NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 KA 1795

STATE OF LOUISIANA

VERSUS

DAVID L. WILLIAMS

Judgment Rendered: MAY 31 2019

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 06-13-0241
Honorable Trudy M. White, Judge Presiding

* * * * * *

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* * * * * *

BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

GUIDRY, J.

The defendant, David Williams, was charged by grand jury indictment with two counts of second degree murder, violations of La. R.S. 14:30.1. He pled not guilty to both counts. In a previous appeal related to this case, the State appealed the trial court's granting of the defendant's motion to quash West Baton Rouge as an improper venue for the murder of Jamie Williams, and this court found no abuse of discretion. State v. Williams, 12-1119 (La. App. 1st Cir. 3/25/13), 2013 WL 1196617 (unpublished). Following a trial by jury, the defendant was found guilty as charged on both counts. On each count, the trial court imposed a sentence of life imprisonment at hard labor, to be served without the benefit of probation, parole, or suspension of sentence. The defendant filed a pro se motion to reconsider sentence, which the trial court denied. The defendant now appeals, filing a counseled brief and a pro se brief. In the counseled brief, defendant's counsel asserts no assignments of error and submits a motion to withdraw, but requests review under La. C.Cr.P. art. 920. In the pro se brief, the defendant asserts two assignments of error. For the reasons that follow, we affirm the convictions and sentences and grant defense counsel's motion to withdraw.

STATEMENT OF FACTS

Esdron Brown, the current Port Allen Police Department Chief of Police, who was employed by the West Baton Rouge Parish Sheriff's Office at the time, testified that on September 1, 2007, he was dispatched to North River Road, where a car was on fire. The scene was determined to be a possible homicide. Police discovered that a bullet had fallen out of the burning car. Two burned bodies were discovered inside the car, one in the front passenger's seat, and one on the floor board of the back seat. Multiple bullets were also recovered from the victims' bodies. The body in the front seat was determined to be Jamie Williams, and his cause of death was determined to be exsanguination due to three bullet wounds.

The body in the back seat was determined to be Drexel Swayzer, and his cause of death was a gunshot wound to the back. Before Swayzer died, he inhaled the smoke from the burning car. Both Williams and Swayzer were each determined to have a blood alcohol content of over .10.

Danielle Gillam, the defendant's girlfriend in 2007, testified that on the evening of August 31, 2007, they were at the Greenway Billiards, where she was "partying" and he was working as a security guard. Also at the club that night were Gillam's sister, Warnette Ward; Gillam's friend, D'Marius "Nikki" Allen; Nikki's friend, Jeremiah Jones; and Warnette's boyfriend, Charles Harris. They stayed until closing time, approximately 2:15 a.m., and left to go to the Suburban Apartments in Baton Rouge, where Gillam and the defendant lived. All had been drinking. When the defendant and Gillam pulled up to the apartment complex, they began arguing in the car. The defendant then left. Drexel Swayzer, Gillam's relative, arrived at the apartment complex at some point with his relative, Jamie Williams. Allen and Jones were in a second car together, and Swayzer and Williams were in a third car. Allen started talking to Williams, and Gillam leaned into the car to talk to Swayzer. Gillam left the car because the defendant pulled into the parking lot and was "tripping." Gillam and the defendant argued again, and the defendant noticed Swayzer and Williams laughing in the other car. Because he believed they were laughing at him and Gillam, the defendant approached them and began firing shots into the car, first on the passenger's side, then the driver's side. Gillam ran upstairs to tell Harris that the defendant had "shot them."

Harris later met the defendant at a gas station on Airline Highway in Baton Rouge, where the defendant pumped gas directly into the car he was driving. He and the defendant then drove in separate vehicles over the Mississippi River Bridge into West Baton Rouge Parish to a levee. Harris testified that he stopped

his car before going over the levee, while the defendant drove to the other side. Once the defendant was on the other side of the levee, Harris could no longer see his car, but saw fire shooting up from behind the levee. At that point, he was backing up to leave because he was scared when the defendant came back from behind the levee, presumably on foot, and caught up to his truck. He eventually stopped and picked the defendant up, and the two men left together, returning to Baton Rouge. The next day, Harris saw the car the defendant had been driving on the news with police and firefighters surrounding it. The news report stated that dead bodies were discovered inside the car.

