



MARRERO, LA 70073  
COUNSEL FOR DEFENDANT/APPELLANT

**CONVICTION AFFIRMED; MULTIPLE ADJUDICATION AND  
SENTENCE VACATED; REMANDED**

The defendant, Olee Parker (“Parker”), was charged 29 March 2000, with aggravated battery, a violation of La. R. S. 14:34. He was arraigned on 3 April 2000, and pled not guilty. A six-member jury found him guilty as charged on 11 May 2000. He filed a motion for new trial on 26 May 2000. He was sentenced to nine months imprisonment on 6 October 2000. The State filed a multiple bill. On 22 November 2000, Parker filed a motion for appeal. On 14 February 2001, the court found him to be a second offender, vacated the original sentence and re-sentenced him to five years at hard labor without benefit of parole, probation, or suspension of sentence. On 25 July 2001, the trial court denied the motion for new trial.

A review of the trial testimony reveals that on 28 January 2000, Officer John Hunter responded to a call of an aggravated battery at 3015 Lafitte Street and found the victim, Frank Jacobs, suffering from a knife wound to his neck. The victim explained that he had been arguing with the defendant over money.

Detective Ricky Hunter interviewed Parker at the police station after he was arrested and advised him of his rights. He could tell that Parker was extremely intoxicated. The defendant denied owing the victim money and claimed that he had not stabbed him. Det. Hunter ended the interview after he learned that Parker had drunk a bottle of scotch. The victim told Det. Hunter that he had gone to see the defendant because Parker owed him \$4.00.

Chris Durrell said he saw Parker and the victim arguing over money. After the victim entered the defendant's house several times demanding his money, the victim picked up a stick. In response, Parker armed himself with a knife. The victim then picked up a two by four piece of wood from a nearby truck. When the victim reached up to swing at him, Parker stabbed him in the neck with the knife.

The victim testified that Parker owed him \$4.00 for some meat. When the victim went to the defendant's house to get his money, the defendant came outside. Parker first pulled out his wallet, then a knife and stabbed the victim. Only then did the victim pick up a stick to defend himself. He said he did not go into the defendant's house at any time. He admitted to drinking a "few beers," but said he was not drunk.

Before we address Parker's assignments of error, we note that the trial

court did not rule upon the defendant's motion for new trial, filed on 26 May 2000, until 25 July 2001. Under La. C. Cr. P. art. 853, a motion for new trial must be filed and disposed of before sentence. A trial court's failure to rule on the merits of a motion for new trial prior to sentencing constitutes an error patent on the face of the record, and requires a vacating of the sentence and remand. *State v. White*, 621 So. 2d 884, 889 (La. App. 4 Cir. 1993). In this case, because the motion was not ruled upon until after the defendant was resentenced at the multiple bill hearing, the defendant's sentence is vacated.

#### ASSIGNMENT OF ERROR ONE:

The defendant first argues that the trial court erred in finding him to be a second offender because the State failed to present adequate proof of his identity.

At the multiple bill hearing, Officer Raymond Loosemore, a fingerprint expert, testified that he took the fingerprints of Parker that morning and matched them with those contained on the back of the defendant's 1985 arrest register, bearing the number F0518485. In addition, the State introduced the 1985 bill of information, containing the same name

as on the arrest register, the same date of arrest, and the same register number. The State also introduced a plea of guilty form from the 1985 case, a minute entry, and a docket master.

The court stated, however, that for the State to carry its burden of proof, it must obtain the transcript from the conviction to prove that the person convicted in 1985 was in fact Parker. Therefore, the hearing was continued; however, the record does not indicate that the earlier transcript was produced by the State.

La. R. S. 15:529.1(D)(1)(b) states that the district attorney has the burden of proving beyond a reasonable doubt any issue of fact and that the presumption of regularity of judgment shall be sufficient to meet the original burden of proof. The State must establish the prior felony and that the defendant was the same person convicted of that felony. *State v. Neville*, 96-0137 (La. App. 4 Cir. 5/21/97), 695 So.2d 534. Various methods are available to prove that the defendant is the same person convicted of the prior felony offense, such as testimony from witnesses, expert opinion regarding the fingerprints of the defendant when compared with those in the prior record, or photographs in the duly authenticated record. *State v. Henry*, 96-1280 (La. App. 4 Cir. 3/11/98), 709 So.2d 322.

