NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 KA 0675

STATE OF LOUISIANA

VERSUS

JONATHAN ARCHILLE

Judgment Rendered: DEC 27 2013

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 11-10-0568

Honorable Donald R. Johnson, Judge

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BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

WELCH, J.

The defendant, Jonathan Archille, was charged by bill of information with two counts of attempted first degree murder, violations of Louisiana Revised Statutes sections 14:30 and 14:27. He pled not guilty and, following a jury trial, was found guilty as charged by unanimous verdicts. The defendant was sentenced to ten years at hard labor without the benefit of probation, parole, or suspension of sentence on count 1. On count 2, he was sentenced to ten years without the benefit of probation, parole, or suspension of sentence. The district court ordered the sentences to run consecutively. The defendant now appeals, arguing that there was insufficient evidence to support his convictions. For the following reasons, we affirm the defendant's conviction and sentence on count 1; affirm the conviction on count 2; amend the sentence on count 2 and affirm as amended.

FACTS

On November 2, 2010, around 8:00 p.m., a silver car with three occupants approached a house on North 47th Street in Baton Rouge, Louisiana. The front and backseat passengers began firing shots at the individuals standing on the porch of the home and nearby. Two of those individuals, Nicholas London and Derrick Emery, were struck by bullets, but did not sustain life-threatening injuries.

Detective Robert Cook with the Baton Rouge Police Department interviewed several witnesses in connection with the shooting. The witnesses identified the occupants of the silver car as the defendant, Darvonda Johnson (the defendant's sister), and Brandon Bailey.[1] Witnesses further identified the defendant as the backseat passenger and as a gunman. The investigation revealed that there was "bad blood" between the defendant and Derrick Emery.

[1] Darvonda Johnson and Brandon Bailey were charged in the same bill of information as the defendant, but the defendant was tried separately.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues that there was insufficient evidence to support his convictions for attempted first degree murder. He does not contest the elements of the offenses, only his identity as a gunman. In support of his argument, he contends that there was no physical evidence connecting him to the crimes and that his convictions were based on the testimony of witnesses who were "strongly motivated by their animosity toward [the defendant] and his family[.]"

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, La. R.S. 15:438 provides that the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 2002-1492 (La. App. 1st Cir. 2/14/03), 845 So.2d 416, 420. Furthermore, when the key issue is the defendant's identity as the perpetrator, rather than whether the crime was committed, the State is required to negate any reasonable probability of misidentification. Positive identification by only one witness is sufficient to support a conviction. It is the fact finder who weighs the respective credibilities of the witnesses, and this court will generally not second-guess those determinations. See **State v. Hughes**, 2005-0992 (La. 11/29/06), 943 So.2d 1047, 1051.

The defendant argues that the testimony of the witnesses presented at trial was unreliable because "there was severe tension and bad blood between [the defendant's] family and the witnesses who testified against him."

The State presented testimony of seven individuals who were at the scene of the shooting, including the two victims. Latoya Lands Emery, who lived in the home where the shooting occurred, called 9-1-1 and told the operator that "the boy" who "stays in the dead end" was the person who "shot up" her house. At trial, she testified that she was referring to the defendant. She admitted that the two families have not gotten along since the shooting. However, according to her testimony, there was no "bad blood" between the families until two days prior to the shooting when the defendant and his sister "got into it" with her children.

Two of Latoya's children, Doniquewar Lands and Donald Lands, testified at trial. Both were home on the night of the incident and testified that they saw the defendant shooting. Doniquewar testified that two days prior to the shooting, a fight broke out. After the fight, she went to the defendant's house to ask what happened, and the defendant's sister threatened her with a knife. She also testified that earlier on the day of the shooting, the defendant shot a gun into the air when she and her friend were playing in the street across from his house. Ariel Lands, who was also at the home that evening, witnessed the shooting. She identified the defendant as one of the people in the car that she saw shooting.

Latoya's husband, Derrick Emery, testified that he was shot in his femur, ankle, and twice in his back. He was "one-hundred percent sure" that the defendant shot him. He admitted that he and the defendant got into a fistfight earlier on the day of the shooting. After the fight, Derrick's stepchildren were playing down the street from their home at their friend's house, which was across the street from the defendant's house. Derrick heard a shot fired into the air, and he told the children to come back home. He then saw Darvonda and Brandon pick

up the defendant in the silver car. The shooting occurred later that night, and Derrick testified that he thought the shooting was done in retaliation. The other victim, Nicholas London, saw a silver car drive past Latoya's house, but did not see its occupants. He was shot in his leg, but did not see who was shooting.

