NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 0343

STATE OF LOUISIANA

VERSUS

CHARLES JUNIUS BRUNET

Judgment Rendered: SEP 13 2010

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Appealed from the
Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Case Number 531,853
Honorable David W. Arceneaux, Presiding

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

The defendant, Charles Junius Brunet, was charged by amended bill of information with one count of second degree battery (count I), a violation of La. R.S. 14:34.1, and one count of a hate crime (count II), a violation of La. R.S. 14:107.2, and pled not guilty on both counts.[1] Following a jury trial, he was found guilty as charged on both counts. On count I, he was sentenced to two years at hard labor, suspended, with two years of probation subject to six months in parish jail. On count II, he was sentenced to an additional one year at hard labor, suspended, with two years of probation subject to six months in parish jail. The court ordered that the sentences on counts I and II would run consecutively, but the terms and conditions of probation would be concurrent. The defendant now appeals, contending that there was insufficient evidence to establish that he was at the scene of the incident or, in the alternative, that he was a principal to second degree battery or a hate crime. For the following reasons, we affirm the convictions and sentences on counts I and II.

FACTS

The victim, Dedric Knight, an African-American, testified at trial. On September 15, 2006, at approximately 11:30 p.m., he pulled into the parking lot of Bayou Express in Houma to change a flat tire. While waiting for his son to bring him the correct jack for his truck, he heard racial slurs coming from the area of the store. He heard, "Let's kill this n_____, let's get this n_____." He moved toward the back of his truck and saw two white males approaching him and spreading out. He then saw two more white males come out, approximately eight feet behind the

[1] Dwayne Adam Racine was charged by the same bill of information with the same offenses. He was a co-defendant at trial and was also found guilty as charged on both counts. An appeal record has been lodged with this court in is case.

first men. All four of the men made racial slurs to him. The victim indicated that Pete Billiot was one of the first two men and had a 9mm handgun, and that Dustin Boudwin[2] was the second of the first two men and distracted him. The other two men "cre[pt]" in slowly. The victim was scared, but "couldn't run against a gun." He told the men, "Y'all don't have to do this. I don't even know you guys." One of the men then knocked the victim unconscious.

The victim woke up when his sister and son arrived. None of his possessions had been taken, but he was lying in a puddle of blood. He suffered a shattered cheekbone, had to have seven stitches under his left eye, and had to have titanium plates and screws placed into his face. He missed approximately ten months of work and had "extraordinary" medical bills. At the time of trial, he was continuing to have problems with his eye and cheek and had frequent headaches. He identified Billiot and Boudwin in lineups, but was unable to identify the other two men. At trial, he initially identified the defendant and Racine as Boudwin and Billiot, but indicated, regardless of their names, they were present at the scene of the attack on him.

Pete Michael Billiot also testified at trial. At the time of trial, he was incarcerated for theft over $500. He had also been tried for his role in the attack on the victim and was aware that he "[could not] be punished any more for this offense." The defendant was his stepfather, and Racine was the defendant's brother and lived in a shed in the backyard of Billiot's house. Billiot indicated he was fifteen years old at the time of the incident and had consumed an excessive amount of alcohol. At that time, he lived on Gustave Lane, behind Bayou Express. He claimed that, after getting drunk, he walked alone to Bayou Express and

[2] Due to court proceedings following the offenses, the victim was familiar with Billiot and Boudwin.

encountered the victim. He claimed Boudwin arrived at Bayou Express about five or ten minutes later to "stop" him. Billiot claimed he had a gun and argued with the victim. He claimed he had shown the defendant the gun before he left the house. Billiot claimed Racine was not with him in the parking lot, but conceded he had previously given a contrary statement to the police. He conceded he had previously told the police that Racine struck the victim. He also claimed that the defendant was not with him in the parking lot, but conceded he had previously given contrary testimony at his trial. He conceded he had previously testified at his trial that the defendant had the gun at the scene. He also conceded that prior to the attack on the victim, he stated "[L]et's get the n_____."

Dustin Paul Boudwin also testified at trial. At the time of trial, he was incarcerated for his role in the attack on the victim. He had also previously entered guilty pleas to unrelated charges of forgery and burglary. He had known the defendant for a "couple of years," and had known Racine since the mid 1990s. According to Boudwin, on the night of the incident, he followed Billiot into the parking lot of Bayou Express after Billiot stormed out of the house. Boudwin claimed that when he arrived, approximately a minute to a minute-and-a-half after Billiot, Billiot and the victim were already arguing. Boudwin claimed that he saw Billiot raise up a pistol and told him to put the gun down. Boudwin claimed that he heard the defendant stating, "y'all come on, y'all come on." Boudwin claimed that he never heard any racial slurs. Boudwin claimed he struck the victim so that Billiot would not shoot him or the victim.

Boudwin conceded that in his first statement to the police, he denied any involvement in the offenses, claimed that Billiot had hit the victim, and claimed that the defendant bragged that his stepson had "knocked the guy out." In that statement, Boudwin also stated that Billiot called the victim a "n_____," and stated,

"Fuck all n_____s." Boudwin conceded he went back to the police station twelve days later, but denied any memory of making another statement concerning the instant offenses. He conceded, however, that his signature appeared at the bottom of a second statement given that day concerning the offenses. In the second statement, Boudwin stated that Racine had hit the victim, and that Billiot was yelling, "n_____ this and n_____ that." In the second statement, Boudwin also stated that the defendant was "out there when it happened," and "saw everything."

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues the evidence was insufficient to support his conviction as a principal to the crimes.

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. State v. Wright, 98-0601, p. 2 (La. App. 1st Cir. 2/19/99), 730 So. 2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So. 2d 1157 and 00-0895 (La. 11/17/00), 773 So. 2d 732 (quoting La. R.S. 15:438).

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.

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. However, the defendant's mere presence at the scene is not enough to "concern" him in the crime. Only those persons who knowingly participate in the planning or execution of a crime may be said to be "concerned" in its commission, thus making them liable as principals. A principal may be connected only to those crimes for which he has the requisite mental state. State v. Neal, 00-0674, pp. 12-13 (La. 6/29/01), 796 So. 2d 649, 659, cert. denied, 535 U.S. 940, 122 S. Ct. 1323, 152 L. Ed. 2d 231 (2002). However, "[i]t is sufficient encouragement that the accomplice is standing by at the scene of the crime ready to give some aid if needed, although in such a case it is necessary that the principal actually be aware of the accomplice's intention." State v. Anderson, 97-1301, p. 3 (La. 2/6/98), 707 So. 2d 1223, 1225 (per curiam).

Battery is the intentional use of force or violence upon the person of another. La. R.S. 14:33. Second degree battery is a battery committed without the consent of the victim when the offender intentionally inflicts serious bodily injury. La. R.S. 14:34.1 (prior to amendment by 2009 La. Acts, No. 264, § 1). A hate crime is committed when any person selects the victim of certain offenses, including second degree battery, because of actual or perceived race. La. R.S. 14:107.2(A).

After a thorough review of the record, we are convinced that a rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was

a principal to the second degree battery and hate crime committed against the victim. The verdict rendered against the defendant indicates that the jury rejected the defense theory that he was not present at the scene and accepted the theory of the State that he was one of a group of four individuals who attacked the victim. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. State v. Moten, 510 So. 2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). No such hypothesis exists in the instant case. Further, in reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See State v. Ordodi, 06-0207, p. 14 (La. 11/29/06), 946 So. 2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. State v. Calloway, 07-2306, pp. 1-2 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam).

This assignment of error is without merit.

CONVICTIONS AND SENTENCES ON COUNTS I AND II AFFIRMED.