

STATE OF LOUISIANA

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NO. 2000-KA-0885

VERSUS

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COURT OF APPEAL

ALFRED WHITE

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 364-971, SECTION "E"
Honorable Calvin Johnson, Judge

Judge Patricia Rivet Murray

(Court composed of Judge William H. Byrnes III, Judge Steven R. Plotkin,
Judge Patricia Rivet Murray)

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AFFIRMED

Defendant Alfred White appeals his conviction for manslaughter claiming that there was insufficient evidence to support the conviction. For the following reasons, we affirm.

STATEMENT OF THE CASE:

Mr. White was originally charged on August 5, 1993, with second degree murder, a violation of La. Rev. Stat. 14:30.1. After a bench trial, he was found guilty of the responsive verdict of manslaughter. He waived delays and was immediately sentenced to forty years at hard labor without benefit of parole, probation, or suspension of sentence. He filed both a motion for appeal and a motion to reconsider sentence. The trial court granted the motion to reconsider sentence, vacated the original sentence, and resentenced Mr. White to twenty-five years at hard labor. Mr. White then filed a motion to withdraw his appeal, which was granted on October 17, 1994. Mr. White, however, filed a motion to reinstate the appeal; that motion was granted on July 30, 1998.

FACTS:

Dr. Paul McGarry, an assistant coroner for Orleans Parish, testified that Bryan Clements was killed after having been shot twice in the head. The bullets entered above and behind the right ear, with one wound being a contact wound. The wounds were consistent with the shooter being in a seated position behind the victim. Because the bullets were shot from the same direction, it was likely that the gun was aimed, rather than fired randomly. The victim tested negative for drugs or alcohol.

Ryan Bailey testified that he was picked up from his house by Derrick Coleman and the victim on June 4, 1993, at approximately 10:00 p.m. Mr. Bailey got into the back seat behind Mr. Coleman, who was driving. The three then drove to Alfred White's house. Mr. White got into the backseat behind the victim, and asked to be taken to the Caribe Hotel. At the hotel, Mr. White got out of the car and went inside the hotel for about five minutes. He returned, and, once again, got into the car behind the victim. Mr. White told Mr. Coleman to drive him around the corner. Coleman did as instructed, and parked the car. Mr. Bailey testified that he thought Mr. White was supposed to get out. Instead, gunshots rang out. Mr. Bailey said that he realized that Mr. White had shot Bryan Clements, and then turned the gun on Derrick Coleman. Mr. Bailey testified that he struggled with Mr.

White for control of the gun, but could not wrestle it away. He got out of the car, and ran toward Carrollton Avenue, where he saw some police officers, who he told that Alfred White had just shot Bryan Clements. Mr. Bailey testified that, as he ran, he heard Mr. White shooting at Mr. Coleman. He also testified that he did not have a gun that night, and he did not see either Derrick Coleman or Bryan Clements with a gun.

Under cross-examination, Mr. Bailey admitted to being on probation for possession of crack, but denied any kind of a deal with the district attorney. He admitted being a small level drug dealer, but denied that there was a drug deal being made in the car the night of the murder. He also denied that he called Mr. White's mother the next morning to warn her that there was a "hit" on her son's head for murdering Bryan Clements. The court also questioned Mr. Bailey about the incident. Mr. Bailey stated that after driving around the corner from the Caribe Hotel, Mr. Coleman stopped the car and began adjusting the radio. They sat there for about three minutes before Mr. White pulled out a gun and shot Bryan Clements in the head.

Derrick Coleman testified that he and Bryan Clements had given a ride to Shawn Perkins, Mr. White's cousin, earlier in the evening. He picked up Ryan Bailey, then Alfred White after he dropped off Ms. Perkins. Mr. White got into the car behind Bryan Clements and asked for a ride to the

Caribe Hotel. They drove to the hotel where Mr. White went in. When he came back out, Alfred White told him to pull around the corner. Mr. Coleman complied, stopped the car, turned off the lights, and kept the engine running. He testified that the four men sat there for four or five minutes doing nothing, when suddenly Mr. White shot the victim in the head and began shooting at him. He fell out of the car, and then ran to a pay phone from which he called Bryan's mother to tell her that Bryan had been shot. He testified that, as he ran, he turned to ask why Mr. White was shooting at him. Mr. Coleman denied that he had a gun that evening, and did not know if either Bryan Clements or Ryan Bailey had one. He also denied that there were drugs in the car at the time of the incident.