At trial, the defendant testified and claimed that he did not shoot anyone; he claimed that Gillam and the other witnesses were lying about his involvement in the shooting because he and Gillam had an acrimonious breakup when he went back to his wife.

***ANDERS* BRIEF**

The counseled defense brief contains no assignments of error and sets forth it is filed to conform with the procedures outlined in Anders v. State of California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and State v. Jyles, 96-2669 (La. 12/12/97), 704 So. 2d 241 (per curiam); see also State v. Benjamin, 573 So. 2d 528 (La. App. 4th Cir. 1990).

Benjamin set forth a procedure to comply with Anders, wherein the U.S. Supreme Court discussed how appellate counsel should proceed when, upon conscientious review of a case, counsel found no non-frivolous issues could be raised on appeal. Benjamin has repeatedly been cited with approval by the Louisiana Supreme Court. See State v. Mouton, 95-0981, pp. 1-2 (La. 4/28/95), 653 So. 2d 1176, 1177 (per curiam); State v. Royals, 600 So. 2d 653 (La. 1992); State v. Robinson, 590 So. 2d 1185 (La. 1992) (per curiam).

Defense counsel reviews the procedural history of the case. Defense counsel sets forth that after a conscientious and thorough examination of the record, he has found no non-frivolous issues to present on appeal and no ruling of the trial court that arguably supports an appeal, either under existing jurisprudence or under a change that should be effected in the law. Accordingly, he moves to withdraw as counsel of record for the appellant.

A copy of defense counsel's brief and motion to withdraw were sent to the defendant. Defense counsel requests that the defendant be allowed to file a pro se brief on his own behalf and that this court conduct a patent error review of the case. The defendant has filed a pro se brief with this court and raised two assignments of error.

SUFFICIENCY

In his first pro se assignment of error, the defendant claims the evidence was insufficient to convict him because the shooting occurred on September 1, 2007, and police did not receive an anonymous tip identifying the defendant as the shooter until October of 2009. The defendant claims no scientific evidence linked him to the shooting and that only the testimony of those who also claimed to be involved linked him to the shooting.

The constitutional standard for testing the sufficiency of the evidence, as enunciated in Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 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 elements of the crime beyond a reasonable doubt. La. C.Cr.P. art. 821. 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. Crowson, 10-1283 (La. App. 1st

Cir. 2/11/11), 2011 WL 2135102, at *6 (unpublished), writ denied, 11-0528 (La. 11/23/11), 76 So. 3d 1146.

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. State v. Forrest, 16-1678, p. 6 (La. App. 1st Cir. 9/21/17), 231 So. 3d 865, 870, writ denied, 17-1683 (La. 6/15/18), 257 So. 3d 687.

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. 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. Thus, 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. See State v. Magee, 17-1217, p. 6 (La. App. 1st Cir. 2/27/18), 243 So. 3d 151, 157, writ denied, 18-0509 (La. 2/11/19), 263 So. 3d 434. Specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. State v. James, 17-1253, p. 7 (La. App. 1st Cir. 2/27/18), 243 So. 3d 717, 721, writ denied, 18-0419 (La. 1/8/19), 259 So. 3d 1024.

Where the key issue is the defendant's identity as the perpetrator of the crime, rather than whether the crime was committed, the State is required to negate

any reasonable probability of misidentification to carry its burden of proof. Positive identification by even one witness may be sufficient to support a conviction. In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. State v. Baham, 15-1741 (La. App. 1st Cir. 6/6/16), 2016 WL 3146017, at *6 (unpublished), writ denied, 16-1341 (La. 6/16/17), 219 So. 3d 1113.

The defendant insinuates that the witnesses in the instant case gave self-serving testimony to connect him to the shooting. After a thorough review of the record, we find the evidence supports the guilty verdicts. No fewer than four witnesses testified as to the defendant's guilt. Gillam stated she witnessed the defendant shoot the victims. Later that morning, after the shooting, the defendant went to Gillam's grandmother's house, where Gillam noticed he smelled like gasoline. In March of 2010, two U.S. Marshal Agents approached Gillam about the incident, and she eventually gave them a statement. Gillam explained at trial that she did not report the murders before that time because she feared what would happen to her if she did.

