

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 0937

STATE OF LOUISIANA

VERSUS

ELIJAH SMITH, III

Judgment Rendered: **FEB 11 2015**

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 06-12-1213

The Honorable Trudy White, Judge Presiding

**Thomas C. Damico
Roberta M. Vath
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellant
Elijah Smith, III**

**Hillar C. Moore, III
District Attorney
Dylan C. Alge
Assistant District Attorney
Baton Rouge, Louisiana**

**Counsel for Plaintiff/Appellee
State of Louisiana**

BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

THERIOT, J.

The defendant, Elijah Smith, III, was charged by grand jury indictment with second degree murder on count one, in violation of La. R.S. 14:30.1, and with attempted second degree murder on count two, in violation of La. R.S. 14:30.1 and La. R.S. 14:27. The defendant pled not guilty and was found guilty as charged after a trial by jury. The trial court denied the defendant's motion for post-verdict judgment of acquittal and his motion for new trial. The trial court imposed a sentence of life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on count one, and a sentence of twenty years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on count two. The trial court ordered that the two sentences be served concurrently. The defendant has timely filed this appeal. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

On March 1, 2012, at approximately 7:15 p.m., officers of the Baton Rouge Police Department (BRPD) were dispatched to Washington Avenue due to a complaint of gunshots being fired at a red vehicle in the area. While in route, the police were further alerted that an occupant of the red car, Edmond Harris (the victim as to the attempted second degree murder offense on count two), called and reported that his girlfriend, Kayla Selders (the victim as to the second degree murder offense on count one), had been shot. Harris indicated that he was covered in Selders' blood and was leaving the vehicle to seek assistance. When Corporal Danny Forbes of the BRPD arrived at the 2800 block of Washington Avenue, he observed a red Honda Civic in the eastbound right lane facing east with the passenger door open. The driver's door was closed, Selders (the sole occupant at the time) was

slumped over and unresponsive, and a car radio system was located on the passenger seat next to Selders' right hand. On the passenger side of the vehicle, there were apparent bullet holes and damage where bullets had impacted the doors and window, and what appeared to be blood was on the interior of the passenger door. Selders suffered a fatal gunshot wound to her chest, another gunshot wound to her right arm (which re-entered her body just superior to her right breast), and a third gunshot wound to her inner left arm.

While the detectives were still at the scene of the vehicle, victim Edmond Harris, who suffered a bullet-graze wound, returned to the scene and provided information regarding the shooting. Harris informed the police that Selders' stepbrother, whom he referred to as "Pumpkinhead," was the shooter.¹ While Harris did not know the shooter's real name, the police learned from other family members at the scene that the defendant was Selders' stepbrother, who was known as "Pumpkinhead." The police conducted a photographic lineup that included a photograph of the defendant. Harris did not make a positive identification. On March 7, 2012, Harris viewed a second photographic lineup that included a more recent photograph of the defendant, and Harris identified the defendant as the shooter. Harris also identified the defendant in court during the trial as the shooter and testified that Selders and the defendant had a dispute over car audio equipment just before the shooting. According to Harris, Selders (the driver) stopped at a residence located at 1838 Plank Road at the Washington Avenue intersection to talk to the defendant while Harris waited in the vehicle. Harris stated that Selders appeared to be agitated after speaking to

¹ In addition to the statements that Harris made at the scene, Harris gave a full statement at the Violent Crimes Unit (VCU).

the defendant, and ultimately approached a black Lexus parked in front of the residence and removed a CD player. Selders then re-entered the Honda Civic, placed the CD player on the passenger seat, and put the car in reverse. The defendant fired gunshots at the Honda Civic as Selders was coming around the curve approaching Washington Avenue.²

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant raises several issues. The defendant contends that the evidence relied upon in this case does not meet the long established standard for upholding a criminal conviction. The defendant notes that only ten of twelve jurors voted to convict him and argues that the fact that two jurors were unconvinced is evidence of the existence of reasonable doubt. The defendant argues that permitting a conviction to stand on less than a unanimous finding of guilt does a disservice to the citizens of Louisiana. The defendant further argues that the cumulative effect of errors, inconsistencies, and omissions serve to undermine the reliability of the verdict in this case.

