

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 KA 0065

STATE OF LOUISIANA

VERSUS

PATRICK JAMES RAMIREZ

Judgment Rendered: JUN 05 2015

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 06-11-0073

Honorable Michael R. Erwin, Judge

Hillar C. Moore, III, D.A.
Dylan C. Alge, Asst. D.A.
Baton Rouge, LA

Attorneys for Appellee
State of Louisiana

Lieu T. Vo Clark
Louisiana Appellate Project
Mandeville, LA

Attorney for Appellant
Defendant – Patrick James Ramirez

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

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WELCH, J.

The defendant, Patrick Ramirez, was charged by grand jury indictment with two counts of second degree murder, violations of La. R.S. 14:30.1, and pled not guilty as charged.¹ After a trial by jury, the defendant was found guilty as charged on both counts. The defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on both counts, to be served concurrently. The defendant now appeals, assigning error to the sufficiency of the evidence. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

On February 7, 2011, the Baton Rouge City Police Department (BRPD) received a Crime Stoppers tip (from an individual later identified as Curtis Labode) that a green Saturn vehicle, located near the intersection of Airline Highway and Plank Road, contained two dead bodies in the trunk. The BRPD detectives that responded to the tip located a vehicle matching the description provided by the tipster on Dutton Street, which is near the Airline Highway service road and Plank Road. The officers observed blood on the back bumper of the car below the trunk and spent shell casings inside the vehicle. They gained entry through the driver's door of the vehicle, which was slightly ajar, and released the trunk latch. One partially clothed deceased female and one nude deceased male (subsequently identified as Latonya Wright and Jarrett Stanley) were located in the trunk of the vehicle. The officers secured the scene and called crime scene technicians and supervisors to process the scene, and the vehicle was further processed at police headquarters.

¹ The defendant was charged along with Kendrick Deandre Johnson, but they were tried separately.

While officers were still at the scene of the vehicle, Crime Stoppers received another tip from Labode providing additional information. He specifically indicated that the defendant committed the murders, and he provided the defendant's full name and address, which was located off of Scenic Highway between Baker and Scotlandville. Labode further specifically stated that the murders were the result of a drug rift, and that gunfire hit the kitchen stove in the defendant's residence at the time of the murders.

The information provided in the second tip was used to obtain a search warrant for the defendant's residence. The police photographed the home and collected evidentiary items, including the stove with an apparent bullet hole on the corner, suspected blood swabs, and clothing. The defendant was not home when the search was conducted and was considered at large at the time. The defendant's children and wife were taken to the Violent Crimes Unit (VCU) to be interviewed. The police learned that prior to the shootings, the defendant, the victims, and the defendant's friend, Kendrick Johnson, were at the defendant's residence watching the Super Bowl. With the assistance of the U.S. Marshall's Task Force, the defendant was located in Lake Charles and Johnson was located in Baton Rouge.² After being advised of his **Miranda**³ rights, the defendant gave a video recorded statement. The defendant initially claimed that the victims only visited him on Super Bowl Sunday, that they watched part of the game and they left, and that the next day, he found out they had been murdered. After further interrogation, the defendant claimed that two unknown masked individuals came in as he was opening the door for his guests (the victims) to leave, forced everyone to take their clothes off and get on the floor, and robbed them. The defendant further claimed

² A search conducted at the apartment complex where Johnson was located resulted in the recovery of narcotics and drug paraphernalia. As noted, Johnson was indicted with the defendant. At the time of the defendant's trial, Johnson's trial was set for a later date.

³ **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

that while he was on the floor, he heard gunfire and that the assailants dragged the victims out of his residence. The defendant repeatedly denied committing the murders and denied seeing Johnson that day.⁴

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant contends there was no direct evidence that he shot the victims. He further contends that there was no evidence to refute his statement to the police that two other individuals entered his residence and shot the victims. While conceding that Labode provided information that was consistent with the physical evidence, the defendant argues that Labode was never questioned as to whether he was involved in the offenses. The defendant notes that no one verified the conversation Labode claimed that he had with the defendant regarding the murders. The defendant also notes that he and Jarrett had been friends since childhood, and argues there was no evidence to explain why he would rob and murder his own friend. The defendant contends that Labode's allegations must be considered in light of the circumstances under which he claims the information was relayed to him and the fact that he received a sizeable payment for his tips to Crime Stoppers. The defendant concludes that the evidence is insufficient to prove beyond a reasonable doubt and to the exclusion of every reasonable hypothesis of innocence that he is guilty of the offenses.

