

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 KA 0147

STATE OF LOUISIANA

VERSUS

CHRISTOPHER JERELL NOBLE

DATE OF JUDGMENT: SEP 21 2018

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 1-15-0303, SECTION VIII, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TRUDY M. WHITE, JUDGE

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

CHUTZ, J.

The defendant, Christopher Jerell Noble, was charged by bill of information with attempted second degree murder, a violation of La. R.S. 14:30.1 and La. R.S. 14:27, and pled not guilty. After a trial by jury, the defendant was found guilty as charged. The trial court denied the defendant's motion for new trial. The defendant was sentenced to ten years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant now appeals,¹ assigning error to the trial court's denial of his motion in limine and to the sufficiency of the evidence. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On October 1, 2014, officers of the Baton Rouge Police Department (BRPD) were dispatched to 6219 Callahan Street, the scene of a shooting. When Officer Theodore Smith arrived at the scene, he observed a black male, later identified as Gregory Johnson, Jr. (the victim herein), with apparent gunshot wounds. The victim was near a vehicle (the victim's 2014 white BMW) at the time and was receiving medical aide by someone at the scene who identified herself as a nurse. As additional officers arrived on the scene, Officer Smith began securing the scene, EMS was summoned, and the victim was transported to the hospital.

¹ The motion for appeal was filed thirty-five days after the sentence was imposed, there were no oral objections, and no motion to reconsider sentence was filed. Thus, the appeal was not timely filed pursuant to La. Code Crim. P. art. 914. However, our supreme court has held that a remand to the district court for further proceedings pursuant to **State v. Counterman**, 475 So.2d 336 (La. 1985), "would only prolong the delay without serving any useful purpose." **State v. S.J.I.**, 2006–2649 (La. 6/22/07), 959 So.2d 483. As in **S.J.I.**, in this case the trial court granted a motion for appeal and appointed the Louisiana Appellate Project to represent the defendant on appeal, and the State failed "to complain about any procedural irregularities in the ordering of the out-of-time appeal[.]" **S.J.I.**, 959 So.2d at 483. Thus, as the reasoning in **S.J.I.** applies to the instant case, this court will address the defendant's assignments of error. See also **State v. Shay**, 2007–0624 (La. 10/26/07), 966 So.2d 562 (the supreme court vacated the judgment of this court dismissing the defendant's appeal where the trial court ruled on an untimely motion to reconsider sentence, granted the motion for appeal, and appointed the Louisiana Appellate Project without complaint by the State).

At trial, which took place one year and eight months after the shooting, the victim testified that at the time of the offense he had just returned to Baton Rouge after completing a job (presumably welding) in Minnesota. On the day in question, he received a phone call from a friend, the defendant. The defendant made a comment about the money that the victim was making from his out-of-town work and ultimately asked the victim to meet him in the victim's childhood neighborhood. The victim agreed to do so. Once the victim arrived in the area, at approximately 7:30 to 8:00 p.m., he did not see the defendant, so he texted him to obtain his exact location. The defendant advised that he was on Callahan Street, which the victim described as a dark, back street. As he approached Callahan Street, the victim saw the defendant sitting on a porch with another individual. As the defendant waved and signaled, the victim backed into the driveway. The defendant approached the passenger side, and the victim unlocked the door to allow the defendant to enter the vehicle.

With his back to the victim, the defendant took his time entering the vehicle, prompting the victim to inquire, "Man, what's taking so long to get in the car ... [w]hat 'cha doing?" The defendant responded, "I'm trying to get this big-ass gun in here." As the victim looked at the defendant and asked what the gun was for, the defendant began shooting at the victim. The victim began dodging the bullets and despite being shot in the foot and buttocks, he was able to exit his vehicle. After exiting the vehicle, the victim was unable to run. He turned to face the vehicle and angrily asked the defendant what was going on and why he was shooting him. At that point, the defendant had his gun propped against the vehicle's console and continued firing.