The defendant specifically argues that the testimony presented at trial revealed several weaknesses and inconsistencies such that any rational trier of fact could not find him guilty beyond a reasonable doubt. The defendant notes that there was no physical evidence linking him to the crime, and that the direct evidence presented by the State consisted of the testimony of only one witness, Edmond Harris. In this regard, the defendant contends that Harris' identification was questionable. The defendant also notes that a

² The red Honda Civic and black Lexus were processed and photographed after being secured in a storage location. Specifically, BRPD Detective Monroe Carter took photographs of the console of the Lexus where the audio equipment had been removed (wires were hanging out) and another car audio system that was located on the back seat of the vehicle. Detective Carter also photographed the shattered glass and car audio equipment that was on the front passenger seat of the Honda Civic. The black Lexus was registered in the defendant's name.

potential witness, an unidentified female who, according to Harris, was present at the scene of the shooting, was not presented as a witness by the State. The defendant argues that it would have been difficult for Harris to get a good look at the shooter, specifically contending that the shooting occurred during dark nighttime hours, that the vehicle that was shot at was in motion when the shots were fired, and that Harris ducked down when he heard the gunshots. The defendant also notes that Harris was unable to pick him out of a lineup immediately after the incident though he chose him in a subsequent lineup that occurred several days later. The defendant claims that the second lineup took place after Harris had an encounter with the defendant in a well-lit environment. The defendant notes that the police placed his photograph in the same location as in the initial photographic lineup. Thus, the defendant argues that the second photographic lineup was suggestive and lacked credibility.

The defendant further raises the hypothesis that a second shooter may have killed Selders since the fatal wound was produced by a bullet that entered the left side of her chest while the bullet holes in the vehicle indicate that they entered on the right side. The defendant concedes that Dr. Clark, the coroner who testified at the trial, though he did not perform the autopsy, noted that the victim may have been moving around in the vehicle. However, the defendant notes that while the projectile that caused the fatal wound was recovered, there was no expert examination to confirm that the bullet with the inconsistent track matched those that caused the other wounds or to see if the projectile was damaged in a manner consistent with a ricochet. For discussion purposes, we shall address defendant's contentions as 1) sufficiency of the evidence and 2) unanimous finding of guilt.

DISCUSSION

Sufficiency of the Evidence

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, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that 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 also La. Code Crim. P. art. 821(B); *State v. Ordodi*, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660; *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.

The *Jackson* standard of review, incorporated in Article 821(B), 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 fact finder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. *State v. Patorno*, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144. This statutory test is not a purely separate one from the *Jackson* constitutional sufficiency standard. Ultimately, all evidence, both direct and circumstantial, must be sufficient under *Jackson* to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt. *State v. Shanks*, 97-1855 (La. App. 1st Cir. 6/29/98), 715 So.2d 157, 159. The reviewing court is required to evaluate the circumstantial evidence in the light most favorable to the prosecution and determine if any alternative hypothesis is sufficiently

reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. *State v. Fisher*, 628 So.2d 1136, 1141 (La. App. 1st Cir. 1993), writs denied, 94-0226 & 94-0321 (La. 5/20/94), 637 So.2d 474 & 476. As the trier of fact, the jury was free to accept or reject, in whole or in part, the testimony of any witness. *State v. Johnson*, 98-1407 (La. App. 1st Cir. 4/1/99), 734 So.2d 800, 805, writ denied, 99-1386 (La. 10/1/99), 748 So.2d 439.

Louisiana Revised Statutes 14:30.1(A) provides in pertinent part that second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Specific intent need not be proven as a fact, but may be inferred from the circumstances of the transaction and the actions of defendant. *State v. Graham*, 420 So.2d 1126, 1127 (La. 1982).

