

STATE OF LOUISIANA

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NO. 2001-KA-0085

VERSUS

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COURT OF APPEAL

JAMES JASMINE

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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. 389-171, SECTION "I"
Honorable Raymond C. Bigelow, Judge

Charles R. Jones
Judge

(Court composed of Judge Charles R. Jones, Judge Max N. Tobias, Jr., and
Judge David S. Gorbaty)

Brian P. Brancato
LOUISIANA APPELLATE PROJECT
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New Orleans, LA 70119
COUNSEL FOR JAMES JASMINE

AFFIRMED

James Jasmine was charged by Bill of Information on April 22, 1997, with one count of attempted armed robbery, a violation of La. R.S. 14:27 (64). He plead not guilty at the arraignment on April 30, 1997; however, a twelve-member jury found him guilty as charged after trial on September 18, 1997. The State filed a multiple bill. According to the minute entry, a hearing occurred in which the district court found him to be a second offender under La. R.S. 15:529.1 and sentenced him to twenty-four years and three months at hard labor without benefit of parole, probation, or suspension of sentence. He appealed, and in an unpublished opinion this Court found the appeal premature under La. C.Cr.P. art. 914 because the sentencing transcript of the multiple bill hearing did not indicate that Jasmine was sentenced. State v. Jasmine, et al., 98-0243 (La. App. 4 Cir. 5/24/00), 761 So.2d 830.

Thus we remanded for resentencing, and on July 12, 2000, the district court resentenced Jasmine to twenty-four years and three months at hard labor without benefit of parole, probation, or suspension of sentence as a second offender under La. R.S. 15:529.1. His Motion for Reconsideration of sentence was denied and his motion for an appeal was granted.

The facts as presented in the earlier appeal are as follows:

On February 25, 1997, at approximately 1:30 a.m., Lionel Weston returned to his home at Piety and Marais Streets. He testified that just before he parked his truck, he saw three men walking down Marais. He further testified that after he stopped, he sat in the truck gathering various belongings and that he then heard a voice. As he opened the door of his truck, he realized someone was standing there. Weston testified that this person ordered him out of the truck and told him he was “jacked.” Weston saw that he had a gun. Weston also had a gun, and the two men exchanged gunfire. Weston testified that one of the other man’s shots hit his gun, causing him to drop it. He also heard the other man yell, “Man, that mother got a gun, he got a gun” to two other men who stood across the street. Weston exited his truck and saw the gunman being supported by the two other men. Weston ran into his house and called the police.

Officer Terrell Seiber testified that he and his partner, Melvin Labeau, responded to a call of an aggravated battery by shooting at 1217 Desire Street, which was around the corner from Piety and Marais. When they arrived at the scene, they were met by James Jasmine, who told the officers that his friend had been shot. The officers went into the alleyway of the residence at 1217 Desire, where they found Stephen Windsor with a gunshot wound in his abdomen. Officer Seiber testified that Windsor told him that he was at the intersection of Piety and Marais when someone in a vehicle pulled up and shot him for no reason.

Officer Seiber went to that intersection, where he was flagged down by Weston. Officer Seiber stated that at the same time, he received call about an attempted armed robbery at the same location. Weston told Officer Seiber that someone had tried to rob him and that he and the would-be robber exchanged gunfire. Weston was taken to the Desire Street location, where he identified

Jasmine as one of the people who was with his assailant. Seiber testified that Windsor had already been taken to the hospital when Weston made the identification of Jasmine. He further testified that Weston identified the jacket worn by Windsor, which had been left at the scene, as that worn by the man who tried to rob him.

The police interviewed Windsor at the hospital, and he told them that he was with Jasmine and his brother James at the corner of Piety and Marais when he was shot for no reason. Weston later identified Windsor in a photographic lineup as the man who tried to rob him. He was shown another lineup containing the picture of Windsor's brother, but he was unable to make an identification.

State v. Jasmine & Windsor, 98-KA-0243, pp.2-3 (La. App. 4 Cir. 5/24/00).

ERRORS PATENT

A review of the record discloses no errors patent.

