

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2000-KA-1763**  
**VERSUS** \* **COURT OF APPEAL**  
**DARROW L. BAKER** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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**APPEAL FROM**  
**CRIMINAL DISTRICT COURT ORLEANS PARISH**  
**NO. 399-733, SECTION "F"**  
**Honorable Dennis J. Waldron, Judge**  
\* \* \* \* \*  
**Judge Patricia Rivet Murray**  
\* \* \* \* \*

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray,  
Judge Terri F. Love)

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**AFFIRMED**

Defendant, Darrow Baker, appeals his conviction of second degree murder. For the reasons that follow, we affirm.

On July 9, 1998, Mr. Baker was charged by bill of indictment with first degree murder in violation of La. R.S. 14:30(A)(6). He pleaded not guilty. After a hearing, the trial court found probable cause to bind him over for trial and denied his motions for an in camera inspection of the State's file, to suppress the identification, and to quash the death penalty. Defense counsel requested a lunacy hearing, and on May 25, 1999, Mr. Baker was found to be competent to stand trial. His first trial, on September 21, 1999, resulted in a hung jury. After two-day trial on April 10-11, 2000, a twelve-person jury found Mr. Baker guilty of second degree murder. On April 27, the trial court sentenced him to life imprisonment without benefits of parole, probation, or suspension of sentence.

In his sole assignment of error, Darrow Baker contends that the evidence was insufficient to support a conviction for second degree murder because the testimony of the only eyewitness is irreconcilable with the

physical evidence and is internally inconsistent.

## **FACTS**

At trial Ms. Sheryl Woods testified that on January 11, 1998, she was employed by the New Orleans Parks and Parkway Department, and at about 8 a.m. she was directing traffic for a tree-trimming crew working in the St. Thomas housing development. While the crew was working, a chain saw was stolen, and the police were called. Ms. Woods approached a group of young men standing nearby and informed them that the police had been called to the scene, telling them “if they had anything on them, that it was best that they should leave.” The group, which included Darrow Baker, left, but they came back while the police were there, and the officers questioned them about the theft of the chain saw. Ms. Woods testified that she had seen the person who had stolen the chain saw, and Darrow Baker was not that person.

When the police left, the park crew returned to trimming trees, and Ms. Woods resumed her position directing traffic. Because traffic was light, Ms. Woods was, in her own words, just “standing around being nosy.” She observed a white car driven by a white man pass by, then go down a driveway and return. There was a younger man who was a passenger in the

car. She then saw Mr. Baker approach the car and speak to the two men. At this point, the passenger got out of the car and stood for a few minutes with his left foot inside, holding onto the door. The passenger next walked to the front of the car near the hood; he was still on the passenger side, and Mr. Baker was standing across the hood on the driver's side. A shot rang out, the car pulled off, and more shots were heard. Ms. Woods said she heard at least three shots in only a few seconds. She was standing behind the gunman, and she saw that he was wearing a Devil's sports jacket, a pair of black jeans and red Bally shoes. She had noticed these clothes earlier that day on Mr. Baker, when the entire crew had commented on the "spiffy" outfit he was wearing so early in the morning. After the shooting, the gunman walked back toward Ms. Woods, tossed his gun under a building, turned around and walked towards the housing development. She then realized he was the same person she had warned earlier about the arrival of the police.

Before the police arrived to investigate the shooting, a boy about ten years of age, who had been on the corner all morning, went over to the building and appeared to pick up the gun. Ms. Woods assumed that was what he did because she saw him go to the site where the gun had been thrown and then run; she did not actually see the gun in his hands, however.

When she walked up to the victim, later identified as William White, she saw that he had a handful of little pebbles, which she thought to be rock cocaine. The people in the area took the rocks. When asked if she knew what the shooting was about, Ms. Woods said, over the defense's objection, that she had heard the white man say to Mr. Baker that "he didn't want it." After that the passenger got out of the car, and Ms. Woods could hear Mr. Baker and the passenger "fussing," but she could not understand what they were saying. When the officers who were there earlier returned to the site, Ms. Woods told them that the shooter was one of the persons they had questioned about the theft of the chain saw.