Louisiana Revised Statutes 14:27(A) provides that to attempt a crime, an accused must do an act tending directly toward accomplishing his object, having a specific intent to commit the crime. While murder requires the specific intent to kill or to inflict great bodily harm, attempted murder requires the specific intent to kill. Thus, the elements of attempted second degree murder are the specific intent to kill a human being and an overt act in furtherance of the object. *State v. Butler*, 322 So.2d 189, 192 (La. 1975). Specific intent may be inferred from a defendant's actions and the circumstances. *State v. Templet*, 2005-2623 (La. App. 1st Cir. 8/16/06), 943 So.2d 412, 421-22, writ denied, 2006-2203 (La. 4/20/07), 954 So.2d 158. Moreover, specific intent to kill may be inferred from a defendant's act of

pointing a gun and firing at a person. *State v. Delco*, 2006-0504 (La. App. 1st Cir. 9/15/06), 943 So.2d 1143, 1146, writ denied, 2006-2636 (La. 8/15/07), 961 So.2d 1160.

Where the key issue in a case is the defendant's identity as the perpetrator, rather than whether or not the crime was committed, the State is required to negate any reasonable probability of misidentification. However, positive identification by only one witness may be sufficient to support a defendant's conviction. *State v. Millien*, 2002-1006 (La. App. 1st Cir. 2/14/03), 845 So.2d 506, 509.

An identification procedure is suggestive if, during the procedure, the witness's attention is unduly focused on the defendant. *State v. Thibodeaux*, 98-1673 (La. 9/8/99), 750 So.2d 916, 932, cert. denied, 529 U.S. 1112, 120 S.Ct. 1969, 146 L.Ed.2d 800 (2000). In determining the likelihood of misidentification of a suspect, a court must look to the "totality of the circumstances" as informed by the five factors set forth by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 199-200, 93 S.Ct. 375, 382, 34 L.Ed.2d 401 (1972). These factors include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation. Any corrupting effect of a suggestive identification is to be weighed against these factors. *Manson v. Brathwaite*, 432 U.S. 98, 114, 97 S.Ct. 2243, 2253, 53 L.Ed.2d 140 (1977). Strict identity of physical characteristics among the persons depicted in a photographic array is not required; however, there must be sufficient resemblance to reasonably test the identification. *State v. Smith*, 430 So.2d 31, 43 (La. 1983). Even if the identification could be considered to be

suggestive, that alone does not indicate a violation of the accused's right to due process. It is the likelihood of misidentification that violates due process, not merely the suggestive identification procedure. *State v. Johnson*, 2000-0680 (La. App. 1st Cir. 12/22/00), 775 So.2d 670, 677, writ denied, 2002-1368 (La. 5/30/03), 845 So.2d 1066; *State v. Reed*, 97-0812 (La. App. 1st Cir. 4/8/98), 712 So.2d 572, 576, writ denied, 98-1266 (La. 11/25/98), 729 So.2d 572. In-court identification may be permissible if there is not a "very substantial likelihood of irreparable misidentification." *State v. Martin*, 595 So.2d 592, 595 (La. 1992). See also *State v. Jones*, 94-1098 (La. App. 1st Cir. 6/23/95), 658 So.2d 307, 311, writ denied, 95-2280 (La. 1/12/96), 666 So.2d 320.

Corporal Mindy Stewart of the BRPD crime scene investigation (CSI) unit arrived at the 2800 block of Washington Avenue at about 8:00 p.m., discussed the case with the detective, did a walk-through, and began taking photographs. She remained on the scene for about two hours before going to the Violent Crimes Unit (VCU), where she was instructed to go to the 2400 block of Washington Avenue, the scene of the shooting which was four blocks away from where the Honda Civic was found. She took additional photographs when she arrived at the scene of the shooting. Corporal Stewart testified that ambient lighting (no flash photography, using only the available light from street lamps and the moon/night vision) was used to take several photographs at both scenes.³ Shell casings were recovered from the parking lot of the residence at 1838 Plank Road at the Washington intersection. Corporal Alessha Biscamp of the BRPD CSI division went to

³ Specifically, S-1 depicts the crime scene at 2400 Washington Avenue at the Plank Road intersection where the shooting took place. S-2, S-4, and S-5 depict the scene at 2800 Washington Avenue where the vehicle was discovered.

