Judgment rendered September 27, 2023.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C. Cr. P.

No. 55,168-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA Appellee

versus

TRE'VEON DEMARCUS ANDERSON Appellant

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 388,277

Honorable John D. Mosely, Jr., Judge

* * * * *

LOUISIANA APPELLATE PROJECT
By: Douglas Lee Harville — Counsel for Appellant

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* * * * *

Before STONE, ROBINSON, and ELLENDER, JJ.

STONE, J.

This criminal appeal arises from the First Judicial District Court, the Honorable John D. Mosely, Jr., presiding. A unanimous jury found Tre'veon Demarcus Anderson (the "defendant") guilty of second degree murder in violation of La. R.S. 14:30.1 and conspiracy to commit second degree murder in violation of La. R.S. 14:26. He received a sentence of life imprisonment at hard labor without the benefit of parole for second degree murder. He also received a sentence of thirty years at hard labor for conspiracy to commit second degree murder. The sentences were ordered to be served consecutively. The defendant now appeals his convictions, arguing the following assignments of error: (1) his constitutional right to confront witnesses against him was violated; (2) the state failed to sufficiently prove that he was guilty of second degree murder and conspiracy to commit second degree murder; and (3) the defendant's trial attorney rendered ineffective assistance of counsel. For the following reasons, we affirm the defendant's convictions and sentences.

FACTS AND PROCEDURAL HISTORY

The defendant and the victim, Officer Chateri Payne ("Ms. Payne"),[1] were in a romantic relationship and cohabiting in a house on Midway Drive in Shreveport at the time of her murder. Their minor child also lived with them. On the evening of January 9, 2019, Ms. Payne was dressed in her Shreveport Police Department ("SPD") uniform and prepared to head to work for the evening shift. As she exited the residence and walked toward

[1] We refer to Officer Payne as Ms. Payne throughout the opinion because she was not murdered due to her status as a law enforcement officer or while in the performance of her job duties with the SPD.

her car that was parked in the driveway, she was met with a barrage of gunfire from multiple assailants (solicited by the defendant to murder her). Ms. Payne was shot three times—once in her foot, once in her side, and once in her head. She later died at a local trauma center. Although the defendant was inside the home with their child when the shots began, the defendant stated to police that he went to the front door with his gun and began firing at the assailants.

Although the investigation determined that the shots that killed Ms. Payne did not come from the defendant's gun, he was prosecuted as a principal to the murder pursuant to La. R.S. 14:24. Police identified Glenn Montreal Frierson ("Frierson") and Lawrence Guydell Pierre ("Pierre"), II, as the assailants. Text messages, search histories, and location data from the cellphones of the defendant and the assailants showed that the defendant had conspired with them to kill Ms. Payne.[2] The three conspirators were set to be tried jointly for the murder of Ms. Payne. However, just minutes before the joint trial was to begin, Pierre pled guilty to second degree murder.

At trial, the evidence showed that the defendant's motive was Ms. Payne's decision to terminate their romantic relationship and relocate to an apartment with their minor child.[3] Daymian Taylor ("Mr. Taylor"), a friend of the defendant, testified that in December 2018 (the month before the murder), he received a text message from the defendant stating that the

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[2] Witnesses from AT&T and Verizon verified the phone numbers that were pulled from both Pierre's and the defendant's phone as belonging to the coconspirators.

[3] Several witnesses, including Ms. Payne's grandmother and coworkers from the SPD, testified that Ms. Payne made it known that she was leaving the defendant. The witnesses testified that the defendant knew the relationship was officially ending after the holidays – that she was moving out of the home she had been sharing with the defendant. Ms. Payne had already paid the deposit for the new apartment at Hillside Apartment Complex, and her projected move-in date was January 15, 2019 (6 days after her murder).

defendant "wanted to kill them both," referring to Ms. Payne and an unknown person, because Ms. Payne was leaving the defendant. The defendant's knowledge of Ms. Payne's plan to leave him was further proved by text messages between Ms. Payne and the defendant.

Detective Adam McEntee ("Det. McEntee") of SPD testified that he had reviewed the data from the defendant's phone. He testified that on January 5, 2019, the defendant made the following internet searches on his phone: (1) "can you die from a gunshot to the leg"; (2) "why not just shoot him in the leg"; (3) "can you die from a gunshot to the leg"; (4) "what happens when you get shot and how to survive it"; (5) "what happens when you get shot and how to survive it"; and (6) "is there a main artery in your shoulder."

Det. McEntee also testified that the gun used to kill Ms. Payne was purchased by Pierre's girlfriend in February 2018.