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 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

⁴ The defendant admitted that he talked to Johnson on the phone that day about acquiring drugs ("Xanbars").

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). See also La. C.Cr.P. art. 821(B); **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660. The **Jackson** standard of review, incorporated in La. C.Cr.P. art. 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. See State v. Patorno, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

Louisiana Revised Statutes 14:30.1(A)(1) 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 that 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). In accordance with La. R.S. 14:24, all persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals. Thus, in order to support a conviction as a principal to second degree murder, the State must show that the defendant had the specific intent to kill or inflict great bodily harm and that he assisted in the commission of the offenses. **State v. Mathews**, 2000-2115 (La. App. 1st Cir. 9/28/01), 809 So.2d 1002, 1009-10, writs denied, 2001-2873 (La. 9/13/02), 824 So.2d 1191 & 2001-2907 (La. 10/14/02), 827 So.2d 412.

Ebony Byrd, Kendrick Johnson's girlfriend at the time of the offenses, testified as a State witness. Byrd recalled that she and Johnson went to Alsen Heights Parkway on the day in question, February 6, 2011 (Super Bowl Sunday). They were travelling in her Dodge Durango. Initially, they went to Johnson's family members' residences before going to the defendant's residence. She testified that Johnson planned to briefly meet with the defendant to get money and drugs and that she waited in the vehicle when they arrived. She responded positively when asked if Johnson told her they were going to "hit a lick." Byrd noted that a small car was parked on the grass at the time. Byrd had the windows up, and she was listening to music and "playing with" her phone as she waited for Johnson. When she heard a loud gunshot, she began looking around. At that point, she observed the defendant exit the house, get into the car that was parked on the grass, and drive it to the doorway of his carport. Johnson called her on the phone and told her to go pick up her friend that was going to a Super Bowl party with them and then to come back afterwards to pick him up. Byrd testified that she drove off from the scene in compliance and that it was after 8:00 p.m. at the time.

Johnson later called Byrd and told her not to come back, but to wait for him at his uncle's residence instead. While she waited at Johnson's uncle's residence, Johnson called her again and told her to come back to the defendant's residence and she complied. When she arrived, Johnson exited the house alone and left with her. She subsequently questioned him about the gunshot she heard while initially waiting outside of the defendant's residence. At first, he told her that she was mistaken then he indicated that she could have heard nearby gunfire, since there were often shootings in that area. Byrd did not see the defendant or Johnson with a gun that day, though she confirmed that Byrd often kept a gun (which she described as, "the gun Yosemite Sam has, like a big ... long looking, old-

fashioned gun”) at her apartment or in the back of her truck and noted that Johnson did walk to the back of the truck when they were at his uncle’s and mother’s residence. She confirmed that Johnson came out with drugs and money when she picked him up from the defendant’s residence that night, and that he told her that the defendant gave him the drugs and one hundred dollars after the “lick.” She testified that she was unaware that anyone had been shot at the time and later learned (Tuesday morning when the police came to her apartment) that Stanley and Wright had been shot.