Selders' autopsy and took photographs and collected a projectile from inside the body bag.

BRPD Detectives Belford Johnson and Brian Ballard also testified during the trial. Detective Johnson was at the scene where the Honda Civic was found when Harris returned to the scene. Detective Johnson testified that Harris was shaken up and scared and had a bullet-graze wound. Detective Ballard testified that the police also spoke to several family members of the victim who did not see the shooting, but helped the police develop the defendant as the only suspect in the shooting, noting that the defendant was known as "Pumpkinhead". Detective Ballard confirmed that the defendant's brother, Gerald Smith (who was also Selders' stepbrother), was one of the family members interviewed and that Gerald indicated that he was in the area at the time of the shooting.⁴ Detective Ballard also confirmed that both the defendant and his brother had an average height, but noted that they had "different hair." He specifically described Gerald Smith's hairstyle as "little twists." Detective Johnson transported Harris to the VCU where he gave a full statement and viewed the initial photographic lineup (from which he did not make an identification) about three hours after the shooting. Harris was still nervous and scared at the time of the initial photographic lineup.

The second photographic lineup that included a more recent photograph of the defendant took place on March 7, 2012.⁵ Detective Ballard testified that Harris was more relaxed at that time than he was on the night of the shooting, and it only took Harris a couple of seconds to identify the defendant as the shooter. The defendant was interviewed on March 7,

⁴ The defendant's brother did not testify at the trial and was never considered a suspect.

⁵ Harris was incarcerated in parish jail for an unrelated offense at the time of the second photographic lineup.

2012 and, according to Detective Ballard, the defendant admitted to having an ongoing dispute with Selders regarding vehicle related work that he had done for her.⁶ The defendant also admitted to his vehicle being at the scene, but denied being present around 7:00 p.m. to 7:15 p.m., the estimated time of the shooting. The defendant specifically indicated that around 4:00 p.m. or 4:30 p.m. he left his vehicle at the residence, and at around 8:00 p.m. or 9:00 p.m. he returned to the residence to get his vehicle. The defendant denied seeing any of the significant number of police officers who were in the area during the time period in which he indicated that he returned to get his vehicle. The Lexus was not at the scene while the police were there, but was seized and processed on a later date.

Dr. William Beau Clark was the East Baton Rouge Parish coroner at the time of the trial. Dr. Alfredo Saurez was the pathologist at the time of the autopsy. Dr. Clark was not present during the autopsy, but reviewed the report of Dr. Saurez and the photographs and determined that the deceased victim suffered three gunshot wounds. The final cause of death was listed as exsanguination secondary to a gunshot wound to the chest. The other two gunshot wounds were to her right upper and left upper extremities. According to Dr. Clark, none of the wounds showed soot or tattooing from gunpowder, therefore, the shots were fired from a distance estimated as greater than five feet. He further testified that the trajectory of the bullet entering Selders' right arm and re-entering the chest is unknown. Further it

⁶ During the trial, the defendant's objection was overruled and the State attempted to play but stopped the recording of the defendant's police interview due to audio inefficiency. The defendant's subsequent objection (on the basis that the recording was the best evidence) to the State questioning of Detective Ballard about the interview was also overruled. The defendant is not challenging these rulings on appeal. The defendant was advised of and waived his rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), prior to making the statements.

is unknown whether the victim's arm was up against her breast or being held up or out at the time of the shooting. Dr. Clark testified that the body could have been moving around inside the vehicle at the time of the impact, noting that the vehicle was in motion. The projectile recovered from the body bag came from the fatal wound (the bullet was pinched at the exit wound of the third gunshot, between the skin surface and the right posterior chest wall and clothing). Dr. Clark testified that it would take between one and two minutes for the victim to bleed to death from the fatal injury. Thus, according to Dr. Clark it was quite possible that the victim died right after driving four blocks away from the shooting.

