

NOT DESIGNATED FOR PUBLICATION

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J

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 KA 0257

STATE OF LOUISIANA

VERSUS

LANIRA DAWSON

JUDGMENT RENDERED: SEP 21 2018

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Docket Number 585754

Honorable Reginald T. Badeaux, III, Judge

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

J.P. Pettigrew, J. Concurs

WELCH, J.

The defendant, Lanira J. Dawson, was charged by bill of information with aggravated criminal damage to property, a violation of La. R.S. 14:55, and pled not guilty. After a trial by jury, she was found guilty as charged. Subsequently, the trial court granted the defendant's motion for post-verdict judgment of acquittal. The State now appeals, assigning error to the trial court's ruling on the motion for post-verdict judgment of acquittal. For the following reasons, we reverse the trial court's ruling, reinstate the conviction, and remand for further proceedings.

STATEMENT OF FACTS

On November 6, 2016, just after 7:00 a.m., the St. Tammany Parish Sheriff's Office (STPSO) received a 911 emergency call from Daja James, reporting that she was being harassed by a female (the defendant), whose vehicle had just collided into her vehicle. Within approximately ten minutes of the dispatch, Deputy Nathan Reis of the STPSO responded to the scene of the Mizer's Grocery parking lot on Gause Boulevard in Slidell and observed the defendant standing outside of her vehicle, a red Chevy Cavalier, having a heated verbal argument with her boyfriend, James Ducree. James was inside of her vehicle, a blue Mustang, at the time.

According to James, Ducree, her long-time friend, called her the night before the incident in question and asked her if he could spend the night at her house because he and his girlfriend, the defendant, had a fight. Ducree also asked James if she would bring him to work, at Mizer's Grocery store, the next morning. James agreed, and when they arrived at Ducree's place of employment, they sat in James's vehicle in the parking lot for a while and conversed. Suddenly, Ducree asked James to put the vehicle in drive and drive away. As James began to question Ducree, she looked up and saw a woman running toward her vehicle. The female, the defendant, had her hand up and as James shifted into drive, the

defendant began banging on James's car window. As James and Ducree pulled off, the defendant reentered her vehicle, drove around the parking lot, and exited onto Military Road. The defendant then reentered the parking lot, meeting James at the parking lot exit that she was attempting to take. As the defendant's vehicle was blocking the exit and meeting them head-on, James put her vehicle in reverse in an attempt to avoid a collision. However, the defendant continued to drive towards James's vehicle, which was traveling in reverse at less than ten miles per hour. James slowed down before coming to a complete stop, as there were many parked vehicles and poles in the parking lot. According to James, the defendant's vehicle was approximately forty to fifty feet away at the time that James came to the complete stop. The defendant kept driving toward James's vehicle and smashed into the front of the vehicle.

James and Ducree did not suffer any injuries as a result of the collision. However, the damage to James's vehicle's front-end and front bumper was observed and photographed by Deputy Reis. After the incident, James obtained an estimate for the damage to her vehicle, and the cost of repair was estimated at twelve hundred dollars.

ASSIGNMENT OF ERROR

In the sole assignment of error, the State argues that the trial court erred in granting the defendant's motion for post-verdict judgment of acquittal. The State contends that the trial court failed to apply the correct standard, specifically contending that the trial court did not view the evidence in the light most favorable to the State. The State further contends that the trial court substituted its own appreciation of the evidence for that of the jury in finding that there was a lack of evidence that it was foreseeable that human life might be endangered. Finally, the State argues that the evidence, when viewed in the light most favorable to the State, supports the jury's conclusion that the defendant was guilty of aggravated

criminal damage to property. Citing **State v. Williamson**, 2009-1299 (La. App. 1st Cir. 12/23/09), 2009 WL 4981333 (unpublished), the State argues that the evidence specifically supports the jury's finding that it was foreseeable that human life *might* be endangered where the defendant chased and smashed into the vehicle occupied by James and Ducree. The State contends that the defendant targeted the vehicle, furious after catching James and Ducree together. As the State further notes, the defendant admitted that she "lost it," and chased the vehicle, causing James to drive in reverse through a parking lot with several poles and parked cars, before ultimately smashing into the vehicle. While noting that the defendant did not challenge the proof offered as to the other elements of the offense, the State submits that the record amply supports the jury's conclusion that all of the elements were proven, citing the defendant's own written statement and admissions, James's testimony, and the evidence of the damage to James's vehicle.