As the gunfire continued, another individual came around the car and approached the victim. While the victim was able to see the defendant's face clearly, he was unable to identify the other individual. The victim stumbled

towards the street as he continued to be hit by gunfire, including shots to the knee, arm, leg, and one bullet that entered his side and exited through his stomach. The victim testified that just before he was shot in the face, which was the final gunshot he was able to recall, he heard the defendant (whose voice he recognized) state, "The n***** still won't die ... you better keep shooting." He could also hear a female in the background screaming. The victim continued to hop on one leg until he reached a flat surface and lay down. As he heard the defendant and the other unknown individual flee from the scene, a female from a nearby house came to his assistance. The victim described his injuries at the trial, noting that he still had bullet fragments, rods, and pins in his arm. Among other procedures, the victim underwent intestinal surgery and reconstructive surgery on the lower portion of his face, during which brackets were placed between his jaws and neck.

SUFFICIENCY OF THE EVIDENCE

In assignment of error number two, the defendant challenges the sufficiency of the evidence. The defendant claims that his conviction is solely based on inconsistent statements of the victim, who has a criminal history and initially identified the defendant by a different name. The defendant further contends that there was no physical evidence to link him to the crime. He contends that the fingerprint evidence only shows that he touched the exterior of the victim's car at some point. The defendant notes that his fingerprints and/or DNA were not found inside the vehicle, on the exterior passenger door, or the passenger door handle, despite the victim's claim that the defendant opened the car door and sat in the car before firing several shots while inside the vehicle. The defendant further contends that no blood was found inside the vehicle despite the victim's testimony that he was hit by several bullets while inside the vehicle. He claims that there was no evidence that the nine-millimeter firearm recovered from his girlfriend's residence had ever been fired, or that it was linked to any of the spent shell casings

or projectiles found at the scene. He contends that while the U.S. Marshals recovered a cell phone purportedly belonging to the defendant, there was no evidence of any exchange of communications between the defendant and the victim to corroborate the victim's story. Finally, the defendant notes that the jury struggled to reach a verdict in this case and was instructed to continue their deliberation after indicating that they could not reach a verdict after the initial two-hour deliberation period. While the defendant does not dispute that the victim was shot multiple times and was the victim of an attempted second degree murder, he maintains that the State failed to sufficiently prove that he was the shooter.

When issues are raised on appeal contesting the sufficiency of the evidence and alleging one or more trial errors, the reviewing court should first determine the sufficiency of the evidence. The reason for reviewing sufficiency first is that the accused may be entitled to an acquittal under **Hudson v. Louisiana**, 450 U.S. 40, 43, 101 S.Ct. 970, 972, 67 L.Ed.2d 30 (1981), if a rational trier of fact, viewing the evidence in accordance with **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), in the light most favorable to the prosecution, could not reasonably conclude that all of the essential elements of the offense have been proven beyond a reasonable doubt. When the entirety of the evidence is insufficient to support the conviction, the accused must be discharged as to that crime, and any discussion of trial error issues as to that crime would be pure dicta since those issues are moot. However, when the entirety of the evidence is sufficient to support the conviction, the accused is not entitled to an acquittal, and the reviewing court must then consider the other assignments of error to determine whether the accused is entitled to a new trial. If the reviewing court determines that there has been trial error (which was not harmless) in cases in which the entirety of the evidence was sufficient to support the conviction, then the accused

will be granted a new trial, but is not entitled to an acquittal. See State v. Hearold, 603 So.2d 731, 734 (La. 1992).

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, as enunciated in **Jackson v. Virginia**, 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 beyond a reasonable doubt. See La. Code Crim. P. art. 821(B); **State v. Ordodi**, 2006–0207 (La. 11/29/06), 946 So.2d 654, 660. 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,” every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. **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. 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 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).

The crime of second degree murder, in pertinent part, “is the killing of a human being: (1) [w]hen the offender has a specific intent to kill or to inflict great bodily harm[.]” La. R.S. 14:30.1(A)(1). 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). Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. Specific intent

may be proven by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Buchanon**, 95–0625 (La. App. 1st Cir. 5/10/96), 673 So.2d 663, 665, writ denied, 96–1411 (La. 12/6/96), 684 So.2d 923. To be guilty of attempted second degree murder, a defendant must have the specific intent to kill and not merely the specific intent to inflict great bodily harm. **State v. Maten**, 2004–1718 (La. App. 1st Cir. 3/24/05), 899 So.2d 711, 716, writ denied, 2005–1570 (La. 1/27/06), 922 So.2d 544. It has long been recognized that specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. **State v. Hoffman**, 98–3118 (La. 4/11/00), 768 So.2d 542, 585, opinion supplemented by, 2000–1609 (La. 6/14/00), 768 So.2d 592 (per curiam), cert. denied, 531 U.S. 946, 121 S.Ct. 345, 148 L.Ed.2d 277 (2000).