Garrett "Bubba" Thomas was standing by a church on 47th Street near Latoya's house and talking on the phone when a silver car pulled up. He saw the defendant, Darvonda, and Darvonda's friend in the car. He saw the defendant shooting out of the backseat car window. He did not know why he was being shot at; although he and the defendant had gotten into a fight a few days before, he thought they were "cool."

Linda Thompson, who lives near the scene of the shooting, testified that she heard gunfire and called 9-1-1. While she was waiting for the police to arrive, she stood at her front door and looked outside. She saw a gray car speed out of the dead end. She saw the defendant get out of the gray car and stand on the street corner. She saw the defendant's mother turn off of 46th Street onto Jonah Street and stop on the corner of 47th Street and Jonah. Then, she saw the defendant get into his mother's pickup truck.

The defendant did not testify at trial. He presented the testimony of Pierre Bell, who, at the time of trial, was in jail awaiting sentencing for unrelated charges. Bell testified that he was at Latoya's house on the day of the shooting. However, he did not see the defendant at the house that day, did not see a car pass by, and did not know where the shots came from. The defendant also presented the testimony of his mother's boyfriend, Aldric Byrd, Sr. Byrd, who lives on 46th Street, testified that the defendant came to his house around 4 p.m. on the day of the shooting and watched television there until he was picked up by his mother around 8 p.m.

The State called Detective Cook as a rebuttal witness. According to Detective Cook, the defendant did not mention going to Byrd's house in his taped

statement given the day after the shooting. In fact, the defendant mentioned his mother picking him up from another location and told Detective Cook that he did not know anyone on 46th Street.

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). The jury's verdicts reflected the reasonable conclusion that based on the testimony of the witnesses and victims, the defendant was one of the gunmen shooting at the individuals standing near Latoya's home. In finding the defendant guilty, the jury clearly rejected the defense's theory of misidentification. See **Id**.

The jury heard testimony from multiple witnesses and was aware of the fighting that occurred between the defendant's family and the Emery/Lands family. After hearing all of this testimony, the jury unanimously found the defendant guilty of two counts of attempted first degree murder. Obviously, the jury chose to believe the testimony of those witnesses who identified the defendant as one of the gunmen. 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.

After a thorough review of the record, we find that the evidence negates any reasonable probability of misidentification and supports the jury's verdicts. 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 at

trial, that the defendant was guilty of two counts of attempted first degree murder. See **State v. Calloway**, 2007-2306 (La. 1/21/09) 1 So.3d 417, 422 (*per curiam*).

This assignment of error is without merit.

SENTENCING ERROR

Whoever attempts to commit an offense punishable by death or life imprisonment shall be imprisoned at hard labor for not less than ten nor more than fifty years without benefit of parole, probation, or suspension of sentence. La. R.S. 14:27D(1)(a). See also La. R.S. 14:30C. In sentencing the defendant on count 2, the district court failed to provide that the sentence was to be served at hard labor.[2] Inasmuch as an illegal sentence is an error discoverable by a mere inspection of the proceedings without inspection of the evidence, La. C.Cr.P. article 920(2) authorizes consideration of such an error on appeal. Further, La. C.Cr.P. article 882A authorizes correction by the appellate court.[3] We find that correction of this illegally lenient sentence does not involve the exercise of sentencing discretion and, as such, there is no reason why this court should not simply amend the sentence. See **State v. Price**, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 124 (*en banc*), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277. Accordingly, because a sentence at hard labor was the only sentence that could be imposed, we correct the sentence on count 2 by providing that it be served at hard labor.

CONCLUSION

For the foregoing reasons, the defendant's conviction and sentence on Count 1 is affirmed; the conviction on Count 2 is affirmed; the sentence on Count 2 is amended and as amended, is affirmed.

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[2] The minutes reflect that the district court sentenced the defendant to hard labor on count 2. When there is a discrepancy between the minutes and transcript, the transcript prevails. **State v. Lynch**, 441 So.2d 732, 734 (La. 1983).

[3] An illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review. La. C.Cr.P. art. 882A.

CONVICTION AND SENTENCE ON COUNT 1 AFFIRMED; CONVICTION ON COUNT 2 AFFIRMED; SENTENCE ON COUNT 2 AMENDED AND AS AMENDED, AFFIRMED.