Louisiana Code of Criminal Procedure Article 821(D) permits the State to appeal if a post-verdict judgment of acquittal is granted. A post-verdict judgment of acquittal is to be granted only if the court finds that the evidence, viewed in the light most favorable to the prosecution, does not reasonably permit a finding of guilty. La. C.Cr.P. art. 821(B); see also **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 2783, 61 L.Ed.2d 560 (1979) (requiring that we view the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt); **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660. **State v. Lemoine**, 2015-1120 (La. 5/3/17), 222 So.3d 688, 690-91 (*per curiam*). The trial judge cannot act as a thirteenth juror in reviewing a jury verdict under La. C.Cr.P. art. 821, but must review under the much more restrictive **Jackson** standard.¹

¹ The **Jackson** standard "... gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." **Jackson v. Virginia**, *supra*, 99 S.Ct. at 2789.

State v. Korman, 439 So.2d 1099, 1101 (La. App. 1st Cir. 1983).

In conducting the review under **Jackson**, we also must be expressly mindful of Louisiana's circumstantial evidence test, i.e., "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." 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; see also **State v. Patorno**, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144. 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. **Wright**, 730 So.2d at 487.

In pertinent part, aggravated criminal damage to property is the "intentional damaging of any ... movable, wherein it is foreseeable that human life might be endangered, by any means other than fire or explosion." La. R.S. 14:55(A). The State had to prove only that it was foreseeable that human life might be endangered. La. R.S. 14:55. The crime of aggravated criminal damage to property requires proof of general criminal intent. See **State v. Brumfield**, 329 So.2d 181, 189-90 (La. 1976). General criminal intent is present when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. La. R.S. 14:10. Aggravated criminal damage to property is committed upon proof that the accused voluntarily did the act. **Brumfield**, *supra*.

At trial, Deputy Reis and James noted that the location of the offense, Mizer's parking lot, consisted of a large shopping center, including such businesses as a vision center, Subway, the grocery store, and McDonald's. Deputy

Reis noted that upon his arrival, the defendant appeared to be very angry, upset, and agitated. He described James as calm but very nervous, apprehensive, and fairly scared. James informed Deputy Reis that she had brought Ducree to work that morning. Her verbal and written statement was consistent with her subsequent trial testimony. Ducree corroborated James's statement but did not provide a written statement. After the defendant was advised of her **Miranda**² rights, she agreed to give a statement and signed a waiver of rights form. The defendant's verbal and written statement corroborated James's verbal and written statements and Ducree's verbal statement. The defendant's written statement specifically provides as follows: "It all started on Nov. 6th when we got into a [sic] argument he wouldn't come back home. So he called his mistress and me trying to make things better I came to his job but he was in the car with her and I lost it. I chased the car and ran into it." Deputy Reis observed and photographed the damage to the front end and bumper of James's vehicle and of the defendant's vehicle, which was consistent with the statements from James, Ducree, and the defendant.

According to James's testimony, she was scared at the time of the incident because the defendant's vehicle was coming at her head-on as she was driving in reverse, and she could see that the defendant was very angry. Just before the defendant crashed into her vehicle, James slowed down, noting that there were several poles and parked cars in the parking lot. As James testified, after James stopped her vehicle, the defendant slowed down a bit just before the contact, "[I]ike she didn't want to hit the car, but then she still came towards the front of the car and she hit me."

James further testified that it appeared that the defendant intentionally hit

² **Miranda v. Arizona**, 384 U.S. 436, 444-445, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966).

James's car and stated that it did not appear that the defendant ever tried to stop her car from hitting James's car. After the collision, the defendant and James exited their vehicles. James asked the defendant why she hit her vehicle and the defendant indicated that she did so because James was in the car with the defendant's boyfriend. The defendant and Ducree then began arguing. Ducree told James to call the police as the encounter became physical (the defendant began striking James). The police officer arrived and separated the two. James then provided a police statement. James indicated that the damage to her vehicle caused by the defendant that day included damage to her side fender above the tire, damage to the paint, and a cracked fog light. James acknowledged, as stated during the 911 call, that she thanked the defendant for hitting her vehicle, stating that she would be able to repair her bumper after the defendant's actions. She testified that the preexisting damage to her bumper included paint chips from mosquitoes and other objects hitting the front of her bumper and a chip of paint that was missing when she purchased the vehicle.

