

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 2271

STATE OF LOUISIANA

VERSUS

NATHANIEL J. PARISH

Judgment Rendered: May 4, 2007

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Appealed from the  
Twenty-Second Judicial District Court  
In and for the Parish of Washington, Louisiana  
Trial Court Number 04-CR3-91325

Honorable Raymond S. Childress, Judge

\* \* \* \* \*

Walter P. Reed, District Attorney  
Franklinton, LA  
and  
Kathryn Landry  
Baton Rouge, LA

Attorneys for  
State – Appellee

Jane L. Beebe  
New Orleans, LA

Attorney for  
Defendant – Appellant  
Nathaniel J. Parish

\* \* \* \* \*

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

WELCH, J.

The defendant, Nathaniel J. Parish, was charged by grand jury indictment with one count of second degree murder, a violation of La. R.S. 14:30.1, and pled not guilty. Following a jury trial, he was found guilty as charged. He moved for a new trial, but the motion was denied. He was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. He moved for reconsideration of sentence, but the motion was denied. He now appeals, designating one assignment of error. We affirm the conviction and sentence.

### **ASSIGNMENT OF ERROR**

The trial court erred in failing to grant the motion for new trial or motion for post-verdict judgment of acquittal based on the fact that the evidence was insufficient to sustain the jury's verdict.

### **FACTS**

The victim, Gary Olson, was an inmate at Washington Correctional Institute (WCI) near Angie, Louisiana. He slept in a dorm, which housed sixty-six inmates and their beds. Every night at approximately 9:40 p.m., the guard in the dorm would call a "freeze count," whereby every inmate would have to be on their bed to be counted.

On September 28, 2004, WCI Correctional Officer Jonathan Regan was the guard in the victim's dorm. Officer Regan conducted the freeze count between approximately 9:40 p.m. and 9:42 p.m. Once he finished the freeze count, the inmates on the dorm moved around freely. While Officer Regan was making entries in his logbook, inmates Joseph Ford and Burnell Coleman shouted for him to come to the area of the victim's bed because an inmate needed help. Officer Regan went to the victim's bed and saw the victim lying on his back, with a bruise on the side of his head, and having difficulty breathing. Officer Regan summoned help.

WCI registered nurse Karen Adams arrived to help the victim. The victim's

face was bluish-gray, he was not breathing, and he had small amount of blood in his right ear canal. Nurse Adams detected a faint pulse in the victim, which quickly stopped. Nurse Adams and the WCI Correctional Officers placed the victim on a backboard and performed cardiopulmonary resuscitation (CPR) on him.

Dr. William P. Newman, III, an expert in the field of forensic pathology, performed the autopsy on the victim. The victim died as a result of head injury caused by trauma. He had hemorrhage and bruising on the right side of his face, a laceration in his right ear canal, eleven fractured ribs, and bruising of the left side and at the base of his brain. The hemorrhaging and bleeding were the result of trauma, and the fractures were consistent with blows to the victim's chest and were not related to the CPR or the other efforts made by the medical personnel to resuscitate the victim.

WCI Medical Director Jerry Thomas, an expert in the field of family medicine and general medical physician, testified that the force of chest compressions during CPR could cause fractured ribs. On September 29, 2004, Dr. Thomas examined the defendant's hands and found no bruising or anything unusual. He indicated, however, hitting someone with your hands would not necessarily cause trauma to the hands.

WCI Lieutenant John Tullos investigated the victim's death. Numerous inmates in the victim's dorm identified the defendant by name, by his nickname "Teardrop," or by both his name and nickname, as the person who caused the victim's injuries. Lieutenant Tullos indicated the defendant's prison record indicated he had three teardrop tattoos under his left eye.