Captain Shannon Mack ("Capt. Mack"), testified as an expert in the field of historical cellphone data. Capt. Mack testified that the defendant deleted the following searches from the internet browser of his cellphone: (1) Hillside Apartments on December 28, 2018, at 6:56 p.m. (i.e., the location of Ms. Payne's new apartment); (2) gunshot wound to leg on January 5, 2019, at 2:15 p.m.; (3) accident insurance on January 5, 2019, at 1:40 p.m.; (4) does Aflac pay for gunshots on January 5, 2019, at 1:37 p.m.; (5) Aflac supplemental insurance on January 5, 2019, at 1:37 p.m.; (6) shooting insurance on January 5, 2019, at 1:25 p.m.; (7) is there a main artery in your shoulder on January 6, 2019, at 6:40 a.m.; (8) car ran over my leg on January 5, 2019, at 10:49 p.m.; (9) can you die from gunshot to leg on January 5, 2019, at 10:29 p.m.

On the day prior to the murder, the defendant texted Pierre: (1) "Let's knock it out tomorrow"; and (2) "You good tomorrow[?]"

On the day of the murder, the defendant and Pierre had the following text exchange during the timeframe of 7:40 p.m.-8:16 p.m., i.e., minutes before and after the murder:

Defendant: "Woah"	
Pierre: "In Highland by Byrd"	(7:40 p.m.)
Defendant: "Cool shower"	
Pierre: "Bet"	
Defendant: "Let me know when you out."	(7:49 p.m.)
Pierre: "I'm almost out, give me two minutes."	
Defendant: "Bet she putting on clothes"	(7:50 p.m.)
Pierre: "Bet"	(7:50 p.m.)
Defendant: "She just about done."	(7:54 p.m.)
Defendant: "Bet hurry up while she gone."	(8:03 p.m.)
Pierre: "Bet."	(8:04 p.m.)
Defendant: "How far, just called, on way."	(8:05 p.m.)
Pierre: "Yeah"	(8:13 p.m.)
Defendant: "Should be coming down."	(8:14 p.m.)
Defendant: "Outside."	(8:16 p.m.)

Additionally, the defendant called both of Pierre's phones within minutes of the murder, and tried to delete those calls. Capt. Mack also explained that cellphone geolocation data of Pierre and Frierson demonstrated them leaving the Highland/Byrd area, driving to the murder scene, and leaving the scene immediately afterward.

The prosecution also introduced testimony showing that the defendant's alleged counterattack on the shooters was a feint to mislead the investigation. Lieutenant Kevin Strickland ("Lt. Strickland") testified that the defendant told him that the assailants were shooting at Ms. Payne from a certain location near the residence, and the defendant claimed that he returned fire in their direction. However, investigation revealed that the defendant had fired his gun into the ground near where he was standing. He did not fire in the direction of the assailants.

During the trial, there was a bench conference between the court and all counsel outside the presence of the jury to determine whether Pierre should be called as a witness regarding his recorded statement to police. All counsel agreed that Pierre should be allowed to testify.

However, throughout the state's questioning, Pierre repeatedly refused to answer. Defense counsel contemporaneously objected that this violated the defendant's rights under the confrontation clause. The state asked two leading questions that suggested the defendant was a principal to the crime and the actual shooter. The defendant's counsel objected stating that Pierre's refusal to testify would make Pierre an unavailable witness. The trial court ordered Pierre to testify and threatened him with contempt, while recognizing the ineffectiveness of the threat on someone who has already been sentenced to life imprisonment. The state never moved to introduce Pierre's videotaped statement into evidence.

On April 20, 2022, a unanimous jury found the defendant guilty as charged on both counts. On May 31, 2022, the defendant filed motions for post-verdict judgment of acquittal and for a new trial, and they both were denied after a hearing. On May 31, 2022, the defendant was sentenced on both counts. The defendant appeals his convictions, urging the following assignments of error: (1) his constitutional right to confront witnesses against him was violated; (2) the state failed to sufficiently prove that he was guilty of second degree murder and conspiracy to commit second degree murder; and (3) the defendant's trial attorney rendered ineffective assistance of counsel.

