate was missing she asked around her apartment complex and learned that hers was not the only license plate to go missing about that same time.

The record indicates that the investigation into the missing license plate failed to turn up any direct evidence linking Defendant to the truck or the removal of its license plate. The record further demonstrates that circumstantial evidence connecting Defendant to the removal of the license plate was nonexistent. At best, the State proved that Defendant borrowed the Nissan Titan truck from Ms. Booker the afternoon of the murder. The State did not present any evidence tending to prove at what point in time the license plate was removed from the truck, or that Defendant removed the plate.

Regarding the missing surveillance system, the State failed to prove beyond a reasonable doubt that Defendant removed the Nguyen's system. The State relied solely on the testimony of Detective Hamilton, who stated that based on the freshness of the dust pattern surrounding the missing system he believed it had been recently removed. While Ms. Nguyen did confirm that there had been a system in that location previously, she claimed that the system had been removed prior to the day the victim was murdered.

While the fact finder's credibility decisions should not generally be second guessed by a reviewing court, this standard only applies to rational credibility determinations based on actual evidence. See *Williams*, 85 So.3d at 770–71. In this case, the issue is not which witness the jury found more credible. The issue is that there was no evidentiary basis for the jury to conclude that Defendant tampered with a surveillance system in the victim's home. The State did not establish with

any degree of certainty when the system was removed from the Nguyen residence, much less that Defendant removed it at some time close to the murder in order to impede a police investigation. The State asserts that the circumstantial evidence was sufficient for a rational jury to find guilt beyond a reasonable doubt, but the moral certainty of guilt required for a conviction based on circumstantial evidence is not present here.

Defendant cites the case *State v. Mussal* in support of his argument that the jury acted irrationally in finding him guilty on the obstruction charge. *State v. Mussall*, 514 So.2d 505 (La.App. 4 Cir. 9/15/87), *writ granted*, 515 So.2d 1101 (La. 1987), *and aff'd*, 523 So. 2d 1305 (La. 1988). While the facts in the *Mussal* case are distinguishable from those in this case, the commonality between the two cases is that the convictions in both relied solely on testimony that was unsupported by any physical evidence.<sup>3</sup>

The only evidence presented by the State was circumstantial and of a speculative nature. Unless that circumstantial evidence excluded every reasonable hypothesis of innocence, assuming every fact to be proved the evidence tended to prove, Defendant's conviction cannot stand. See *State v. Gould*, 395 So.2d 647, 656 (La. 1980). While the State was able to connect Defendant to Ms. Nguyen and the victim, the State failed to connect him to either of the alleged incidents. Due to the complete lack of evidence presented in support of the State's obstruction of justice charge against Defendant, a rational juror, viewing the evidence in the light most favorable to the prosecution, could only have speculated as to who removed the license plate from Ms. Booker's truck or the surveillance system from the

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<sup>3</sup> In the *Mussal* case, there was doubt that a crime occurred. The victim was the only witness.



Nguyen residence. The evidence presented at trial failed to establish every element of the charged offense and cannot support Defendant's conviction for obstruction of justice.

**CONCLUSION**

For the reasons stated above the defendant's conviction is reversed and the sentence as a multiple offender is vacated.

**CONVICTION AND SENTENCE VACATED**