Sometime later, Detective David Gaines came to Ms. Woods' place of employment and showed her two photographic lineups. She selected the defendant's picture from the second lineup and wrote "tentative ID" on the back of the picture. At trial, she explained that she wrote those words because she was not sure she wanted to be involved in the investigation, not because she was uncertain about the identification. After she appeared before the grand jury, Detective Gaines told her that Crimestoppers was offering a \$1,000 reward for information concerning the murder. She took the money, but she insisted she did not testify for the money.

Dr. Alvaro Hunt, an expert forensic pathologist, testified that he

performed the autopsy on William White on January 12, 1998. Mr. White died while in surgery as a result of one of two gunshot wounds. The fatal bullet pierced his body from left to right. It entered his left side about eight inches below his armpit and went through his left kidney and spleen and also through the first lumbar vertebrae on his backbone. From there the bullet traveled through his right kidney and then his liver; it also struck the lower right lung and rested against the eleventh rib on the right. The second bullet entered the victim's left leg and fractured his femur bone. The bullet causing the chest wounds was recovered intact, but only fragments of the bullet from the leg wound were found.

Officer Kenneth Leary, an expert in ballistics, testified that he examines firearms to determine if particular ammunition was fired from a particular weapon. The officer examined three nine-millimeter cartridge cases found at the scene of the crime, and concluded that they were all fired from the same weapon. Officer Leary also examined a nine-millimeter bullet that was recovered during the autopsy and some fragments. One of the fragments had a bore diameter of thirty-two, which indicated it was fired from a thirty-two caliber revolver.

Officer Avery Matthews testified that he was the first officer to respond to the call concerning the shooting in the 1800 block of St. Thomas

Street; there he saw a man lying face down on the lake side of St. Thomas Street near St. Mary Street. People were in the area when the officer arrived. He found three brass bullet casings, but no weapon.

Officer Edwin Worthy testified that he and his partner, Officer Julio Alonzo, were in the St. Thomas housing development about 10:30 a.m. on January 11, 1998, investigating the theft of a chain saw from a parkway crew trimming trees in the area. They spoke to people in the area and got a description of a suspect in the theft. They noticed Mr. Baker, who was standing diagonally across the street with several other men. About 11 a.m., after receiving a call about the shooting, the officers returned to the area. Mr. Baker was no longer present.

Officer Worthy further testified that on January 14, he was asked by Detective David Gaines to look at a photographic lineup. Officer Worthy did so, but he did not recognize anyone in the lineup. The next day after viewing a second lineup, the officer selected Mr. Baker's picture as being the person he had seen standing on the corner prior to the murder.

Officer Alonzo testified to the same facts and stated that he too had viewed a photographic lineup on January 14 without selecting anyone; however, the next day when viewing another lineup, he selected the Mr. Baker's picture.

Detective David Gaines, the lead investigator in this case, testified that he first went to the hospital to see the victim. The next day he attended the autopsy and watched the doctor retrieve one bullet and two bullet fragments from the body. He also got information about the scene of the crime from the officers who were there. He then prepared a photographic lineup containing the picture of a man named Johnell Brown, who initially was considered a suspect. He showed this lineup to Officers Worthy and Alonzo and to Sheryl Woods, but none of the three recognized anyone as being connected to the shooting. Detective Gaines then prepared a photographic lineup containing Darrow Baker's picture; he showed the lineup to each of the same three people, and each selected Mr. Baker's photograph.

Mr. Robert Zachary Smith, a criminal investigator with the public defender's office, testified that he photographed the site where the murder occurred. He measured from the nearest trees, where he assumed Ms. Woods was standing, to the spot where the gunman was standing, and he found the distance to be one hundred and thirty-one feet. He also examined the crawl spaces in the nearby buildings and found heavy steel covers over those spaces. Under cross-examination, Mr. Smith admitted he has no expertise in crime scene reconstruction, and also that he did not realize that



Ms. Woods' had not been standing near the tree trimmers, but had been in the street directing traffic. The pictures of the steel covers were taken in 1999, more than a year after the murder, and they show the opposite side of the street from where the gun was thrown.