DISCUSSION

Sufficiency of the evidence

The defendant argues *pro se* that the state presented insufficient evidence at trial to sustain a conviction for second degree murder and conspiracy to commit second degree murder. The defendant alleges that witnesses Pierre and Frierson were not credible. He also attacks the retrieval of the phone database, specifically, the text messages. The state counters that, regardless of the other evidence, the text messages and the internet search history retrieved from the conspirators' cellphones constituted sufficient proof of the defendant's guilt.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); *State v. Tate*, 01-1658 (La. 5/20/03), 851 So. 2d 921, *cert. denied*, 541 U.S. 905, 124 S. Ct. 1604, 158 L. Ed. 2d 248 (2004); *State v. Ward*, 50,872 (La. App. 2 Cir. 11/16/16), 209 So. 3d 228, *writ denied*, 17-0164 (La. 9/22/17), 227 So. 3d 827. This standard, now legislatively embodied in La. C.Cr.P. art. 821, does not provide the appellate court with a vehicle to substitute its own appreciation of the evidence for that of the factfinder. *State v. Ward, supra*; *State v. Dotie*, 43,819 (La. App. 2 Cir. 1/14/09), 1 So. 3d 833, *writ denied*, 09-0310 (La. 11/6/09), 21 So. 3d 297. On appeal, a reviewing court must view the evidence in the light most favorable to the prosecution and must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. *Jackson, supra*.

The appellate court does not assess the credibility of witnesses or reweigh evidence. *State v. Smith*, 94-3116 (La. 10/16/95), 661 So. 2d 442; *State v. Ward*, *supra*. A reviewing court accords great deference to a jury's decision to accept or reject the testimony of a witness in whole or in part. *State v. Ward*, *supra*; *State v. Eason*, 43,788 (La. App. 2 Cir. 2/25/09), 3 So. 3d 685, *writ denied*, 09-0725 (La. 12/11/09), 23 So. 3d 913. In the absence of internal contradiction or irreconcilable conflict with the physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. *State v. Burd*, 40,480 (La. App. 2 Cir. 1/27/06), 921 So. 2d 219, *writ denied*, 06-1083 (La. 11/9/06), 941 So. 2d 35.

The *Jackson* standard is applicable in cases involving both direct and circumstantial evidence. An appellate court reviewing the sufficiency of evidence in such cases must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and inferred from the circumstances established by that evidence must be sufficient for a rational trier of fact to conclude beyond a reasonable doubt that defendant was guilty of every essential element of the crime. *State v. Sutton*, 436 So. 2d 471 (La. 1983); *State v. Ward*, *supra*; *State v. Speed*, 43,786 (La. App. 2 Cir. 1/14/09), 2 So. 3d 582, *writ denied*, 09-0372 (La. 11/06/09), 21 So. 3d 299. To convict a defendant based upon circumstantial evidence, every reasonable hypothesis of innocence must be excluded. La. R.S. 15:438; *State v. Barakat*, 38,419 (La. App. 2 Cir. 6/23/04), 877 So. 2d 223.

"Second degree murder is the killing of a human being when the offender has a specific intent to kill or inflict great bodily harm." La. R.S. 14:30.1. More than one person may be guilty of a single murder:

> All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals.

La. R.S. 14:24. Similarly, conspiracy to commit a crime is itself a crime:

> Criminal conspiracy is the agreement or combination of two or more persons for the specific purpose of committing any crime; provided that an agreement or combination to commit a crime shall not amount to a criminal conspiracy unless, in addition to such agreement or combination, one or more of such parties does an act in furtherance of the object of the agreement or combination.

La. R.S. 14:26.

The factual issue in this case is not whether Ms. Payne was murdered, but whether the defendant was part of the group that plotted and accomplished that murder. Viewing the evidence in the light most favorable to the prosecution, the state presented ample evidence at trial for a reasonable jury to convict the defendant as a principal to second degree murder and for conspiracy to commit second degree murder. The jury was presented with the text messages between the defendant and Pierre both the day before the murder and minutes before the shooting, specifically tracking Ms. Payne's movements just moments before her death. Capt. Mack also demonstrated and explained to the jury all of the defendants' geolocation data before arriving at the crime scene and thereafter. Also, the jury heard Det. McEntee and Capt. Mack testify regarding the deleted internet searches and inquiries the defendant completed weeks and days before the murder, such as: (1) gunshot wound to leg; (2) accident insurance; (3) does Aflac pay

for gunshots; (4) shooting insurance; (5) is there a main artery in your shoulder; and (6) can you die from gunshot. Furthermore, the jury heard Lt. Strickland and Cpl. Cerami testify that the defendant was shooting his gun at the ground, and that defendant's statement to police that he was shooting at unknown assailants by the fence was irreconcilable with the physical evidence recovered. The jury heard Mr. Taylor's testimony that weeks before the murder the defendant texted him that he wanted to kill Ms. Payne. Also, the jury heard testimony from several witnesses that Ms. Payne was leaving the defendant and took steps to leave by securing an apartment elsewhere. The jury clearly chose to believe the testimony of the state's witnesses over that of the defense. It is within the discretion of the trier of fact to make such credibility determination, and this court will not disturb this determination on appeal. A rational trier of fact could conclude that the evidence established the defendant's guilt beyond a reasonable doubt. This assignment of error lacks merit and is rejected.

