

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

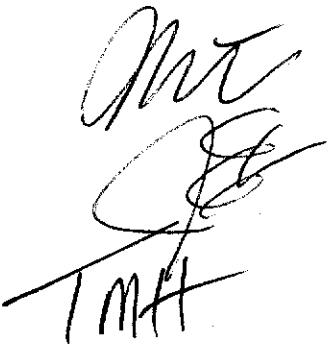
FIRST CIRCUIT

NO. 2013 KA 1724

STATE OF LOUISIANA

VERSUS

JAMICA WARREN



Judgment Rendered: MAR 24 2014

Appealed from the
22nd Judicial District Court
In and for the Parish of Washington
State of Louisiana
Case No. 10 CR3-110491

The Honorable Scott Gardner, Judge Presiding

Prentice L. White
Baton Rouge, Louisiana

Counsel for Defendant/Appellant
Jamica Warren

Walter P. Reed
District Attorney
Covington, Louisiana

Counsel for Plaintiff/Appellee
State of Louisiana

Kathryn W. Landry
Baton Rouge, Louisiana

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

THERIOT, J.

The defendant, Jamica Warren, was charged by bill of information with attempted second degree murder, a violation of La. R.S. 14:27 and 14:30.1 (count 1); aggravated criminal damage to property, a violation of La. R.S. 14:55 (count 2); and illegal use of weapons or dangerous instrumentalities, a violation of La. R.S. 14:94 (count 3). The defendant pled not guilty to the charges and, following a jury trial, was found guilty as charged on counts 2 and 3. For the attempted second degree murder charge (count 1), he was found guilty of the responsive offense of aggravated battery, a violation of La. R.S. 14:34. See La. C.Cr.P. 814(A)(4). The defendant filed a motion for post-verdict judgment of acquittal, which was denied. For the aggravated battery conviction, the defendant was sentenced to five years imprisonment at hard labor; for the aggravated criminal damage to property conviction, he was sentenced to fifteen years imprisonment at hard labor; and for the illegal use of weapons or dangerous instrumentalities conviction, he was sentenced to two years imprisonment at hard labor. The sentences were ordered to run concurrently. The defendant now appeals, designating one assignment of error. We affirm the convictions and sentences.

FACTS

On July 30, 2010, Justin Watson was at his godmother's house on Jim Avenue in Bogalusa. When Justin went outside, he became involved in an altercation with an unknown male. At some point, the unknown person drew an AK-type rifle and began firing at Justin. Justin ran and took cover behind a car. At this point, another person with a handgun began shooting at Justin. Justin began running to his aunt's house on a nearby street. As he ran, the person with the handgun chased him and shot at him. A bullet

grazed Justin's head, causing only a superficial wound. Sometime later, Justin procured a handgun and went back to the area where the shooting occurred. Justin felt that the person or people who shot at him stayed at the house at 1625 Warren Street, which was across the street from his godmother's house on Jim Avenue. Because Justin's godmother's house had been struck by gunfire, Justin, out of retaliation, fired shots at the house on Warren Street, striking it several times.

Chief Joe Culpepper, with the Bogalusa Police Department, interviewed Justin about the shootings. In the interview, Justin identified the defendant as the person who shot at him with the handgun. At trial, however, Justin testified that it was not the defendant who had shot at him. The video of the interview was played for the jury.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the evidence was insufficient to support the convictions. Specifically, the defendant contends that his identity as the perpetrator was not established by the State.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, 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). See La. C.Cr.P. art. 821(B); *State v. Ordodi*, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660; *State v. Mussall*, 523 So.2d 1305, 1308-09 (La. 1988). The *Jackson* standard of review, incorporated in Article 821, 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 factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See *State v. Patorno*, 2001-2585 (La.App. 1st Cir. 6/21/02), 822 So.2d 141, 144. 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 factfinder 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. *State v. Davis*, 2001-3033 (La.App. 1st Cir. 6/21/02), 822 So.2d 161, 163-64.

In his brief, the defendant asserts there was reasonable doubt as to his identify as one of the shooters because, at trial, Justin Watson recanted what he had told Chief Culpepper in his recorded statement. Specifically, the defendant suggests that what Justin told the chief about the defendant shooting at him was a lie and that, during his statement, he was intoxicated from cocaine use.