Edmond Harris testified that Selders had been his girlfriend for about a year at the time of the shooting. Just before the shooting they were planning to go to the movies. When they drove past Washington Avenue, they saw the defendant entering the residence at the Plank Road intersection. At that point, Selders made a loop on Plank Road and pulled up in the driveway. Selders exited the car, talked to the defendant and a female who was also present at the residence.⁷ According to Harris, Selders was "tired of waiting" and "jacked the CD player" out of a black Lexus. She got back in the red Honda Civic, put the CD player on the seat, and the gunshots were fired as she attempted to get back on Washington Avenue. Harris specifically testified that he saw "Pumpkinhead" run towards the car, stop as he got to the street, and fire the gunshots. Harris further identified the defendant as "Pumpkinhead" in court. Harris testified that he started ducking when he saw the defendant come out of the house with the gun and point it towards the car. He further testified, "Well, when I was ducking I

⁷ The police unsuccessfully attempted to determine the identification and whereabouts of the unidentified female who was a potential witness to the shooting.

was, like, kind of like this looking and making sure he don't come run up on the car or whatever." Harris also confirmed that he was looking at the defendant when the defendant fired the shots. Selders did not immediately lose consciousness and kept trying to drive when the shots were first fired, but she eventually passed out. When the vehicle came to a stop, Harris exited the vehicle and went to a nearby residence to ask for assistance. The occupants would not allow him to use their telephone so Harris kept running and told onlookers in the area to call the police as he ran to Selders' mother's house. Harris estimated that he returned to the scene where the vehicle stopped about thirty minutes later. He testified that he was scared and had been ducking behind vehicles. He recalled telling the police that "Pumpkinhead" committed the shooting after the police took him to the station and he further recalled participating in the photographic lineup that night. He stated that he did not recognize anyone in the first lineup but was able to identify the photograph of "Pumpkinhead" in the second lineup. Harris testified that he had about three or four encounters with the defendant before the shooting, that he only knew the defendant as "Pumpkinhead" because that's what Selders called him, and that he was one hundred percent certain of his identification of the defendant as the shooter.

During cross-examination, Harris testified that he did not personally know the defendant's brother, but that he saw him a couple of times. He specifically stated, "I mean, I saw him a couple of times, too, because he came and picked me up a couple of times." Harris clarified that he was unable to duck below the window sill when the shooting started. Harris further admitted that he could not actually see who Selders was talking to when she stood in the yard of the residence and spoke to someone in the doorway. He assumed she was talking to the defendant (whom he saw enter

the home just before they pulled up), though he could only see the unidentified female who was still outside at the time. Harris denied that anyone showed him a photograph of the defendant during the six day interval between the first and second photographic lineups. However, Harris testified that he saw the defendant while they were both incarcerated.⁸ When asked if he had a better recollection immediately after the shooting, Harris noted that he was “shook up” at that time.

On redirect examination, Harris testified that the defendant and his brother did not look alike. Regarding their hairstyles, he further testified that the defendant’s brother had “dreds” while the defendant did not. Harris responded positively when asked if the photograph of the defendant in the first lineup was a bad photograph, and further testified that he was certain when he looked at the second lineup.

Detective Johnson was recalled as the sole defense witness after having testified as a State witness. Detective Johnson confirmed that Harris had told the police that he had only been in a relationship with Selders for about three months though he testified that they had been together for about a year. Detective Johnson testified that while Harris was unable to make a selection during the first photographic lineup, prior to the lineup Harris said that he had met the defendant a couple of times and that he would be able to identify him. Detective Johnson denied that Harris mentioned the possibility of a second shooter.

