

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2019 KA 0077

STATE OF LOUISIANA

VERSUS

ELWARD WILLIAMS, JR.

Judgment Rendered: May 31, 2019

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**Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Case No. 711,434**

The Honorable John R. Walker, Judge Presiding

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**Bertha M. Hillman
Covington, Louisiana**

**Counsel for Defendant/Appellant
Elward Williams, Jr.**

**Joseph L. Waitz, Jr.
District Attorney
Ellen Daigle Doskey
Assistant District Attorney
Houma, Louisiana**

**Counsel for Appellee
State of Louisiana**

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BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

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THERIOT, J.

The defendant, Elward Williams, Jr., was charged by grand jury indictment on count one with second degree murder, a violation of La. R.S. 14:30.1, and on count two with possession of a firearm or carrying a concealed weapon by a convicted felon, a violation of La. R.S. 14:95.1.¹ He pled not guilty and, after a trial by jury, was found guilty as charged on both counts. The trial court denied the defendant's motion for new trial. The defendant was sentenced on count one to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. On count two, he was sentenced to twenty years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence and a fine of \$5,000.00. The trial court ordered that the sentences 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 October 28, 2015, at approximately 4:15 p.m., officers of the Houma Police Department ("HPD") were dispatched to the 500 block of Morgan Street in response to shots being fired in the area. When the officers arrived at the scene, a large crowd was present, and a black male, identified as Corey Butler (the victim), was lying in the street face-down in a pool of blood.² Sergeant Cory Johnson, the HPD evidence custodian and crime scene technician, arrived at the scene and began taking photographs and collecting evidence. Sergeant Johnson collected

¹ While the defendant was tried alone, the record reflects that he was indicted along with Anthony Sylvester, who was charged with manslaughter (as amended), and Maurice Banks, who was charged with principal to second degree murder. The defendant's predicate convictions on count two consist of guilty pleas to possession of cocaine, a violation of La. R.S. 40:967(C), and possession of a firearm while in possession of a controlled dangerous substance, a violation of La. R.S. 14:95(E).

² Dr. Dana Troxclair, the forensic pathologist who performed the autopsy, testified that the victim had fourteen gunshot wounds, including one graze wound. The cause of death was multiple gunshot wounds.

several nine millimeter and .40 caliber spent casings and projectiles outside near where the victim's body was found and inside of a residence located at the corner of Morgan Street and Roosevelt Street. No weapons were recovered.

Sergeant Trey Lottinger, an HPD detective at the time, was informed of the homicide and dispatched to Terrebonne General Medical Center where the victim was transported. Sergeant Lottinger was further informed of the victim's identity, as well as the identity of Anthony Sylvester and Maurice Banks, who were also shot and being treated at the hospital. Percy Mosely, supervisor of security at Terrebonne General, provided Sergeant Lottinger with the license plate number of the vehicle in which some of the subjects were transported to the hospital. Sergeant Lottinger ran the license plate number and discovered that it was a black 2008 GMC pickup truck registered to the defendant. Sergeant Lottinger also obtained video surveillance of the hospital showing the defendant's pickup truck as it was driven underneath one of the emergency room ramps at the hospital. The footage further shows the defendant, Banks, and another subject exiting the truck, and Sylvester lying in the bed of the truck. Sergeant Lottinger also spoke to the victim's mother, who provided a potential motive for the shooting, a "turf war" between Banks and the victim. He interviewed several others who claimed to have witnessed the shooting. Based on the information that Sergeant Lottinger received during the interviews, he secured arrest and search warrants for the defendant and Sylvester. At trial, Caralynn Elliot and Ty'janae Miller, two of the witnesses interviewed by Sergeant Lottinger, testified that they were present at the time of the shooting and saw the defendant shoot the victim.³

³ Before the trial, two of the witnesses, Renissa Johnson and Cassanyaa Jackson, admitted that they did not actually see the shooting. In recanting, they indicated that their prior statements were made to protect their younger sister, Elliott, who was present and saw the defendant shoot the victim. Thus, Johnson and Jackson prompted Sergeant Lottinger to interview Elliot. Sergeant Lottinger testified Elliot's statement was consistent with the accounts initially given by Johnson and Jackson.

DISCUSSION

In the sole assignment of error, the defendant argues that the evidence is insufficient to support the verdicts. He argues that the State did not prove that he was the shooter in this case, that he was in possession of a firearm, or that he ever owned a gun.⁴ The defendant argues that the foundation of the State's case was the admittedly false testimony of two witnesses, Renissa Johnson and Cassanyaa Jackson. The defendant contends that Johnson and Jackson lied when they told investigators that they saw him shoot the victim. He notes that a week before trial, Johnson admitted that she was not at the scene and Jackson admitted that although she was present, she did not see the shooting.