Jones specifically testified he saw the defendant and Gillam argue, and saw the defendant become increasingly agitated by the victims. Jones stated he then saw the defendant pull out a gun and shoot both victims with a gun he described as a small black nine millimeter automatic pistol. He heard "six or more" shots and then saw the defendant drive away in the same car in which the victims were shot. Allen saw Gillam laugh at something one of the victims said, which so angered the defendant that he "just started shooting." Allen heard the defendant fire a total of five shots and told the defendant she would transport the victims to the hospital.

Although Harris did not witness the defendant shoot the victims, he testified Gillam "came running upstairs" and informed him the defendant had shot the

victims. The defendant asked Harris for help and to meet him at a gas station on Airline Highway. After the defendant and Harris drove over the Mississippi River Bridge, Harris parked his car on one side of the levee, and the defendant drove to the other side. Harris stated that when the defendant "started coming from behind the levee—fire in the air—I went to backing out because I got scared."

Any rational trier of fact, viewing the evidence presented in this case 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 counts I and II and the defendant's identity as the perpetrator of those offenses. The verdict indicates the jury rejected the defendant's testimony and his attempts to discredit the testimony of Gillam, Jones, Allen, and Harris. When a case involves circumstantial evidence, and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. State v. Captville, 448 So. 2d 676, 680 (La. 1984). No such hypothesis exists in the instant case. The trier of fact is free to 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. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. State v. Ford, 17-0471, pp. 12-13 (La. App. 1st Cir. 9/27/17), 232 So. 3d 576, 586. Further, in reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See State v.

Ordodi, 06-0207, p. 14 (La. 11/29/06), 946 So. 2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. State v. Calloway, 07-2306, pp. 1-2 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam). In accepting a hypothesis of innocence that was not unreasonably rejected by the fact finder, 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. See State v. Mire, 14-2295, p. 2 (La. 1/27/16), __ So.3d __, __, 2016 WL 314814, at *4 (per curiam).

This assignment of error is without merit.

MOTION TO QUASH AND MOTION IN LIMINE

In his second pro se assignment of error, the defendant contends the trial court erred in denying his motion to quash based on improper venue and his motion in limine. With regard to his motion to quash, the defendant claims that because the bodies of both victims were found in West Baton Rouge Parish, and because the death of one of the victims also occurred in West Baton Rouge Parish, venue is improper in East Baton Rouge Parish. With regard to his motion in limine, the defendant claims that the use of evidence collected by the West Baton Rouge Parish Sheriff's Office should have been excluded at trial, as well as any prospective testimony from its officials, because they exceeded their jurisdictional authority. We will first address the defendant's arguments regarding his motion to quash.

All trials shall take place in the parish where the offense has been committed, unless the venue is changed. La. Const. art. I, §16; La. C.Cr.P. art. 611(A). If acts constituting an offense or if the elements of an offense occurred in more than one place, in or out of the parish or state, the offense is deemed to have

been committed in any parish in this state in which any such act or element occurred. La. C.Cr.P. art. 611(A). If the offender is charged with the crime of first or second degree murder and it cannot be determined where the offense or the elements of the offense occurred, the offense is deemed to have been committed in the parish where the body of the victim was found. La. C.Cr.P. art. 611(B) (prior to La. Acts 2018, No. 125 § 1). Venue shall not be considered an essential element to be proven by the State at trial, rather it shall be a jurisdictional matter to be proven by the State by a preponderance of the evidence and decided by the court in advance of trial. La. C.Cr.P. art. 615.

When a trial court rules on a motion to quash, factual and credibility determinations should not be reversed on appeal in the absence of a clear abuse of the trial court's discretion. However, a trial court's legal findings are subject to a *de novo* standard of review. State v. Flanigan, 14-0020 (La. App. 1st Cir. 6/6/14), 2014 WL 3843934, at *2 (unpublished), writ denied, 14-1446 (La. 3/13/15), 161 So. 3d 637.

The *locus delicti* of a crime must be determined from the nature of the crime alleged and the location of the act or acts constituting it. State v. Williams, 12-1119 (La. App. 1st Cir. 3/25/13), 2013 WL 1196617, at *2 (unpublished). Second degree murder is the killing of a human being when the offender has a specific intent to kill or inflict great bodily harm. La. R.S. 14:30.1(A)(1).