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. **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.

Corporal Darcy Taylor of the BRPD Crime Scene Division was assigned to the case and took photographs at the scene, including the victim's white BMW and bloodstains on the scene. Multiple shell casings and bullets were recovered from inside the vehicle, including the windshield, dashboard and the floorboard of the front-passenger seat. Bullet-hole damage to the front driver's-door panel and center console was also photographed.

Detective Belford Johnson of the BRPD Homicide Department was the lead detective on the scene. While at the scene, Detective Johnson was advised that the victim had identified the shooter as "Big Chris." Officer Kenneth Patterson, a BRPD crime scene investigator, collected the evidence at the scene, including the shell casings. Officer Patterson testified that nine-millimeter caliber Luger casings and forty-caliber Smith and Wesson casings were recovered at the scene. Specifically, ten to twelve forty-caliber casings were located mainly inside of the vehicle, while eleven nine-millimeter casings were located outside the vehicle, on or near the roadway, driveway, grass, or front yard of the house. The vehicle was also processed for fingerprints on the scene. Corporal Taylor and Officer Patterson could not recall whether any blood was located inside the vehicle. Officer Darryl Dyer of the BRPD Crime Scene Division responded to 2888 Dougherty Street, Apartment 12, which was the residence of the defendant's girlfriend, Antonia Walker, to collect evidence and take photographs while executing a search warrant. Officer Dyer recovered a nine-millimeter SIG Sauer pistol, a magazine, fifteen nine-millimeter Luger Plus P-RP bullets, and a cell phone from a bedroom dresser. The cell phone was damaged (including a cracked screen) and non-functioning. Walker indicated that the cell phone and firearm belonged to the defendant. The defendant later voluntarily turned himself in to the police, but declined to give a statement.

Amber Medere, a crime lab analyst at the Louisiana State Police Crime Lab, testified as an expert in latent fingerprint comparison. Ms. Medere compared reference fingerprints of the defendant to the six latent fingerprint lifts in evidence in this case that were collected by Officer Patterson. As labeled, the latent fingerprint lifts were retrieved from the exterior of the BMW. Two identifications

were made to the defendant's left palm, one from the driver's side of the BMW's trunk (lift one) and the other from the passenger side of the trunk (lift five).²

After being transported to the hospital, the victim was placed in an induced coma for several days. Meanwhile, Detective Johnson received anonymous tips from individuals who identified "Big Chris" as Chris Noble, and implicated another individual, Reynard O'Conner, in the incident. Based on the information that he received, Detective Johnson prepared separate photographic lineups that included photographs of the defendant and O'Conner and other individuals with similar facial features and skin tones. On October 7, 2014, while recovering from his injuries, the victim was interviewed at the hospital. Detective Johnson conducted the video recorded interview of the victim as he lay in his hospital bed.³ During the interview, the victim confirmed that he received a call on the day in question from a friend who "goes by a couple of names," including "Big Archie." Big Archie asked the victim to meet him on the day in question. The victim noted that he and the defendant were "cool," and he did not suspect anything. He noted that before the shooting, he believed the defendant, who was younger than the victim, looked up to him.

When asked if anyone else was there when he arrived at the scene, the victim stated that he did not know "the other dude" he saw sitting on the porch. After "Big Archie" entered the victim's vehicle, he began shooting the victim. The victim further stated that he was able to exit his vehicle as the shots continued. The victim was unable to discern whether shots were also being fired from a second shooter, as he kept his head down. He heard Big Archie stating, "Die ...

² Additional identifications were made through the Automated Fingerprint Identification System (AFIS), taken from the trunk center of the BMW, to Raniard (spelled elsewhere in the record as "Reynard") O'Conner. Two additional latent fingerprint lifts taken from the trunk passenger side and the passenger door were not of a significant value.

³ Before the hospital interview was played at trial, the victim testified that he used one or both of the defendant's nicknames, "Big Chris" and/or "Big Archie," in identifying the shooter during the interview.

why won't you just die." During the recording, the victim participated in the photographic lineups, wherein he identified number five (the defendant) in the first lineup as Big Archie, the individual who called him by phone to arrange the meeting just prior to committing the shooting. The victim stated that he knew Big Archie, as they grew up together. The victim did not identify anyone from the second photographic lineup that included a photograph of Reynard O'Conner.