### **ASSIGNMENT OF ERROR**

The standard for reviewing a claim of insufficient evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979); State v. Rosiere, 488 So. 2d 965 (La.1986). The reviewing court is to consider the record as a whole and not just the evidence most favorable to the prosecution; and, if rational triers of fact could disagree as to the interpretation of the evidence, the rational decision to convict should be upheld. State v. Mussall, 523 So. 2d 1305 (La.1988). Additionally, the reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. Id. The trier of fact's determination of credibility is not to be disturbed on appeal absent an abuse of discretion. State v. Cashen, 544 So. 2d 1268 (La.App. 4 Cir.1989).

Second degree murder is the killing of a human being when the offender has the specific intent to kill or inflict great bodily harm. La. R.S. 14:30.1; State v. Banks, 496 So. 2d 1099 (La. App. 4 Cir. 1986). Specific intent need not be proven as a fact, but may be inferred from the circumstances of the transaction and the actions of the defendant. State v. Maxie, 93-2158 (La. 4/10/95), 653 So. 2d 526. Specific intent is that state of mind that exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow from his act or failure to act. La. R.S. 14:10(1); State v. Marshall, 94-1282 (La. App. 4 Cir. 6/29/95), 657 So. 2d 1106.

Mr. Baker first notes that Ms. Woods was the only person on the parkway crew to testify and contends that her testimony is irreconcilable with the physical evidence in the autopsy report. According to this argument, Ms. Woods' testimony that Mr. White was standing directly opposite the gunman is inconsistent with the autopsy report, which showed that the victim's body was pierced from left to right by two bullets. Mr. Baker contends that if Ms. Woods' testimony were accurate, the bullets should have caused frontal body wounds. This argument is not persuasive because it ignores the possibility that Mr. White could have been standing facing the gunman during the argument and then turned to the right to avoid

the gunfire, which would have resulted in the bullets entering his left side. Mr. Baker also argues that if the victim and gunman were on opposite sides of the car, a downward angle would be evident in Mr. White's thigh wound, yet the autopsy report indicates a lateral shot parallel to the ground. However, Ms. Woods testified that the two men were on opposite sides of the hood of a small white car during their altercation. Considering this evidence, we find no inconsistency between the autopsy report and the testimony that the gunman shot straight across the top of the hood, hitting the victim's thigh.

Next, Mr. Baker questions Ms. Woods' motive for testifying, noting her admission that she had received a reward from Crimestoppers. Mr. Baker cites contradictions between the testimony of Ms. Woods and that of Detective Gaines as to when Ms. Woods first learned of the reward. However, this discrepancy does not render Ms. Woods' entire testimony unreliable, especially since the issue of when Ms. Woods learned about the reward is not directly relevant to the guilt or innocence of Mr. Baker.

Other inconsistencies noted by Mr. Baker include Ms. Woods' testimony regarding whether or not the gunman had a beard and whether he had tossed the gun under a building or into some bushes, and a discrepancy between her testimony and the police report regarding the color of the

gunman's shoes. All these inconsistencies were brought to the attention of the jury, which nevertheless found Ms. Woods' testimony, along with the other evidence, to be sufficiently consistent and credible to support a verdict of second degree murder. We cannot say that the jurors abused their discretion in making this determination. Mr. Baker was identified by Ms. Woods and by Officers Worthy and Alonzo as the person they had spoken to prior to the incident; Ms. Woods warned him that the police were coming. He left and when he returned, she noticed that he was back. Then she witnessed his shooting Mr. White, tossing the gun aside, and walking away. Considering the totality of the evidence, the jury did not err in concluding that the State proved beyond a reasonable doubt that Darrow Baker committed second degree murder of William White.

Accordingly, Darrow Baker's conviction and sentence are affirmed.

**AFFIRMED**