Robert Perkins slept in the bed next to the victim's bed at the time of the incident. According to Perkins, on that night, he awoke to a loud commotion and saw "Teardrop" punching the sleeping victim. Teardrop then walked "up the aisle," approximately fifty feet and returned and beat the victim again. When asked if

“Teardrop” was present in court, Perkins stated, “It’s been a while. It was a baldheaded guy. I don’t know where he [*sic*] at now, it’s been a while since I seen [*sic*] him.” When asked if the defendant was “Teardrop,” Perkins stated, “I think so. I’m not too certain. It’s been a while.”

The State and the defense stipulated that in a videotaped statement given by Perkins shortly after the death of the victim, Perkins did not give the name or nickname of the person he claimed struck the victim.

Victor Cortez was also housed in the victim’s dorm at the time of the incident. He indicated the defendant’s nickname was “Teardrop.” According to Cortez, on the night of the incident, he was awakened by a sound like “hollering and cutting up.” He saw the defendant beating up the sleeping victim. The defendant struck the victim at least seven or eight times in the chest. The defendant then went back to his bed, but returned and struck the victim another five or six times. According to Cortez, the victim and the defendant had argued over something on the day of the incident.

James Harvey was also housed in the victim’s dorm at the time of the incident. He indicated the defendant’s nickname was “Teardrop.” According to Harvey, on the night of the incident, he was sitting on his bed drinking coffee and reading his Bible when he saw the defendant walk past Harvey’s bed and talk to one of the defendant’s friends. Harvey then heard a sound “like an inmate was slapping a mattress on the floor.” The noise stopped, but then started again. Harvey saw the defendant standing by a bed and “looked like he was just beating on it.” When Harvey moved closer to the bed, he saw the victim on the bed. The victim’s head, neck, and arms were purple, and blood was coming out of his ear. After beating the victim, the defendant unwrapped a “face rag” from his hand, put it over his shoulder, and walked into the TV room. Harvey asked another inmate, “Why did [the defendant] beat Gary to death?”

Joseph Ford was also housed in the victim's dorm at the time of the incident. According to Ford, on the night of the incident, he was awoken by a "big loud thumping noise, like somebody was beating a mattress, like fluffing a mattress."

When initially asked to describe what he saw when he woke up, Ford refused to discuss the matter any further stating, "[b]ecause I've got to live there for the next two years. I've got four children I'm trying to go home to." Ford indicated the investigating officers had told him they would charge him as an accessory before and after the fact if he did not tell them what he had seen. Ford also indicated he had been threatened six times by inmates concerning testifying about what he had seen.

Outside of the presence of the jury, the court advised Ford of the penalties for direct contempt of court and for perjury. Ford then testified he had seen "Teardrop," whom he identified in court as the defendant, beating the victim with his hands. The defendant then walked away, but returned and "finished [the victim] off." Ford indicated when he went to help the victim, the victim "was gasping for air, his lips [were] blue, and he had like some gel coming out of his ear." Ford indicated, during the attack on the victim, three inmates, "Williana" and two other inmates who would be testifying, blocked the view of the guard.

On cross-examination, Ford conceded he was taking psychiatric medicine. Ford agreed when asked, "[a]nd your understanding was that if you didn't go in there and tell [the investigating officers] what they wanted to hear[,] that you were facing twenty years in prison?" Ford also agreed when asked if he knew that the investigating officers wanted to hear that the defendant had beaten the victim.

On redirect examination, Ford indicated the investigating officers had asked him what happened, had not told him what to say, and, "knew who it was that did it and they got it out of me, cause I didn't want to tell them who did it."

Jamie Hardin was also housed in the victim's dorm at the time of the incident. According to Hardin he was awoken by "pounding noises" on the night of the

incident. Hardin saw the defendant punching the sleeping victim. The defendant hit the victim in the chest “for a good while,” then stopped, walked away, but returned and “started doing it again.”