In addition to the missing transcript, which the trial court stated was

necessary for the State to carry its burden of proof, the record on appeal does not contain the exhibits introduced at the multiple bill hearing. Without the transcript and an independent examination of the documents to determine whether identity was proven, the court finds that the multiple adjudication must also be vacated.

ASSIGNMENT OF ERROR TWO:

Parker also argues that the evidence was insufficient to support the conviction because the record shows that he was acting in self-defense.

The proper standard for appellate review for a sufficiency of evidence claim is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781 (1979); *State v. Bellamy*, 599 So.2d 326 (La. App. 2 Cir.1992). The *Jackson* standard is applicable in cases involving both direct and circumstantial evidence. The facts established by the direct evidence and inferred from the circumstances established by that evidence must be sufficient for a rational trier of fact to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. *State v. Owens*, 30,903 (La. App. 2 Cir. 9/25/98), 719 So.2d 610.

Battery is the intentional use of force or violence on the person of another. La. R. S. 14:33. Aggravated battery is a battery committed with a dangerous weapon. La. R. S. 14:34. In the absence of qualifying provisions, the term "intent" refers to "general criminal intent." La. R. S. 14:11. An aggravated battery conviction requires proof of only general criminal intent or a showing that the defendant in the ordinary course of human experience must have adverted to prescribed criminal consequences as reasonably certain to result from the defendant's act or failure to act. La. R. S. 14:10; *State v. Howard*, 93-74 (La. App. 3 Cir. 11/2/94), 649 So.2d 489.

Parker admits that he stabbed the victim. The injury, therefore, was a reasonably certain consequence. Nevertheless, the defendant contends that the victim was the aggressor. Parker claims that he acted in self-defense and the State failed to disprove that his actions were justified.

The statutory defense of justification is a codification of the legal doctrine of necessity, which generally provides that the existence of extenuating circumstances will defeat criminal culpability. See *State v. Recard*, 97-754, pp. 5-7 (La. App. 3 Cir. 11/26/97), 704 So.2d 324, 327-29, and authorities cited therein. As the Third Circuit has pointed out, this doctrine has been applied under circumstances other than those enumerated in La. R. S. 14:18, *Recard* at 6-7, 704 So.2d at 328, and has been recognized

as providing a defense in any case in which it is not expressly prohibited. *State v. Blache*, 480 So.2d 304, 308 (La. 1985). This is in accord with the language of the first paragraph of La. R. S. 14:18, which specifies that the defense of justification is applicable for any crime, including:

\* \* \*

(6) When any crime, except murder, is committed through the compulsion of threats by another of death or great bodily harm, and the offender reasonably believes the person making the threats is present and would immediately carry out the threats if the crime were not committed....

In *State v. Fluker*, 618 So.2d 459 (La. App. 4 Cir. 1993), this court determined that the State must disprove a claim of justification. In a non-homicide situation, the defense of justification requires a dual inquiry, namely: an objective inquiry into whether the force used was reasonable under the circumstances, and a subjective inquiry into whether the force was apparently necessary. *Id.*

Here, the eyewitness said that the victim paced outside the house of the defendant, entered the house, and raised his arm to strike the defendant with a piece of lumber just before the defendant stabbed him. However, the victim said he did not go into the house and did not pick up the stick until after the defendant stabbed him. Issues of credibility are for the trier of fact. *State v. Rosiere*, 488 So.2d 965 (La. 1986). The jury chose to believe that



the defendant was the aggressor. Therefore, the evidence was sufficient and this assignment is without merit.

### **CONCLUSION**

The conviction is affirmed. The multiple offender adjudication and sentence are vacated and the case is remanded to the trial court for further proceedings.

**CONVICTION AFFIRMED; MULTIPLE ADJUDICATION AND  
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