The defendant concedes that other witnesses, Caralynn Elliot and Ty'Janae Miller, testified at trial that they saw the defendant shoot the victim. He notes that Elliot also testified that several people put Sylvester in the bed of a pick-up truck, and that the shooter sat in the driver's seat before the vehicle drove away. The defendant notes that video footage shows him getting out of the bed of the truck, as opposed to exiting the driver's door. Thus, the defendant contends that he was not the driver or the shooter. Regarding Miller's identification of the defendant as the shooter, the defendant argues that Miller was prodded by the State and did not actually see the shooting. The defendant notes that no fingerprints were taken from the casings found at the scene. He concludes that the State failed to prove beyond a reasonable doubt that he fired the shots that killed the victim.

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, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979), requires

⁴ The defendant does not contest his predicate convictions of possession of cocaine and possession of a firearm while in possession of a controlled dangerous substance.

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 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. Code Crim. 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 Article 821(B), is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the fact finder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Patorno**, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. **State v. Vaughn**, 2018-0344 (La. App. 1st Cir. 9/24/18), 259 So.3d 1048, 1058.

The crime of second degree murder is defined in pertinent part as “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. 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. **State v. Coleman**, 2017-1045 (La.

App. 1st Cir. 4/13/18), 249 So.3d 872, 877, writ denied, 2018-0830 (La. 2/18/19), 263 So.3d 1155. Specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. See State v. Maten, 2004-1718 (La. App. 1st Cir. 3/24/05), 899 So.2d 711, 717, writ denied, 2005-1570 (La. 1/27/06), 922 So.2d 544.

The State bears the burden of proving those elements, along with the burden to prove the identity of the defendant as the perpetrator. **State v. Draughn**, 2005-1825 (La. 1/17/07), 950 So.2d 583, 593, cert. denied, 552 U.S. 1012, 128 S.Ct. 537, 169 L.Ed.2d 377 (2007). 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. A positive identification by only one witness is sufficient to support a conviction. **State v. Weary**, 2003-3067 (La. 4/24/06), 931 So.2d 297, 311, cert. denied, 549 U.S. 1062, 127 S.Ct. 682, 166 L.Ed.2d 531 (2006), quoting **State v. Neal**, 2000-0674 (La. 6/29/01), 796 So.2d 649, 658, cert. denied, 535 U.S. 940, 122 S.Ct. 1323, 152 L.Ed.2d 231 (2002).

Louisiana Revised Statute 14:95.1(A) makes it unlawful for any person who has been convicted of certain felonies to possess a firearm. To prove a violation of La. R.S. 14:95.1, the State must prove: (1) the defendant's status as a convicted felon; and (2) that the defendant was in possession of a firearm. **State v. Loper**, 2010-0582 (La. App. 1st Cir. 10/29/10), 48 So.3d 1263, 1266. The State must also prove that ten years have not elapsed since the date of completion of the punishment for the prior felony conviction. See La. R.S. 14:95.1(C). Thus, a violation of La. R.S. 14:95.1 by the defendant required proving no more than that he had a prior felony conviction and was in possession of a firearm. In this case, the defendant does not contest his predicate convictions on appeal, and stipulated thereto at trial.

Sergeant Johnson sent the cartridges collected at the scene to the Louisiana State Police Crime Lab for testing. The nine millimeter casings were determined to have been fired from the same Glock or Glock-type firearm. The results further indicated that two different firearms were used to fire the .40 caliber casings, a Smith & Wesson SD40 VE and a Smith & Wesson M&P. The .40 caliber casings that were found in the middle of the street were fired from a Smith & Wesson SD40 VE model. Thus, the results indicated that three distinct firearms were used at the scene.

Sergeant Johnson further attended the autopsy of the victim. A .40 caliber projectile was recovered from the victim's right inner forearm. A possible .40 caliber projectile was located in the victim's abdomen, near his spine. A nine millimeter projectile and another projectile of an unknown caliber were removed from the right side of the victim's chest. Possible nine millimeter projectiles were located in his outer hip and neck. Additionally, bullet fragments were found in his upper right thigh and skull.

Sergeant Johnson also participated in the search of the black 2008 GMC pickup truck. An insurance card for the defendant was located in the glove compartment. A bullet hole was observed on the driver's side, near the rear passenger door. Sergeant Johnson determined that the bullet entered from the inside of the vehicle and passed outside of the vehicle while the door was apparently open (as the hole was inside of the frame).