At trial, the victim again identified the defendant in court as the shooter.⁴ The victim testified that he had known the defendant for ten years, explaining that he first met the defendant when the defendant was young. He referred to the defendant as "Big Chris," and later indicated that he sometimes used the defendant's other nickname, "Big Archie." The victim further described a lapse in their association. However, when he was released from a period of incarceration, he began seeing the defendant again in the neighborhood. The victim testified that he and the defendant would spend time eating or talking at a mutual friend's place of business. The victim acquired his vehicle in April 2014, about six months before the shooting, and was unaware of any occasion that the defendant could have touched his vehicle other than on the day of the shooting.

The verdict rendered in this case indicates that the jury credited the testimony of the victim. 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**, 96-1429 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. The credibility

⁴ On direct examination the victim testified that his criminal background included an armed robbery when he was seventeen years old and a felony drug offense committed in his late twenties. The victim further indicated that he was thirty-seven years old and a welder at the time of the trial.

of witnesses will not be reweighed on appeal. **State v. James**, 2002–2079 (La. App. 1st Cir. 5/9/03), 849 So.2d 574, 581.

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. The jury viewed the victim’s pretrial interview in comparison to the victim’s trial testimony. We note that the victim’s pretrial statement, even under his hospitalized condition, was highly consistent with his trial testimony. The victim had known the defendant for many years. The victim consistently, and without any doubt, identified the shooter as the defendant. The victim was certain that the defendant entered his vehicle and opened fire. While the victim used the name “Big Archie” during the interview, both during the interview and at trial, the victim stated that he knew the defendant by two nicknames. He testified that those nicknames were “Big Chris” and “Big Archie.” His statements regarding additional facts surrounding the shooting were also consistent, including the claim that the defendant summoned him to the scene and that another, unknown male was present when he arrived. Two of the fingerprints lifted from the victim’s vehicle, one from the passenger side and the other from the driver’s side, matched the defendant’s left palm print. The victim was unaware of any other occasion that the defendant could have left his fingerprints on the vehicle.

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). A court of appeal impinges on a fact finder’s discretion beyond the extent necessary to guarantee the fundamental protection of due process of law in accepting a hypothesis of innocence that was not unreasonably rejected by the

fact finder. See State v. Mire, 2014–2295 (La. 1/27/16), ___ So.3d ___, ___, 2016 WL 314814 (per curiam). A thorough review of the record indicates that 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 attempted second degree murder, and the defendant’s identity as the perpetrator of the offense. Based on the foregoing reasons, assignment of error number two lacks merit.

MOTION IN LIMINE

In assignment of error number one, the defendant argues the trial court erred in denying his motion in limine, which sought to prevent the State from admitting the fingerprint results. The defendant contends that defense counsel received the fingerprint results only three to four hours prior to filing the motion, on the second day of the trial. Conceding that the State provided open file discovery, the defendant claims that he had no way of knowing that the fingerprints had been tested. The defendant contends that the State had an on-going duty to provide evidence to the defense as received, despite the fact that open file discovery was provided. The defendant further contends that the defense had no duty to request that evidence be tested or to point out to the State that evidence had not yet been tested. The defendant argues that he suffered actual prejudice due to the late disclosure, claiming that he was not able to contest the fingerprint matches as there was insufficient time to hire an expert to evaluate the fingerprints. Finally, in asserting that the evidence was not overwhelming in this case, the defendant cites the jury’s initial indication that it could not reach a verdict and the additional arguments raised in connection with his challenge to the sufficiency of evidence.

Under La. Code Crim. P. art. 718, in pertinent part, the State is required, upon written motion of the defendant, to produce documents or tangible objects

within the possession, custody, or control of the State that are intended for use by the State as evidence at trial. The State is under a continuing obligation to promptly disclose additional evidence that may be discovered or that it decides to use as evidence at trial. La. Code Crim. P. art. 729.3. Under La. Code Crim. P. art. 719(A), in pertinent part, the State is required, upon motion of the defendant, to permit or authorize the defendant to inspect and copy, photograph, or otherwise reproduce any results or reports, or copies thereof, of scientific tests or experiments, made in connection with or material to the particular case, that are in the possession, custody, control, or knowledge of the State and intended for use at trial.