Burnell Coleman was also housed in the victim’s dorm at the time of the incident. He identified the defendant in court as Nathaniel Parish a/k/a “Teardrop.” Coleman indicated he was 6’ 2” tall, weighed 210 lbs., and had a shaved head. He denied having the nickname “Teardrop” and denied striking the victim on the night of the incident. He denied seeing anyone strike the victim on the night of the incident, and specifically denied seeing the defendant strike the victim. He conceded he might have given a different account of what he saw on the night of the incident to the investigating officers, but claimed the officers threatened inmates with charging them as accessories after the fact “if we didn’t say what they wanted us to say.” He indicated the officers wanted him to say that the defendant had struck the victim.

James Brazille was also housed in the victim’s dorm at the time of the incident. He claimed the defendant a/k/a “Teardrop” was with him in the game room from the time of the bed count until the victim’s body was removed from the dorm.

Ellis Pierce was also housed in the victim’s dorm at the time of the incident. He claimed the defendant a/k/a “Teardrop” was with him in the television room from the time after the bed count until “the commotion.” According to Pierce, he went to the victim’s bed to see what the commotion was about and saw the victim “jumping on the bed” and hitting his head on the locker at the end of the bed. Pierce also claimed that the victim’s head hit the door as he was taken out of the dorm on a stretcher.

WCI Master Sergeant Scotel Temple was the supervisor of the victim’s dorm at the time of the incident. He indicated the victim was removed from his bed to a board and the board was placed on a stretcher. Master Sergeant Temple denied that the victim’s head struck anything while he was being removed from the dorm.

## SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues “although the [S]tate presented the testimony of many jailhouse witnesses who each claimed to have seen something different that night, it was simply not rational for the jury to find this evidence sufficient to establish beyond a reasonable doubt that [the defendant] committed second degree murder and it was error for the trial judge to deny the motion for new trial.”

The standard of review for 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 conclude the State proved the essential elements of the crime and the defendant’s identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana’s circumstantial evidence test, which states in part, “assuming every fact to be proved that the evidence tends to prove, in order to convict,” every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. Where the key issue is the defendant’s identity as the perpetrator, rather than whether or not the crime was committed, the State is required to negate any reasonable probability of misidentification. Positive identification by only one witness may be sufficient to support the defendant’s conviction. **State v. Wright**, 98-0601, pp. 2-3 (La. App. 1<sup>st</sup> Cir. 2/19/99), 730 So.2d 485, 486-87, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732.

When a conviction is based on both direct and circumstantial evidence, the reviewing court 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 the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential

element of the crime. **Wright**, 98-0601 at p. 3, 730 So.2d at 487.

Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. La. R.S. 14:30.1(A)(1).

Specific criminal intent is that “state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act.” La. R.S. 14:10(1). Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. Specific intent may be proven by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant’s actions or facts depicting the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Henderson**, 99-1945, p. 3 (La. App. 1<sup>st</sup> Cir. 6/23/00), 762 So.2d 747, 751, writ denied, 2000-2223 (La. 6/15/01), 793 So.2d 1235.

After a thorough review of the record, we are convinced the evidence, viewed in the light most favorable to the State, proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of second degree murder and the defendant’s identity as the perpetrator of that offense. The verdict rendered against the defendant indicates the jury accepted the testimony of the State’s witnesses and rejected the testimony of the defense witnesses. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder’s determination of guilt. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. **State v. Lofton**, 96-1429, p. 5 (La. App. 1<sup>st</sup> Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331.



This assignment of error is without merit.

### **REVIEW FOR ERROR**

The defendant also asks that this court examine the record for error under La. C.Cr.P. art. 920(2). This court routinely reviews the record for such errors, whether or not such a request is made by a defendant. Under La. C.Cr.P. art. 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See State v. Price, 2005-2514, pp. 18-22 (La. App. 1<sup>st</sup> Cir. 12/28/06), \_\_\_\_ So.2d \_\_\_\_, \_\_\_\_, (en banc).

**CONVICTION AND SENTENCE AFFIRMED.**