

STATE OF LOUISIANA

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NO. 2002-KA-2517

VERSUS

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COURT OF APPEAL

OLIVER BROWN

\*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 431-234, SECTION "G"  
Honorable Julian A. Parker, Judge

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**Judge Charles R. Jones**

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(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris Sr.,  
Judge Michael E. Kirby)

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**AFFIRMED**

On June 26, 2002, the defendant, Oliver Brown, (hereinafter “O. Brown”), was charged by bill of information with the attempted second-degree murder of Jeremiah Shaw, in violation of La. R.S. 14:(27)30.1. After a jury trial, he was found guilty of aggravated battery. He filed motions for new trial and post verdict judgment of acquittal. The district court denied the motions. O. Brown waived all delays, and the district court sentenced him to serve thirty months at hard labor without benefit of probation, parole or suspension of sentence. The district court denied his Motion for Reconsideration of Sentence. This timely appeal follows.

Jeremiah Shaw, the victim, testified at trial that he knew O. Brown for several years from his neighborhood, and that prior to the date of the shooting, April 4, 2002, he and O. Brown had never quarreled or fought with each other. On the night of the shooting, both Mr. Shaw and O. Brown were at a party together. Mr. Shaw left the party and went to the house of a friend who lived two blocks away, stayed at his friend’s house for approximately five minutes and then left. As he was walking, Mr. Shaw saw O. Brown

approach him, and told O. Brown “What’s up?”, as O. Brown passed him. After Mr. Shaw passed O. Brown, he heard a gunshot and grabbed his back, realizing that he had been shot. Mr. Shaw turned around and saw O. Brown standing near him with fire coming from his hand. Mr. Shaw attempted to run away. However, O. Brown continued shooting, so Mr. Shaw fell down and pretended to be dead. After O. Brown left, Mr. Shaw sought help. A friend of his sister called the police. Mr. Shaw was taken to Charity Hospital. He sustained gunshot wounds to his jaw, neck, back and arm. A few days later, Mr. Shaw spoke with Detective Gerard Robinette and identified O. Brown as the person who shot him. Mr. Shaw denied having a weapon the night of the shooting. He acknowledged that he had prior convictions for possession of a concealed weapon and possession of marijuana.

Detective Robinette, who handled the follow-up investigation, met with Mr. Shaw on April 9, 2002 at Charity Hospital. After speaking with Mr. Shaw, the officer developed O. Brown as a suspect. A few days later, the officer presented Mr. Shaw with a photographic lineup in which Mr. Shaw identified O. Brown as the person who shot him. Detective Robinette then obtained an arrest warrant for O. Brown. The officer was informed on April 24, 2002, that O. Brown had turned himself in at the First District

Police Station. Detective Robinette and his partner, Detective Richard Chambers, went to the police station and met with O. Brown, who informed the officers that he wanted to talk to them about the incident. After Detective Robinette advised O. Brown of his Miranda rights, O. Brown gave the officers a verbal statement, wherein he admitted shooting at the victim but claimed that he acted in self-defense. O. Brown told the officers that several days before the shooting, Mr. Shaw had shot at O. Brown's brother and his brother's friend. According to O. Brown, on the night of April 4, 2002, he thought he saw Mr. Shaw take a gun out of his waistband, and O. Brown reacted by taking his gun out and shooting at Mr. Shaw.

Anthony Brown, (hereinafter "Mr. A. Brown"), the defendant's brother, testified at trial that he lives with his grandmother in the Iberville Housing Development and that he knew Mr. Shaw from the neighborhood. Mr. A. Brown testified that a few nights before the shooting, he saw Mr. Shaw in the neighborhood, and that Mr. Shaw had a Tech Nine machine gun and started shooting at him and his friend, Eric Doucette. Mr. A. Brown further testified that he and Mr. Doucette were able to flee without getting shot. The incident was not reported to the police. Mr. A. Brown testified that he told his brother about the incident. He acknowledged a prior conviction for possession of cocaine. On cross-examination, Mr. A. Brown

admitted that he could not see the person shooting at him the night Mr. Shaw allegedly shot at him and his friend. Mr. A. Brown also testified that he knew that it was Mr. Shaw because he saw Mr. Shaw with a Tech Nine the next day.

O. Brown, the defendant, testified at trial and acknowledged that he owned a gun on April 4, 2002. He testified that he purchased the gun for protection. He further testified that he did not live with his grandmother in the Iberville Housing Development, but visited her two or three times a day. On the evening of the shooting, he was leaving his grandmother's house when he saw Mr. Shaw walking towards him. He testified that he saw Mr. Shaw take a gun from his waistband and point it at him. O. Brown admitted that he took out his gun and shot Mr. Shaw. When he learned that the police were looking for him, he turned himself in at the First District Police Station.

On appeal, O. Brown contends that the district court erred when it stated his sentence was to be served without benefit of probation, parole or suspension of sentence. He also seeks a review of the record for errors patent.

A review of the sentencing hearing indicates that the district court sentenced O. Brown to serve thirty months at hard labor. The district court did not say anything about a prohibition on the benefits of probation, parole

or suspension of sentence. However, the commitment form, minute entry and docket master entry, all stated that O. Brown's sentence was to be served without benefit of probation, parole or suspension of sentence. La. R.S. 14:34 provides that "[w]hoever commits an aggravated battery shall be fined not more than five thousand dollars, imprisoned with or without hard labor for not more than ten years, or both." There is nothing in the statute which prohibits probation, parole or suspension of sentence. Generally, where there is a discrepancy between a minute entry and a transcript, the transcript prevails. State v. Hall, 99-2887, p.17 (La. App. 4 Cir. 10/4/00), 775 So.2d 52, 63; State v. Anderson, 99-1407, p.2, n.1 (La. App. 4 Cir. 1/26/00), 753 So.2d 321, 323 n.1. As the transcript states, there was no prohibition of probation, parole or suspension of sentence placed upon O. Brown's sentence. However, as the Department of Corrections does not receive a copy of the transcript but only the commitment order, the district court is hereby ordered to send an amended commitment form to the Department of Corrections deleting the prohibition against probation, parole or suspension of sentence.

No other patent errors were found upon review.

## **DECREE**

Accordingly, The district court is ordered to send an amended commitment form to the Department of Corrections deleting the prohibition against probation, parole or suspension of sentence. In all other respects the conviction and sentence of Oliver Brown are affirmed.

**AFFIRMED**