In his interview with Chief Culpepper, Justin stated that he got into an argument with an unknown male while standing outside his house on Jim Avenue. The unknown person drew a long rifle (likely an AK-type weapon) and started shooting at Justin. Justin ran and took cover behind a car. At that moment, Justin saw the defendant approach from the side and begin shooting at him with a handgun. Justin ran down the street, and the defendant chased after him, shooting at him. One of the bullets grazed Justin's head. At trial, Justin recanted only that part of his statement wherein he identified the defendant as the second shooter. Instead, Justin

testified that he thought the shooter with the handgun was the defendant, but, in fact, it was not him. Justin could not identify who that shooter was, but insisted it was not the defendant. Justin testified that at the time he told Chief Culpepper the defendant was the shooter, he (Justin) was “drugging hard.”

Despite Justin’s recantation at trial, the jury chose to believe that what Justin told Chief Culpepper was the truth. Our review of Justin’s statement reveals that Justin, unhesitatingly and matter-of-factly, identified the defendant several times as the shooter. He was lucid and coherent and did not appear intoxicated. When asked at trial if Justin appeared to be impaired or on drugs, Chief Culpepper responded that Justin was “in total control of his faculties, other than being a little agitated.” The defendant notes in his brief that when speaking to Chief Culpepper, Justin identified the defendant as “Mike.” This assertion is inaccurate. In his interview, Justin identified “Jamica” as the shooter. Justin pronounced the name with a long “i” so that the defendant’s name sounded like “J $\text{\textcircled{a}}$ -Mike’- $\text{\textcircled{a}}$.”¹

Physical evidence corroborated Justin’s statement to Chief Culpepper regarding the identity of the defendant as the shooter with the handgun. Justin testified at trial that the gun in the defendant’s hand was an automatic. Justin thought the gun might be a .45. At the scene where Justin indicated the defendant was shooting at him, the police found twelve .40 caliber cartridge cases on the ground. Six days after the shooting, the defendant was a passenger in a vehicle stopped for speeding. A police officer removed the defendant from the vehicle and found a handgun on the floorboard where the defendant had been sitting. The officer seized the gun, which had a

¹ The character that looks like an upside-down “e” is a schwa, which is unstressed and sounds like “uh” (like the “a” in “about.”)

magazine in it and a live round in the chamber. The gun, identified as a .40 caliber Glock pistol, was submitted for testing. Deputy Lloyd Morse, an expert in firearms examination with the St. Tammany Parish Sheriff's Office, testified that the twelve .40 caliber cartridge cases at the scene were fired from the Glock pistol found at the defendant's feet in the vehicle.

The argument regarding sufficiency set forth by the defendant is based on credibility determinations. Despite the discrepancy in Justin's trial testimony with the statement he provided to Chief Culpepper about the shooting, the jury, given the corroborating physical evidence, chose to believe Justin's recorded statement, which identified the defendant as one of the shooters. Perhaps the jury felt Justin partially recanted his recorded statement out of fear of retaliation. In any event, the trier of fact is free to 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. 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 factfinder's determination of guilt. *State v. Taylor*, 97-2261 (La.App. 1st Cir. 9/25/98), 721 So.2d 929, 932. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See *State v. Mitchell*, 99-3342 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. *State v. Quinn*, 479 So.2d 592, 596 (La.App. 1st Cir. 1985). In the absence of internal contradiction or irreconcilable conflict with the physical evidence,

one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. *State v. Higgins*, 2003-1980 (La. 4/1/05), 898 So.2d 1219, 1226, cert. denied, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005). Further, the testimony of the victim alone is sufficient to prove the elements of the offense. *State v. Orgeron*, 512 So.2d 467, 469 (La.App. 1st Cir. 1987), writ denied, 519 So.2d 113 (La. 1988).

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. See *State v. Moten*, 510 So.2d 55, 61 (La.App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). The jury heard all of the testimony and viewed all of the physical evidence presented to it at trial and, notwithstanding any conflicting testimony, found the defendant guilty. The jury's finding of guilt reflected the reasonable conclusion that based on the physical evidence, and Justin's statement to the police immediately following the shooting, which identified the defendant as one of the shooters, the defendant was the person who shot at Justin, striking the house behind Justin, and shortly thereafter, striking Justin in a grazing shot to the head. In finding the defendant guilty, the jury clearly rejected the defense's theory of misidentification. See *Moten*, 510 So.2d at 61.

After a thorough review of the record, we find that the evidence negates any reasonable probability of misidentification and supports the jury's finding of guilt. 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, that the defendant was guilty of aggravated battery of Justin Watson, aggravated criminal damage to property, and the illegal

use of a weapon. See *State v. Calloway*, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). The assignment of error is without merit.

DECREE

For the reasons set forth hereinabove, we affirm the defendant's convictions and sentences.

CONVICTIONS AND SENTENCES AFFIRMED.