

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL


FIRST CIRCUIT

2013 KA 0428

STATE OF LOUISIANA

VERSUS

CARNELL ELLIOT CHAMBERS



**On Appeal from the 32nd Judicial District Court
Parish of Terrebonne, Louisiana
Docket No. 618,434, Division "B"
Honorable John R. Walker, Judge Presiding**

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Carnell Elliot Chambers**

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

Judgment rendered NOV 04 2013

Guidry, P. concurs in the result.

PARRO, J.

The defendant, Carnell Elliot Chambers, was charged by felony bill of information with battery of a correctional facility employee, a violation of LSA-R.S. 14:34.5. He pled not guilty and, following a jury trial, was found guilty as charged. He filed a motion for post-verdict judgment of acquittal and a motion for new trial, both of which were denied. The defendant was then sentenced to four years of imprisonment at hard labor. He now appeals, arguing that the evidence was insufficient to support his conviction. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

On August 1, 2011, the defendant was on "lock-down" in a cell by himself in the Terrebonne Parish Criminal Justice Complex where he was incarcerated. Deputy Chad White with the Terrebonne Parish Sheriff's Office and Monique Scales, an emergency medical technician employed by the jail, were passing out medication to the inmates when the defendant requested Tylenol and an antibiotic cream. Scales had the Tylenol with her, but had to return to her supply cart parked outside of the lock-down area to get the antibiotic cream. She gave the defendant the Tylenol and told him that she would bring the cream after she passed out medicine to the other inmates. When Deputy White and Scales began to walk away from the defendant's cell, the defendant became upset. He called Scales a "[f**king] b****[,]" and threatened to "throw s*** on" Deputy White and Scales and "piss [them] down." Deputy White walked back to the defendant's cell and closed the hatch-hole on the front of the cell door. After Deputy White closed the hatch-hole, he and Scales were hit with a liquid that came from a crack between the door and the wall of the defendant's cell.¹ The two immediately left the area and cleaned their clothing and skin. Deputy White then reported the incident to Sergeant John Verret.

¹ The door of the defendant's cell slid across the wall. When closed, there was a gap of approximately one or two inches wide between the door and wall.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues that there was insufficient evidence to convict him of battery of a correctional facility employee because the state failed to prove that urine was the substance thrown on Deputy White and Scales.²

The constitutional standard for testing the sufficiency of the evidence, enunciated in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime charged and defendant's identity as the perpetrator of that crime beyond a reasonable doubt. **State v. Jones**, 596 So.2d 1360, 1369 (La. App. 1st Cir.), writ denied, 598 So.2d 373 (La. 1992). The **Jackson** standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that, in order to convict, the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 02-1492 (La. App. 1st Cir. 2/14/03), 845 So.2d 416, 420.

Louisiana Revised Statute 14:34.5(A)(3) provides:

For purposes of this Section, "battery of a correctional facility employee" includes the use of force or violence upon the person of the employee by throwing feces, urine, blood, saliva, or any form of human waste by an offender while the offender is incarcerated and is being detained in any jail, prison, correctional facility, juvenile institution, temporary holding center, halfway house, or detention facility.

The defendant did not testify or call any witnesses at trial. He does not contest throwing a liquid substance at the correctional facility employees, but claims that the substance thrown was water. Deputy White, Scales, and Sergeant Verret testified at trial. According to Sergeant Verret, when he went to speak with

² Although the record indicates that the defendant threw a liquid substance at both Deputy White and Scales, the bill of information charges the defendant with battery of Scales only.

the defendant, the defendant stated that he had thrown water on Scales and was yelling, "I got that b****." Scales testified that she saw the defendant throw a liquid from a cup, but was not sure whether the liquid was urine. Deputy White stated that the defendant had a history of throwing feces and urine on other inmates. Although he could not say with certainty that the liquid thrown on him was urine, Deputy White testified that, based on his experience with the defendant and the defendant's threats, he believed that it was urine. When asked whether he attempted to smell the liquid that had been thrown, he stated that he did not and explained, "if I personally believe that it's piss, I'm not going to put it next to my nose." He also testified that lock-down smells "really bad like piss and s***," and, as a result, he could not have distinguished an odor. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Taylor**, 97-2261 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932.

The jury's verdict reflected the reasonable conclusion that based on the testimony of Deputy White and Scales, the defendant threw urine at them. In finding the defendant guilty, the jury clearly rejected the defense's theory that the substance thrown was water. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

After a thorough review of the record, we find that the evidence supports the jury's verdict. We are convinced that, viewing the evidence in the light most favorable to the state, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of

innocence suggested by the defense, that the defendant was guilty of battery of a correctional facility employee. See **State v. Calloway**, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). Accordingly, this assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.