Chris McCormick, an off-duty NOPD officer, testified that about 11:10 on June 4, a young man ran up to him and his partner, who was on a detail assignment at the Mid-City Bowling Alley, and told them that his friend had just been shot. Officer McCormick, his partner and the young man drove to the scene and found a black man with a bullet wound to the head in the front seat of the vehicle. He stated that the driver of the car was also on the scene when they arrived.

Detective Luis Suarez of NOPD's Homicide Division testified that the car in which the murder occurred was impounded, and searched the

following day. No narcotics or guns were recovered. Both Derrick Coleman and Ryan Bailey denied that the murder was narcotics related.

Patricia White, the defendant's mother, testified that on the evening of the shooting, Rabbi Coleman, Derrick's younger brother, knocked on the door and asked for Alfred. She told him that Alfred was preparing to eat, so Rabbi came inside and waited. She watched as Alfred left, and saw him speak to someone on the driver's side of the car, then get into the back seat behind the driver. She could not see who the driver was or if anyone else was in the car because of the heavily tinted windows. Ms. White also testified that Ryan Bailey used to frequent her home, but after she learned of his involvement with drugs, she banned him from her home. The morning after the murder, Ryan Bailey called her home and told her to have Alfred "watch his back; there was a hit out on him." When she asked why, he told her that he and Alfred had been struggling over a gun that Bailey had been carrying in his waistband. She was positive that Ryan Bailey said the gun was his.

Sharon Warren, Ms. White's sister and the defendant's aunt, testified that she was at her sister's house the day after the murder (at the time she did not know that a murder had occurred), and answered a call from Ryan Bailey. He asked to speak with her niece, Shawn Perkins, but, because she

did not like Mr. Bailey, she hung up on him. She then left the house with her children.

Shawn Perkins, testified that she had known both Ryan Bailey and Derrick Coleman for about two years. She considered them to be her friends. Prior to the murder, she was with Derrick Coleman and the victim, Bryan Clements. She said the two men were smoking marijuana. Coleman drove her to her friend, Shandell's house where they were waited for Shandell to bathe her baby. While they waited, Derrick placed a phone call when his beeper went off. She and Shandell eventually were dropped off at a club around 8:30 p.m.

Shandell Moore confirmed Ms. Perkins's story.

The defendant, Alfred White, took the stand. He testified that he grew up with Ryan Bailey, and had become friends with Derrick Coleman through Rabbi, Derrick's younger brother. He testified that Derrick Coleman was a high level drug dealer, and Ryan Bailey a lower level dealer who sold for Derrick. Mr. White admitted using drugs, and said that Ryan had gotten him involved with drugs by telling him that he was a juvenile and would do no time if caught. He testified that he and several unnamed people put together money to buy a "quarter" of cocaine for \$250.00 on the night of the shooting. Because he knew the dealers, he was designated as the buyer.

Rabbi Coleman came to the door and told him that Derrick was waiting outside. Mr. White testified that he believed both Ryan Bailey and Derrick Coleman were capable of shooting someone. In fact, Derrick had told him that he had killed a man, and had shot his own uncle. Mr. White assumed that both men were armed the night of the crime because he knew them always to carry guns. He denied that he had a weapon with him, and stated that he wore only a tee shirt that evening. He got into the back seat on the driver's side, but he sat toward the middle of the seat because Derrick's seat was pushed back. He showed the men his money, and they showed him the drugs, but he thought the drugs were "short," so he told them he did not want to make the buy. Mr. White said that Bryan, the victim, mumbled something about not calling them anymore if he was not going to make the purchase. After Mr. White refused to purchase the drugs, the men insisted that he drive around with them. They passed the Caribe Hotel where Bailey normally dealt drugs instead of taking him home as he had asked. Coleman drove the car around the corner from the hotel, stopped and turned the lights off. This made Mr. White nervous and he asked to be let out of the car. At that point he saw Ryan Bailey pull a gun from his pocket, and he and Bailey began struggling over it. The gun went off as they struggled, but Mr. White also admitted to firing the gun a second time after he got it away from Bailey.