The defendant’s wife Melissa Ramirez, his step-daughter, Nikosha Sole, and his step-son, Terry Ferguson (also referred to as T.J.), also testified as State witnesses. They watched part of the football game at home on the day in question. The defendant had left home before the game, but returned shortly after it started. The victims (Jarrett and his girlfriend Latonya) arrived before the defendant got back and were still there when he returned. Mrs. Ramirez indicated that the defendant and Jarrett grew up together, though she did not know him personally. The victims were still there when Mrs. Ramirez and Nikosha (and Patrick, Jr.) left around 7:00 p.m. or 8:00 p.m. to go visit Mrs. Ramirez’s mother who lived nearby. Terry, who was wearing an ankle bracelet because he was under house arrest at the time due to juvenile offenses and was subject to a 7:00 p.m. curfew, stayed home with the defendant. Everything appeared to be okay when they left, no one was arguing, and the victims’ gray vehicle was parked on the grass in the defendant’s yard at the time. Mrs. Ramirez testified that Johnson was not there when she left and that she did not see him that night. However, Terry confirmed that Johnson arrived in a Dodge Durango after his mother and siblings left. Shortly after Johnson arrived, Terry went into his mother’s bedroom and began texting and talking on the phone and listening to music with his earbuds. He denied hearing gunshots.

When Terry came out of his mother's bedroom, he observed blood streaks smeared on the floor from the kitchen to the living room and between the doors. He did not see anyone else in the home at the time and went back to his mother's bedroom after briefly sitting in the living room. He recalled the defendant and Johnson returning to the house and that they used the kitchen countertop as they were "counting money, splitting drugs, cleaning guns and stuff." Regarding their comments at the time, he testified they remarked, "It was a nice lick, stuff like that." According to Terry, Johnson was cleaning a .44 revolver and the defendant had a nine-millimeter. He testified that he did not tell his mother what he saw and heard, and noted that it was not his business at that point. He further testified that the defendant and Johnson finished cleaning up the blood before his mother returned.

Mrs. Ramirez, Nikosha, and Patrick, Jr. returned home around 10:00 p.m. or 11:00 p.m., and the defendant was cleaning the home, which had an odor of Clorox. Specifically, defendant was washing dishes and had mopped the floor. Nikosha noticed duct tape on the corner of the stove and showed it to her mother. Mrs. Ramirez questioned T.J. and the defendant, but did not get an explanation for the hole in the stove. During cross-examination, Mrs. Ramirez confirmed that she helped the defendant care for Jarrett at their home after he had been shot earlier that year or at the end of the previous year. Terry confirmed that he had a confrontation with Labode before the trial, regarding the information that was "ratted" to the police in this case.

Labode also testified as a State witness. Before the trial, a material witness arrest warrant was issued for Labode after he failed to cooperate. During the trial, Labode confirmed that he was being compelled to testify and noted that he and the defendant had been friends since 2009. He further testified that he sensed something was wrong when, during the late night hours of February 6, 2011, the

defendant called him and stated that he was going to come to visit him in the morning. When the defendant picked Labode up the next day, they went to a dentist's office in Delmont Village, where the defendant was getting gold teeth. Along the way, the defendant told Labode about two bodies that were in the trunk of a vehicle located at Airline Highway and Dutton Street. Labode testified that the defendant said he and Johnson robbed the victims to get drugs and took money from the bodies. When asked if the defendant told him why they killed the victims, Labode stated, "Not really." Labode waited outside while the defendant briefly went into the dentist's office, and he called Crime Stoppers before the defendant came back to the car. Labode also confirmed that he made the second tip with additional information, including the fact that the defendant told him a bullet went into the stove when he was shooting at one of the victims. Labode also confirmed having a confrontation with Terry wherein they accused each other of being a rat. During cross-examination, Labode denied any involvement in the murders.

Before the trial, Deroy Walden, who also testified as a State witness, was informed that he was in danger of being charged as an accessory after the fact in this case. Walden's mother lived across the street from the defendant and Walden considered him a friend. The defendant called him several times on the night of the Super Bowl and ultimately asked him to pick him up on Airline Highway. While he was driving on Airline Highway toward Scenic Highway (near Dutton Street), he spotted the defendant on the side of the road. Johnson was with the defendant at the time and Walden gave them a ride to the defendant's house. Walden testified that he did not know Johnson would be with the defendant and that he was nervous when he saw Johnson, adding that he did not want to know why they needed a ride or why they were stranded on the road. Regarding Johnson, Walden further indicated that they "weren't cool" and that he would not

have come if he had known Johnson would be with the defendant. Regarding statements by Johnson that night, Walden testified that Johnson was, "saying g-shit [thug shit]." He stated that he felt deceived by the defendant since he did not mention Johnson would be with him, and that he took them directly to the defendant's residence.

