

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 1350

STATE OF LOUISIANA

VERSUS

STEPHANIE NICOLE LIDE

DATE OF JUDGMENT: APR 28 2014

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 523631, DIV. A, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE RAYMOND S. CHILDRESS, JUDGE

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

The defendant, Stephanie N. Lide, was charged by bill of information with one count of second degree battery, a violation of La. R.S. 14:34.1, and pled not guilty. Following a jury trial, she was found guilty of the responsive offense of simple battery, a violation of La. R.S. 14:35. She moved for a post verdict judgment of acquittal and a new trial, but the motions were denied. She was sentenced to ninety days in parish jail, suspended, and one year probation, subject to special conditions, including a fine of \$100. She now appeals, challenging the sufficiency of the evidence. For the following reasons, we affirm the conviction and sentence.

FACTS

The victim, Crystal Fahm, testified she was out with her friends Jennifer and Lisa in Olde Towne in Slidell during the early hours of April 14, 2012. According to the victim, as she approached her friends, the defendant threw a drink on her, and Jennifer stood in front of the victim, trying to calm her. The defendant then punched the victim in the face, knocking her back into the tables. The victim's nose gushed blood, and she had difficulty breathing. She was taken by ambulance to the hospital and diagnosed as having a nasal bone fracture and a deviated nasal septum. The victim denied physically or verbally provoking the defendant to attack her. She did not dispute hospital records indicating she was heavily intoxicated when she was treated at the hospital following the incident.

Jennifer Grisaffi testified she was out with the victim at the time of the incident. Jennifer stated that she saw the victim pass the defendant, "and that's when she¹ went to say something or do something." Jennifer approached the victim and saw the defendant throw her drink on the victim. According to

¹ Jennifer did not indicate whether she was referring to the defendant or the victim.

Jennifer, the victim did not touch the defendant or make any aggressive motions toward her before the drink was thrown. Jennifer indicated she stood in front of the victim after the drink was thrown to calm the victim down, and the defendant “came around” Jennifer and punched the victim in the face. Jennifer testified that the victim did not threaten the defendant before the punch was thrown, and denied that the victim grabbed the defendant’s face or hair.

Slidell Police Department Officer Clint McCall was on patrol in Olde Towne at the time of the incident. He saw the defendant throw a drink on the victim and strike her in the face with a closed fist. He did not see the victim touch the defendant or grab her hair. He testified the throwing of the drink drew his attention to the defendant and the victim.

The defendant testified she had served in the Navy with the military police. She indicated on the night of the incident, she was out with her friend, who was also named Stephanie, and was not drinking because she was the designated driver. The defendant stated she was walking her friend Scotty to his car when he “hit on” the victim. The defendant told Scotty, “leave her alone. She’s fake.” According to the defendant, the victim asked her what she had said, and the defendant replied, “You heard me, Crystal. You’re fake. Get out of my face.” The defendant claimed she threw a drink on the victim “to diffuse [sic] the situation,” and the victim grabbed the defendant’s face and hair. The defendant testified she punched the victim after “[the victim] came to come back at [the defendant].” While conceding the victim did not threaten her with death or great bodily harm, the defendant stated she had reason to believe the victim could have inflicted great bodily harm on her when the victim grabbed the defendant’s face.

SUFFICIENCY OF THE EVIDENCE

In assignment of error number 1, the defendant argues the trial court erred in denying the motion for post verdict judgment of acquittal. In assignment of error

number 2, she argues the trial court erred in denying the motion for new trial. In assignment of error number 3, she argues the evidence is insufficient to support the verdict. The defendant combines the assignments of error in her brief, and argues the evidence established she acted in self-defense. She does not challenge the proof of her identity.

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 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157 & 2000-0895 (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**, 730 So.2d at 487.

As is pertinent here, battery is the intentional use of force or violence upon the person of another. La. R.S. 14:33. Simple battery is a battery committed without the consent of the victim. La. R.S. 14:35.

Louisiana Revised Statutes 14:19, in pertinent part, provides:

A. The use of force or violence upon the person of another is justifiable when committed for the purpose of preventing a forcible offense against the person ... provided that the force or violence used must be reasonable and apparently necessary to prevent such offense, and that this Section shall not apply where the force or violence results in a homicide.

C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using force or violence as provided for in this Section and may stand his or her ground and meet force with force.

D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used force or violence in defense of his person ... had a reasonable belief that force or violence was reasonable and apparently necessary to prevent a forcible offense....

However, La. R.S. 14:21 provides:

A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.

In a non-homicide situation, a claim of self-defense requires a dual inquiry: first, an objective inquiry into whether the force used was reasonable under the circumstances, and, second, a subjective inquiry into whether the force used was apparently necessary. In a homicide case, the State must prove, beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. However, Louisiana law is unclear as to who has the burden of proving self-defense in a non-homicide case. In previous cases dealing with this issue, this Court has analyzed the evidence under both standards of review, that is, whether the defendant proved self-defense by a preponderance of the evidence or whether the State proved beyond a reasonable doubt that the defendant did not act in self-defense. Similarly, we need not decide in this case who has the burden of proving (or disproving) self-defense, because under either standard the evidence sufficiently established that defendant did not act in self-defense. **State v. Taylor**, 97-2261 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 931.

Any 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, all of the elements of simple battery and that the defendant's attack on the victim was not justified. The verdict rendered in this case indicates the jury rejected the defendant's claim that the victim was the aggressor in this case. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984). No such hypothesis exists in the instant case. Additionally, the verdict indicates the jury rejected the defendant's testimony, accepted the testimony offered against her, and rejected her attempts to discredit that testimony. This Court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The testimony of the victim alone is sufficient to prove the elements of the offense. 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**, 96-142 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. 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, 2006-0207 (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**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

Any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could also find that the evidence established that the defendant was the aggressor in the conflict, and thus, was not entitled to claim self-defense. Moreover, even if it could be found that the defendant was not the aggressor, any rational trier of fact could find, beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant did not act in self-defense. Testimony at trial indicated the defendant threw a drink on the victim; reached around Jennifer, who was trying to defuse the situation; and forcefully punched the victim in the nose.

These assignments of error are without merit.

DECREE

For these reasons, we affirm the conviction and sentence of defendant, Stephanie N. Lide.

CONVICTION AND SENTENCE AFFIRMED.