Ducree, who was in the vehicle with James at the time of the incident, testified that he was surprised to see the defendant at the parking lot that morning. He immediately told James to drive off and James complied, but the defendant "cut her off." Ducree denied that the defendant ever exited her vehicle before the crash. Ducree indicated that James made a loop around the median and headed towards the exit, and that the defendant began talking out of her window, telling James to back up. Ducree further indicated that James initially began backing up slowly, but then picked up speed, travelling between five and ten miles per hour. According to Ducree, the defendant then smashed on her brakes but, as her vehicle was an old model, it slid and hit James's car. When asked why James stopped her vehicle suddenly, Ducree testified, "We out the way already. So she just stopped." Ducree denied ever being afraid for his life and stated that there were no other

people in the parking lot at the time of the incident. The defendant did not testify at trial.

In **Williamson**, the defendant and his girlfriend, Brenda Aucoin, were traveling in their respective pickup trucks. The defendant's truck had special heavy-duty bumpers. The defendant wanted Aucoin to come home with him, but she refused. The defendant pulled away from Aucoin's truck, angled his truck so that his rear-bumper faced Aucoin's driver's side, accelerated, and rammed into her truck while she was sitting in it. Aucoin had dropped her keys on the floorboard and was reaching down to get them when she felt the impact, which occurred with enough force to cause Aucoin's truck to "fish-tail." The defendant left, and Aucoin called the police. She was taken to Teche Regional Medical Center, where she was treated for dizziness, headache, and neck, shoulder, and spinal pain. The defense, through argument and cross-examination, challenged the sufficiency of the evidence to support a finding that it was foreseeable that the defendant's actions might endanger human life. The defendant likewise limited his contention on appeal to the foreseeability element of the offense. This court noted the defendant's vehicle had heavy duty bumpers and that Aucoin's vehicle was hit with force, such that she was injured. In finding the jury could rationally conclude that Aucoin's life was endangered by the defendant's conduct, this court noted that the State had to prove only that it was foreseeable that human life *might* be endangered.

Herein, in granting the motion for post-verdict judgment of acquittal, the trial court noted that James and the defendant were only driving up to ten miles per hour. In pertinent part, the trial court concluded: "I think the most accurate description of what happened ... [i]s that Ms. [James] made a 90-degree turn in reverse, you know, trying to evade Ms. Dawson, but then all of a sudden stopped because she was afraid of backing into a parked car. And then Ms. Dawson hit her

brakes and skidded into her car.” The trial court noted that the estimate for the damage to James’s vehicle was at the high-end based on the photographs, conceding that the damage was certainly above five hundred dollars. The trial court added, “But to that extent, you could almost argue that was just negligence. She wasn’t able to stop in time.”

While the punishment for simple criminal damage to property is dependent upon the amount of damage to the property, no such requirement exists for aggravated criminal damage to property. **State v. Kitchen**, 2017-0362 (La. App. 1st Cir. 9/15/17), 231 So.3d 849, 857. Further, because the crime of aggravated criminal damage to property is a general intent crime, the jury was not required to find that the defendant actively desired to hit the vehicle occupied by James and Ducree, only that hitting James’s vehicle was a reasonably certain outcome of the defendant’s intentional use of her own vehicle. See **State v. Julien**, 2009-1242 (La. App. 3rd Cir. 4/7/10), 34 So.3d 494, 499. It is the role of the fact finder to weigh the respective credibilities of the witnesses, and the trial court should not second-guess the credibility determinations of the trier of fact. See La. C.Cr.P. art. 821(B); see also **State ex rel. Graffagnino v. King**, 436 So.2d 559, 563 (La. 1983), citing **State v. Richardson**, 425 So.2d 1228 (La. 1983). 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 inferred that based on the defendant’s actions, causing the vehicle occupied by James and Ducree to travel in reverse in a congested parking lot just before colliding into the vehicle, it was foreseeable that human life might be endangered. 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 trial court erred 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. See **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (*per curiam*).

It is well-settled that a jury is free to believe some, none, or all of any witness's testimony. The trial court could not reweigh the evidence in considering the motion for post-verdict judgment of acquittal. See **State v. Voorhies**, 590 So.2d 776, 777-78 (La. App. 3rd Cir. 1991). We find that the trial court impermissibly did so in this case. Based on our careful review, 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 aggravated criminal damage to property. The trial court erred in vacating the verdict. The State's sole assignment of error has merit.

For the reasons discussed, the trial court's ruling is reversed, and the original conviction is reinstated. Further, the case is remanded for sentencing based on the jury's verdict. The trial court is directed to inform the defendant of the provisions of La. C.Cr.P. art. 930.8 at sentencing.

**POST-VERDICT JUDGMENT OF ACQUITTAL REVERSED;
ORIGINAL CONVICTION REINSTATED; AND REMANDED FOR
SENTENCING.**