Two days later, the defendant called Walden and asked for a ride to Lake Charles and Walden drove him there. Walden confirmed that during the ride to Lake Charles, the defendant began making statements about Johnson's behavior on the night in question, and ultimately stated that Johnson fired "shots through the backseat" and "shot them all through the backseat." Walden initially stated that the defendant did not tell him what occurred in his residence, but subsequently stated that the defendant indicated that Johnson also fired the shots in his residence. He confirmed that the defendant never stated anything about two masked men entering his house, forcing everyone to lay on the floor and strip their clothes off, and shooting the victims before taking them out of the house. He testified that the defendant basically blamed everything on Johnson.

Detective Phillip Chapman (of the BRPD) responded to the tip and located the vehicle parked just off of the roadway facing south on the west side of Dutton Street, about seventy feet south of the service road. Corporal Alesha Kuhn and Sergeant Adam Chaney (also of the BRPD) photographed the vehicle, processed it for DNA and fingerprints, collected evidence, and took reference DNA swabs from the victims. Projectiles, a metal fragment, and suspected bullet holes were in the trunk. When the rear-passenger side door was opened, a shell casing fell out. An additional shell casing was located on the front-passenger seat. Three cell phones were located on the front floorboard, and two shell casings were located on the rear-passenger seat. A total of 7 nine millimeter shell cartridge cases were

found, collected, and processed for DNA, and nine suspected bullet holes were located in the backseat.

Officer Roberta Hotard and Lieutenant Lawrence Cavalier, of the East Baton Rouge Parish Sheriff's Office, executed the search warrant for the defendant's residence at 263 Gatebriar Street, in Alsen Heights Parkway. A blood illumination spray was used to determine what areas of the home to collect swabs for potential evidence. As a result, several swabs were taken throughout the house and several evidentiary items were collected. Duct tape that appeared to be painted white was located on the corner of the kitchen stove. Underneath the tape, there appeared to be a two inch diameter bullet hole. When Officer Hotard pulled the stove out, a piece of lead (a possible bullet fragment) fell from the stove. A can of white paint and duct tape located in a cabinet next to the stove were collected and dusted to lift fingerprints. In the laundry room, clothing that was located between the wall and washer was described as having cockleburs (that stick to the clothing from a wooded or bushed area), an empty bleach bottle was located on the dryer, and a bucket with a mop and dirty water was located in the area. A substance that appeared to be blood was located at the threshold between the kitchen and living room where a piece of tile was missing. A presumptive test was performed and the substance tested positive for blood. The officers photographed the front door and it was devoid of evidence of tampering or damage to the frame or locks. After the stove was transported to a secured storage facility, Officer Hotard pulled the metal grill from underneath the stovetop cover and recovered an empty copper jacket from the top portion of the stove which insulates the oven. Cell phone records were used to develop and locate additional witnesses, including Walden and Labode.⁵ The officers also obtained a search

⁵ Amber Madere of the Louisiana State Police Crime Lab, an expert in latent print processing, analyzed evidence in this case and obtained prints from a plastic bag that contained drugs and a receipt (both had been removed from the backpack). Jackie Hohensee, a latent print examiner of

warrant for medical records from Affordable Dental Care in the Delmont Village Shopping Center and received records showing that on February 7, 2011, a patient listed as Patrick Romez made a final payment of three hundred and twenty dollars in cash toward the installment of gold teeth.

Jeff Goudeau, the firearms and crime scene supervisor for the Louisiana State Police Crime Lab and expert in firearms examination, examined the shell casings, bullets, and fragments collected in this case and determined that the cartridge cases were fired from the same nine millimeter weapon. The bullet removed from the stove was consistent with a .44 caliber, which he further confirmed was a big revolver, like the ones "Yosemite Sam" carried. Goudeau also analyzed the trajectory of bullet holes in the vehicle and determined that a group of shots were consistent with going from the front of the vehicle to the back of the vehicle, in other words, from inside the car into the trunk at downward angles. He testified that several such shots entered the trunk and either entered the victims or remained in the trunk area. He confirmed that additional shots were fired with the trunk open at downward angles.