Mr. White said that he had no intention of killing Bryan Clements, but was acting in self-defense. After this incident, Mr. White learned that a price of \$6,500.00 was placed on his head. A friend of Coleman's, Brad Elzee, shot him in the neck two or three weeks later. Under cross-examination, Mr. White admitted that his mother did not want him to associate with Derrick Coleman and Ryan Bailey because they were a bad influence on him. He knew that Bailey used drugs, but denied knowing that he sold drugs until after the shooting. Mr. White said he had "a clue" that Coleman was a drug dealer because of the way he dressed. When asked again about the shooting, he said that the gun fired twice before he was able to wrestle it away from Bailey, and that after he got the gun, he fired it himself in Bryan Clements' direction.

ASSIGNMENT OF ERROR:

Mr. White argues that his right to due process was violated because the trial court chose to find him guilty even though it did not believe the entirety of the story told by the State's witnesses. He contends, therefore, that the evidence was insufficient to support the conviction.

After the close of the trial, the trial judge took the case under advisement over the weekend. In announcing his verdict, he said that he believed that Mr. White and Ryan Bailey set out to rob Derrick Coleman and

Bryan Clements of money and drugs. He did not believe that Coleman had stopped the car for no reason; rather, he believed that Mr. White was the one who pulled a gun and had it pointed at Coleman. The judge did not believe that Bryan Clements was shot as the result of a struggle over the gun between Mr. White and Ryan Bailey. Because the coroner testified that the first shot was at point blank range, the judge was convinced that Mr. White had aimed the gun at Clements' head and shot him. If the first shot had not struck him in the head, Clements would have attempted to run. He believed Ryan Bailey lied about the murder because he was afraid of reprisal and did not want it to appear that he was involved in killing the victim. The judge stated that he was convinced that the evidence supported a finding of second degree murder, but because Mr. White was only sixteen years old, the court would find him guilty of manslaughter so that he would not face a life sentence.

When assessing the sufficiency of evidence to support a conviction, the appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979); *State v. Jacobs*, 504 So.2d 817

(La. 1987).

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. *State v. Shapiro*, 431 So.2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. Rev. Stat. 15:438. This is not a purely separate test from the *Jackson* standard to be applied, but rather is an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt. *State v. Wright*, 445 So.2d 1198 (La. 1984). All evidence, direct and circumstantial, must meet the *Jackson* reasonable doubt standard. *State v. Jacobs, supra*.

The appellate court's primary function is not to redetermine a defendant's guilt or innocence in accordance with its appreciation of the facts and credibility of the witnesses. Rather, its function is to review the evidence in the light most favorable to the prosecution and determine whether there is sufficient evidence to support the verdict. *State v. Myers*, 584 So.2d 242, 250 (La.App. 5 Cir.), *writ denied*, 588 So.2d 105 (La. 1991), *cert. denied*, 504 U.S. 912, 112 S.Ct. 1945 (1992); *State v. Burrow*, 565

So.2d 972, 977 (La.App. 5 Cir.1990), *writ denied*, 572 So.2d 60 (La.1991).

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. Rev. Stat. 14:30.1. The specific criminal intent required does not have to be proven as fact, but may be inferred from the circumstances and actions of the defendant. *State v. Boyer*, 406 So.2d 143 (La.1981).

Here, two eyewitnesses testified that Mr. White shot the victim twice in the head at close range. Further, the assistant coroner testified that one of the head wounds was a contact wound. These facts are sufficient to support a conviction for second degree murder, and are thus sufficient to support a conviction for the lesser included offense of manslaughter. La. Code Crim. Proc. art. 814.

Mr. White argues that because the trial court found the eyewitnesses less than credible in their testimony as to why Derrick Coleman stopped the car, it could not find the witnesses credible at all, and, therefore, there was no reasonable theory of guilt presented. The court found that the physical evidence supported the witnesses' statements that Bryan Clements was shot in the head by Mr. White at point blank range. The court reasoned that the first shot had to have been to Mr. Clement's head. Had it been otherwise, Mr. Clements would have attempted to escape the car, and there was no

evidence that he did so. The trial court was in the best position to evaluate the credibility of the witnesses. It was free to find the witnesses credible on the crucial part of the story, that is, Mr. White shot the victim in the head.

Accordingly, we find the evidence sufficient to convict Mr. White, and affirm the conviction and sentence.

AFFIRMED