ASSIGNMENT OF ERROR

In a single assignment of error, Jasmine complains that the State failed to present sufficient evidence of guilt. He argues that there was no evidence that he was a principal to the attempted armed robbery committed by Windsor because his mere presence on the scene of the crime is not sufficient to meet the State's burden of proof.

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 all of 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. 4th Cir. 1989).

Jasmine was found guilty of attempted armed robbery. Armed robbery is the taking of anything of value from the person of another or that is in the immediate control of another by use of force or intimidation while armed with a dangerous weapon. La. R.S. 14:64. An attempt is defined in La. R.S. 14:27(A) as:

Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

A principal is a person concerned in the commission of a crime, whether present or absent, and whether he directly commits the act constituting the offense, aids and abets in its commission, or directly or indirectly counsels or procures another to commit the crime. La. R.S. 14:24. Only those persons who knowingly participate in the planning or execution of the crime are principals, and mere presence at the scene is not enough. State v. Graves, 96-1537 (La. App. 4 Cir. 9/10/97), 699 So. 2d 903; State v. Marshall, 94-1282 (La. App. 4 Cir. 6/29/95), 657 So. 2d 1106. One may only be convicted as a principal for a crime for which he personally has the requisite mental state. Id. Therefore, the State was required to show that Jasmine had the specific intent to commit the attempted armed robbery of Lionel Weston.

Specific intent may be inferred from the circumstances of the transaction and from the actions of the accused. State v. Graham, 420 So. 2d 1126 (La. 1982). When circumstantial evidence forms the basis for the conviction, such evidence must exclude every reasonable hypothesis of innocence. La. R.S. 15:438. The court does not determine whether another possible hypothesis suggested by the defendant could afford an exculpatory explanation of events; rather, when evaluating the evidence in the light most favorable to the prosecution, the court determines whether the possible

alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt under Jackson v. Virginia. State v. Davis, 92-1623 (La. 5/23/94), 637 So. 2d 1012. This is not a separate test from Jackson v. Virginia, but is instead an evidentiary guideline for the jury when considering circumstantial evidence and facilitates appellate review of whether a rational juror could have found the defendant guilty beyond a reasonable doubt. State v. Wright, 445 So. 2d 1198 (La. 1984); State v. Addison, 94-2431 (La. App. 4 Cir. 11/30/95), 665 So. 2d 1224.

Recently, the Louisiana Supreme Court considered a case in which a defendant, Bernell Juluke, Jr., was in the company of two gunmen prior to a murder, and then fifteen minutes after the murder he was known to have been driving the car from which they had been shooting. However, at trial the witness could not positively identify Juluke as the driver with the gunmen at the time of the shooting. All three men were found guilty at trial, but on appeal this court found the evidence insufficient as to Juluke because another person could have been driving. The Supreme Court, however, reversed the decision on the basis that all the evidence placed Juluke with the defendants before the shooting and in the car with them fifteen minutes after the shooting, and the evidence offered by the three defendants at trial

was not convincing or consistent. State v. Juluke, 98-0341 (1/8/99), 725 So. 2d 1291, 1294.

Similarly, Jasmine was with Windsor immediately before and immediately after the incident, and he was standing close enough at the time of the shooting for Weston to be able to see and identify him. At trial Weston described Jasmine, his clothing that night, and his actions. Weston called Jasmine “the red guy with [Windsor],” and said his first impression was that Jasmine was a woman; Jasmine was wearing a light colored—either blue or gray—jacket; when Weston shot at Windsor, he called out to Jasmine who was standing across the street, and then Jasmine and an unknown accomplice aided Windsor in leaving the scene. The jury made credibility determinations and could have reasonably inferred the requisite specific intent. Looking at the evidence in the light most favorable to the prosecution in this case, we find the State proved Jasmine’s guilt as a principal to attempted armed robbery beyond a reasonable doubt. When viewed in the light most favorable to the prosecution, the evidence is sufficient to prove beyond a reasonable doubt that Jasmine actively participated in or aided and abetted in the attempted armed robbery of Lionel Weston.

This assignment of error is without merit.

Accordingly for reasons cited above, James Jasmine's conviction and sentence are affirmed.

AFFIRMED