⁸ Harris specifically testified that after being arrested for an outstanding bench warrant for an unrelated offense, he saw the defendant while in parish jail. Harris was not specifically asked if he saw the defendant before or after he viewed the second photographic lineup, which also took place while Harris was incarcerated. Detective Ballard testified that the defendant may have been arrested on March 7, 2012, the same day that the second photographic lineup and the defendant’s interview took place. Thus, Harris’ encounter with the defendant in jail may have taken place after the defendant was arrested in light of the positive identification by Harris.

We are constitutionally precluded from acting as a “thirteenth juror” in assessing what weight to give evidence in criminal cases. 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. 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. Further, the testimony of the victim alone is sufficient to prove the elements of the offense. *State v. Clouatre*, 2012-0407 (La. App. 1st Cir. 11/14/12), 110 So.3d 1094, 1100. This assignment of error lacks merit.

Non Unanimous Verdict

The defendant cites no authority for his propositions that the non-unanimous verdict (specifically a concurrence of ten out of twelve jurors) is “per se evidence [of] reasonable doubt” and “does a disservice to the citizens of Louisiana.” A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. La. Const. art. I, § 17(A); La. Code Crim. P. art. 782(A). See also La. R.S. 14:30.1 and La. R.S. 14:27. This scheme of non-unanimous jury verdicts has been approved by the United States Supreme Court, which has recognized that unanimity of twelve member juries is not required in state cases. *Johnson v. Louisiana*, 406 U.S. 356, 360-65, 92 S.Ct. 1620, 1623-26, 32 L.Ed.2d 152 (1972); *Apodaca v. Oregon*, 406 U.S. 404, 411-13, 92 S.Ct. 1628, 1633-34, 32 L.Ed.2d 184 (1972). In *Johnson*, the United States Supreme Court found that the dissenting votes to acquit raised no question of constitutional substance about either the integrity or the accuracy of the majority verdict of guilt. Despite the dissenting votes, the Court concluded that the State satisfied its

burden of proving guilt beyond any reasonable doubt. The Court held that Louisiana's twelve-person jury, wherein nine persons (before the 1974 state constitution raised the requirement to ten) must concur to reach a verdict in order to subject a defendant to punishment necessarily at hard labor, did not violate the defendant's right to due process or equal protection. *Johnson v. Louisiana*, 406 U.S. at 360-65, 92 S.Ct. at 1623-26. Likewise, the Louisiana Supreme Court and this Court have held that the provisions of La. Const. art. I, § 17(A) and La. Code Crim. P. art. 782 for non-unanimous verdicts of twelve-person juries are constitutional and do not offend equal protection or due process of the federal or state constitution or a defendant's right to be presumed innocent until found guilty beyond a reasonable doubt. *State v. Bertrand*, 2008-2215 & 2008-2311 (La. 3/17/09), 6 So.3d 738, 743; *State v. Jones*, 381 So.2d 416, 418 (La. 1980); *State v. Ledet*, 337 So.2d 1126, 1130 (La. 1976); *State v. Ross*, 320 So.2d 177, 181 (La. 1975); *State v. Jones*, 2009-0751 (La. App. 1st Cir. 10/23/09), 29 So.3d 533, 540; *State v. Hammond*, 2012-1559 (La. App. 1st Cir. 3/25/13), 115 So.3d 513, 514-15, writ denied, 2013-0887 (La. 11/8/13), 125 So.3d 442, cert. denied, ___ U.S. ___, 134 S.Ct. 1939, 188 L.Ed.2d 965 (2014). There is no authority to the contrary. This assignment of error is without merit.

CONCLUSION

After careful 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 any rational trier of fact, viewing the evidence presented at trial in the light most favorable to the State, could find the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of second degree murder and attempted second degree murder, and the defendant's

identity as the perpetrator of the offenses. When a case involves circumstantial evidence and the trier of fact reasonably rejects a 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). We find no such hypothesis exists in the instant case. The verdict rendered in this case indicates that ten of twelve jurors accepted Harris's testimony and rejected the hypothesis that someone else committed the shooting. In reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See *Ordodi*, 946 So.2d at 662.

CONVICTIONS AND SENTENCES AFFIRMED.