When a defendant files a motion to quash or other preliminary plea, the running of the periods of limitation established by La. C.Cr.P. art. 578 shall be suspended until the ruling of the court thereon; but in no case shall the State have less than one year after the ruling to commence the trial. La. C.Cr.P. art. 580(A). For the crime of second degree murder, no trial shall be commenced nor any bail obligation be enforceable after two years from the date of institution of the prosecution. See La. C.Cr.P. art. 578(2).

For the purposes of La. C.Cr.P. art. 580, a preliminary plea is any pleading or motion filed by the defense that has the effect of delaying trial. These pleadings include properly filed motions to quash, motions to suppress, or motions for a continuance, as well as applications for discovery and bills of particulars. Joint motions for a continuance fall under the same rule. State v. Joseph, 16-1541, p. 6 (La. App. 1st Cir. 6/2/17), 223 So. 3d 528, 531.

The defendant's motion to quash raised the issue of venue under La. C.Cr.P. art. 611. The defendant's motion to quash raised the following issues in paragraph 4, subparagraphs B through D:

> (B) Code of Criminal Procedure, Article 581 provides that there shall be no further prosecution of the defendant once the indictment has been dismissed for the failure to timely take the case to trial;
>
> (C) In these proceedings, not withstanding [sic] the actions taken by the 18th Judicial District Court, the State of Louisiana has failed to timely prosecute this case under the rules established in Code of Criminal Procedure, Article 578; and
>
> (D) This court has no jurisdiction to conduct any criminal prosecutions, as provided for and on the basis of the provisions established in the Code of Criminal Procedure, Article 611.

The trial court denied the motion to quash without reasons, and defense counsel noted his objection for the record.

We note initially that there is no time limit for instituting prosecution for second degree murder. See La. C.Cr.P. art. 571. Our thorough review of the record indicates that defense counsel repeatedly filed continuances, including a joint continuance with the State, and all were within one year of one another. They therefore suspended the time limitations established by La. C.Cr.P. art. 578. We have previously found East Baton Rouge to be a proper venue in this matter and further note that, in our previous case, the defendant prevailed on his pro se motion to quash that argued venue was improper in West Baton Rouge Parish. See Williams, 2013 WL 1196617, *4. Thereafter, the State, in the 19th Judicial District Court in East Baton Rouge Parish, charged the defendant on June 6, 2013, with

two counts of second degree murder, and a true bill was returned on these counts. This assignment of error lacks merit.

With regard to the defendant's motion in limine, the defendant raised the issue of West Baton Rouge Parish Sheriff's Office officials exceeding their authority in his motion, which was denied by the trial court without reasons at the hearing. Defense counsel objected for the record.

The defendant further argues that trial evidence collected and testimony adduced by West Baton Rouge Parish Sheriff officers should have been precluded because proper venue was in East Baton Rouge Parish. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La. C.E. art. 401. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of Louisiana, the Code of Evidence, or other legislation. Evidence which is not relevant is not admissible. La. C.E. art. 402. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403.

In the instant case, Chief of Police Esdron Brown, Detective Bryan Doucet, and Captain Ron LeJeaune of the West Baton Rouge Parish Sheriff's Office all testified at the defendant's trial. On September 1, 2007, Chief of Police Brown was dispatched to North River Road, where a car was on fire. He then turned the investigation over to Detective Kenny Young, also of the West Baton Rouge Parish Sheriff's Office. As part of the investigation, Detective Doucet took pictures of the burned car with the bodies in it, located on the levee on North River Road. Captain LeJeaune took photographs during the autopsies of the victims. Entered

into evidence were twenty-four crime scene photographs taken by Detective Doucet and six autopsy photographs taken by Captain LeJeaune.

All of the referenced testimony and evidence was highly probative regarding the circumstances of the crime in the instant case. The defendant has not introduced any evidence showing that the West Baton Rouge Parish Sheriff's Office exceeded its authority and thereby led to unfair prejudice. We find the trial court properly admitted the testimony of Chief of Police Brown, Detective Doucet, and Captain LeJeaune, and the photographs from the crime scene and autopsies. This assignment of error is without merit.

This court has conducted an independent review of the entire record in this matter. We have found no reversible errors under La. C.Cr.P. art. 920(2). Furthermore, we conclude there are no non-frivolous issues or trial court rulings that arguably support this appeal. Accordingly, the defendant's convictions and sentences are affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending the disposition of this matter, is hereby granted.

CONVICTIONS AND SENTENCES AFFIRMED; MOTION TO WITHDRAW GRANTED.