Herein, at the hearing on the defendant's motion in limine, which took place just after the jury was selected, the State confirmed that pretrial discovery was provided and that the defendant was aware that the fingerprints had been lifted at the scene. The State further indicated that the results were given to the defense when the State received them, adding that the defense had the results the day before the hearing. After the trial court denied the motion in limine, the defendant did not request a continuance, even though the State suggested that defense counsel could do so, particularly since the jury had not yet been sworn. The defense also apparently declined the State's offer to make the witness scheduled to testify regarding the fingerprint results available to defense counsel before testimony began. Upon the State's inquiry, defense counsel confirmed that he had discussed the fingerprint results with the defendant when they were received. After confirming that there were no additional preliminary matters, the trial continued.

The articles regulating discovery are intended to eliminate unwarranted prejudice that could arise from surprise testimony. Discovery procedures enable the defendant to properly assess the strength of the State's case against him in

order to prepare his defense. **State v. Johnson**, 604 So.2d 685, 691 (La. App. 1st Cir. 1992), writ denied, 610 So.2d 795 (La. 1993). In the event of a discovery violation, the court may order the party to permit the discovery or inspection, grant a continuance, order a mistrial on motion of the defendant, prohibit the party from introducing into evidence the subject matter not disclosed, or enter such other order, other than dismissal, as may be appropriate. La. Code Crim. P. art. 729.5(A). For failure to comply with discovery requests, the trial judge is given wide latitude in choosing the appropriate sanction provided in La. Code Crim. P. art. 729.5. **State v. Busby**, 464 So.2d 262, 264 (La. 1985), cert. denied, 474 U.S. 873, 106 S.Ct. 196, 88 L.Ed.2d 165 (1985), vacated on other grounds, 538 So.2d 164 (La. 1988).

If a defendant is lulled into a misapprehension of the strength of the State's case by the failure to fully disclose, such prejudice may constitute reversible error. **Johnson**, 604 So.2d at 691. However, even if the State had not complied with its continuing duty to disclose, the failure to comply fully with discovery rules does not constitute reversible error unless actual prejudice results. See Busby, 464 So.2d at 264; **State v. Pooler**, 96–1794 (La. App. 1st Cir. 5/9/97), 696 So.2d 22, 51, writ denied, 97–1470 (La. 11/14/97), 703 So.2d 1288; **State v. Bates**, 95–1513 (La. App. 1st Cir. 11/8/96), 683 So.2d 1370, 1375; **State v. Thomas**, 504 So.2d 907, 914 (La. App. 1st Cir.), writ denied, 507 So.2d 225 (La. 1987).

In this case, the defendant does not deny that all the evidence introduced at trial was available for independent examination and testing. He does not claim that the State refused to provide the defendant access to any of the evidence it had in its possession, custody, or control. The reason for the delay in analyzing the fingerprints is unclear from the record. Nonetheless, even assuming that the State violated the discovery articles, the defendant has not demonstrated that he was prejudiced by the admission of the fingerprint evidence. We note that when faced

with such a discovery violation, the normal remedy is not suppression of the evidence. **State v. Foret**, 628 So.2d 1116, 1119, n.2 (La. 1993). Trial counsel, had he needed additional time to prepare, could have asked for a recess or continuance in accordance with La. Code Crim. P. art. 729.5, but did not to do so. See **State v. Arnaud**, 412 So.2d 1013, 1017 (La. 1982) (in assuming a discovery violation by the State, the Court considered the sanction of suppressing the evidence to be “extreme,” explaining that the defendant could have asked for a recess or continuance but chose not to do so). The defendant cross-examined Ms. Medere, the crime lab analyst, and argued that doubt was created by the location of the fingerprints and the lack of DNA and additional fingerprint evidence. Moreover, the evidence against the defendant was overwhelming, consisting of a positive identification by the victim, who knew the defendant well and saw him enter his vehicle and open fire. The use of fingerprint evidence to establish the identity of the perpetrator was cumulative of the victim’s testimony as an eyewitness. See e.g., **Busby**, 464 So.2d at 264-65. Considering the circumstances herein, there is no showing of prejudice. Thus, assignment of error number one lacks merit.

CONVICTION AND SENTENCE AFFIRMED.