Corporal Robert Hunt of the BRPD high-tech support unit extracted data from the cell phones collected in this case and noted that all information prior to Monday, February 7, 2011 (including calls and text messages), had been removed from the defendant's phone. Johnson's cell phone was locked with an unknown code such that only the S.D. card could be examined. Timothy Piper, a radio frequency engineer and custodian of records for AT&T Mobility, testified regarding the AT&T cell phone records obtained in this case. Notably, the records

the East Baton Rouge Parish Sheriff's Office, confirmed that Johnson's fingerprints matched prints from the backpack items and the defendant's fingerprint was on the can of white paint located in the kitchen cabinet. Tammy Rash, an expert DNA analyst at the Louisiana State Police Crime Lab, also analyzed some of the evidence in this case, including swabs from casings, and reference swabs from the victims, the defendant, and Johnson. The bulk of the DNA evidence was inconclusive.

confirmed that Sunday night (the date of the murders, February 6) Johnson's cell phone was hitting on the cell site that would be used if he was at the defendant's residence. Sprint frequency engineer Ron Kennedy, an expert in historical cell data analysis, testified regarding the defendant's cell phone records. The defendant's records indicated that his phone was used that Sunday night, February 6, 2011, in the vicinity of Dutton Street, where the vehicle was eventually located. The defendant called Waldon several times starting at about 5:00 p.m., and called Labode three times before midnight. On Monday, February 7, 2011, the defendant called Waldon four times between 1:30 a.m. and 4:30 a.m. and called Labode around 10:20 a.m. and 10:53 a.m.

Dr. Christopher Tape, an expert in forensic pathology, performed the autopsies in this case. Tape testified that Jarrett had multiple gunshot wounds, including one to the head (that entered at the right ear and exited from the left neck) and shots to the abdomen, the lower back, and an exit wound on his thigh. Based on the toxicology results, Jarrett had cocaine and marijuana in his system. Wright also suffered gunshot wounds to the head, back, and had a stab wound on her left chest. She had a total of eight gunshot entry and exit wounds. Wright had morphine and codeine in her system. Sergeant Chaney attended Wright's autopsy and collected three projectiles from the pathologist. Sergeant David Fauntleroy attended Jarrett's autopsy and took photos and collected a spent bullet that was removed from the victim's body.

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 the jury accepted the

testimony presented by the State and rejected the hypothesis of innocence presented by the defendant during his police interview through conflicting, self-serving versions of the events that were not corroborated by any of the witnesses. Labode testified that the defendant informed him of the location of the bodies and confessed to killing the victims, as indicated in his tips to the police. While none of the witnesses saw the defendant shoot the victims, under the broad definition of “principals” in Louisiana, the jury did not have to find that the defendant was the one who fired the shots that killed the victims in order for him to be convicted of second degree murder. Rather, the jury had to find that he had the requisite intent and was involved in the commission of the crime, whether he directly committed the acts constituting the offenses, aided and abetted in their commission, or directly or indirectly counseled or procured another to commit the crimes in order to be prosecuted as a principal. See La. R.S. 14:24; **State v. Arnold**, 2007-0362 (La. App. 1st Cir. 9/19/07), 970 So.2d 1067, 1072, writ denied, 2007-2088 (La. 3/7/08), 977 So.2d 904; **State v. Savoy**, 2006-191 (La. App. 3rd Cir. 5/31/06), 931 So.2d 1207, 1213. We also note that the evidence, including the testimony of the State witnesses, was wholly consistent with the information in the tips provided by Labode, including the defendant’s confession to Labode. Further, the phone records were consistent with the timeline and facts presented by the State witnesses. 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. 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*). 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 for the two counts of second degree murder. The assignment of error is without merit.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.