Ty'Janae Miller was a friend of the victim. She was seventeen years old at the time of the trial and fourteen years old at the time of the shooting. On the day of the shooting, as Miller walked past Caralynn Elliot's residence located on Morgan Street, near the Hobson Street intersection, she saw the victim along with an individual identified as Wavez Little. The victim was walking about three feet ahead of Miller. Miller saw Sylvester, who was armed with a long black firearm,

approach the victim and Little. Sylvester told Little that he was a “real n-----r” and struck Little with the gun. Little fled, but the victim remained. Miller further testified that at that point, shots began firing. She was unsure as to who fired first, but believed that both individuals, Sylvester and the victim, were firing at each other. As Sylvester and the victim fell to the ground, a black truck, which was previously parked in front of a set of apartments, was driven up to the scene of the shooting. Miller then observed an individual, who she knew as “Bo” and identified at trial as the defendant, as he approached from behind the truck and began firing his gun at the victim at close range.⁵ At that point, Miller fled from the scene and ran home. Miller testified that she knew the defendant “[f]rom the streets.”

Caralynn Elliot was fifteen years old at the time of the shooting and eighteen years old at the time of the trial.⁶ She testified that the victim, who she called by the nickname “Bug,” was her brother’s friend. Elliot confirmed that she lived on Morgan Street near the Hobson Street intersection. Prior to the shooting, Elliot was walking down the street near her house when she saw the victim. She walked to the field where the victim was located, near a set of apartments. She was sitting down when Sylvester and the defendant approached the area. Elliot further recalled that the victim began to approach Sylvester and the defendant when the victim saw Little. At that point, the victim told Elliot, “there go my young boy and they going to f--k over [Little] and I’m going to die about it over there.” As Elliot started to follow the victim, the victim told her, “Fall back. They about to get at me over there. Watch how that play out over there.”

⁵ Miller testified that the defendant did not immediately begin shooting when he came out from behind his truck, but waited until he got close to the victim. She noted that Sylvester and the victim were both on the ground as shots were being fired. She testified that although she could not see the gun, she believed that the defendant was the shooter.

⁶ As to why she did not initially report what she observed to the police, Elliot testified that her mother, sisters, and others did not want her to give a statement at the time. She testified, “they didn’t want me to go up there beings [sic] that I was only [fifteen].”

Elliot further testified that she stood by the corner as Sylvester approached Little. She observed as Sylvester hit Little in the face with the gun, and saw Little cover his face and flee. Sylvester then began walking towards the victim. Elliot stated that Sylvester still had the black gun in his hand as he swung at the victim, adding, "I ain't seen who shot first, but I just -- I seen he swung at him -- he swung at [the victim], then the shots went off." She then saw the victim and Sylvester fall to the ground. She noted that the victim tried to move, but he was struck in the leg. Elliot further testified, "then that's when [the defendant] come off the side of the truck. I seen him come -- I seen him on [sic] try to come from side the truck started shooting [the victim].⁷ Even when [the victim] started falling he kept on --- he kept shooting him." When the gunfire ended, the defendant and Sylvester, with assistance, entered the truck and drove off.⁸

Cassanyaa Jackson, Elliot's sister, also testified that the victim was their brother's friend. She testified that when she gave her statement after the shooting, she was only telling the police what was told to her by Elliot. She stated that she and her other sister, Renissa Johnson, spoke to the police on Elliot's behalf because Elliot was "too young to go up there." Jackson testified that the gunfire had ended by the time she arrived on the scene and saw the victim lying on the ground.

Tara McGuire testified that she spoke to a detective at the hospital after the shooting. She informed the detective that she was aware of a Facebook post by Banks, indicating that he was going to "make it rain blood in his neighborhood that day." She testified that she did not have any further details about the post and was unaware of any dispute between the defendant and the victim.

⁷ Elliot confirmed that she was able to see the gun in the defendant's hand.

⁸ Elliot was uncertain as to who helped the defendant place Sylvester into the bed of the truck, but noted that several people were outside to assist at the time. She could not recall who was in the bed of the truck with Sylvester, as the truck was driven away from the scene.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. **State v. Richardson**, 459 So.2d 31, 38 (La. App. 1st Cir. 1984). Unless there is internal contradiction or irreconcilable conflict with the physical evidence, the testimony of a single witness, if believed by the fact finder, is sufficient to support a factual conclusion. **State v. Marshall**, 2004-3139 (La. 11/29/06), 943 So.2d 362, 369, cert. denied, 552 U.S. 905, 128 S.Ct. 239, 169 L.Ed.2d 179 (2007). 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 fact finder's determination of guilt. **State v. Taylor**, 97-2261 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932.

In the instant case, the verdict indicates the jury believed the eyewitnesses to the shooting, Elliot and Miller. The two witnesses positively identified the defendant as the person who exited the black truck with a firearm and began firing at the victim, who was already on the ground after being shot in the leg by Sylvester. The accounts provided by Elliot and Miller were wholly consistent. 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). Viewing the evidence presented at trial in the light most favorable to the State, we are convinced that any rational trier of fact could find that the State proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of the second degree murder and possession of a firearm or carrying a concealed weapon by a convicted

felon, and the defendant's identity as the perpetrator. Accordingly, the sole assignment of error lacks merit.

CONVICTIONS AND SENTENCES AFFIRMED.