Constitutional right to confront witnesses

In his only assignment of error made through counsel, the defendant contends that the trial court committed reversible error when it allowed the state question to Pierre as a witness before the jury when the state knew Pierre would invoke his Fifth Amendment privilege against self-incrimination. The state argues that, because he had waived his Fifth Amendment privilege, there was no error in calling Pierre to the stand. The defendant counters that Pierre's refusal to testify in front of the jury — whether lawful or unlawful—violated the defendant's confrontation right because the state asked leading, inculpatory questions which it knew Pierre would refuse to answer. The state contends that the defendant failed to

preserve the confrontation clause issue for appellate review by initially consenting to Pierre being called to testify. According to the state, such constitutes failure to contemporaneously object.

At the time the state called Pierre as a witness, he had no Fifth Amendment privilege regarding the murder of Ms. Payne. That is because Pierre pled guilty to the murder, thereby waiving his Fifth Amendment right against self-incrimination in that regard.[4]

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." Additionally, the confrontation clause of the Louisiana Constitution directly affords the accused the right to "confront and cross-examine the witness against him." La. Const. art. I, §16; *State v. Casey*, 99-0023 (La. 1/26/00), 775 So. 2d 1022, *cert. denied*, 531 U.S. 840, 121 S. Ct. 104, 148 L. Ed.2d 62 (2000). Indeed, the main purpose of the confrontation clause is to secure for the defendant the opportunity to cross-examine witnesses against him. Cross-examination is the primary means by which to test the believability and truthfulness of testimony, and it provides an opportunity to impeach or discredit witnesses. *State v. Mitchell***,** 16-0834 (La. App. 1 Cir. 9/21/17), 231 So. 3d 710, *writ denied*, 17-1890 (La. 8/31/18), 251 So. 3d 410.

Confrontation errors are subject to harmless-error analysis. *State v. Burbank*, 02-1407 (La. 4/30/04), 872 So. 2d 1049. In *Namet v. United States*, 373 U.S. 179, 83 S. Ct. 1151, 10 L.Ed. 2d 278 (1963), the United States Supreme Court formulated the standard of review applicable when a

[4] Also, Pierre was granted immunity regarding his pending drug charges.

witness refuses to testify in front of the jury as whether "inferences from a witness' refusal to answer added critical weight to the prosecution's case in a form not subject to cross examination, and thus unfairly prejudiced the defendant."

In this case, the confrontation claim is properly preserved for appellate review, and we have already determined that the defendant had no Fifth Amendment privilege with regard to the murder of Ms. Payne. The state may have violated the defendant's confrontation clause rights by continuing to ask Pierre leading, inculpatory questions after it became apparent he would not answer. We need not and do not decide this issue because, as previously addressed in our discussion regarding the sufficiency of the evidence, the evidence of the defendant's guilt is so overwhelming that the defendant would have been convicted regardless of Pierre's refusal to testify. Any inferences drawn from Pierre's refusal to answer leading questions did not add critical weight to the prosecution's case. If there was any error, it was harmless; therefore, this assignment of error is rejected.

Ineffective Assistance of Counsel

The defendant argues that he was denied the effective assistance of counsel when his attorney: (1) failed to file a motion to suppress the video of Frierson's interview with the police; (2) failed to object to prosecution's opening statement; and (3) failed to make a motion to sever his trial from that of his codefendant and move for a mistrial on that basis.

The state argues that the instant appellate record is insufficient to properly respond to the defendant's ineffective assistance of counsel claims. It also contends that this matter is appropriate for post-conviction relief, and the defendant bases his claim on speculation and unsupported hearsay.

As a general rule, a claim of ineffective assistance of counsel is more properly raised in an application for post-conviction relief in the trial court because this provides the opportunity for a full evidentiary hearing under La. C.Cr.P. art. 930. *State v. McGee*, *supra*; *State v. Ward*, 53,969, p. 17 (La. App. 2 Cir. 6/30/21), 324 So. 3d 231, 240. When the record is sufficient, however, allegations of ineffective assistance of trial counsel may be resolved on direct appeal in the interest of judicial economy. *Id.*; *State v. Frost*, 53,312 (La. App. 2 Cir. 3/4/20), 293 So. 3d 708, *writ denied*, 20-00628 (La. 11/18/20), 304 So. 3d 416.

We decline to address the defendant's claims of ineffective assistance of counsel; these are more properly raised in a post-conviction relief application.

CONCLUSION

For the reasons set forth above, the convictions and sentences of the defendant are **AFFIRMED.**