

STATE OF LOUISIANA

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NO. 2003-KA-1745

VERSUS

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COURT OF APPEAL

BERNARD E. CORNIN

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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. 437-564, SECTION "J"
HONORABLE DARRYL A. DERBIGNY, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge James F. McKay III, Judge Michael E. Kirby,
Judge Pro Tempore Moon Landrieu)

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On March 26, 2003, the State filed a bill of information charging Bernard E. Cornin with attempted simple robbery, a violation of La. R.S. 14:27(65). He was arraigned on April 1, 2003 and pleaded not guilty. However, after trial on April 15, 2003, a six-member jury found him guilty as charged. The defendant filed a motion for a post-verdict judgment of acquittal, which the court denied. He was sentenced on May 20, 2003 to serve two years at hard labor; his sentence was suspended and he was placed on one year of probation with special conditions. His motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

Officer Stephen Mortell testified that, while wearing plain clothes, he was on a routine patrol in the 200 block of Royal Street on March 19, 2003. The defendant approached him and asked for money, but the officer ignored him. Then Mr. Cornin grabbed Officer Mortell and demanded money. The officer shoved him off, showed his police badge, and said, "New Orleans Police, get against the wall." Mr. Cornin swung at the officer who immediately handcuffed him. When the defendant was searched incident to his arrest, a folding knife was found in his pocket.

The forty-nine year old defendant testified that was employed as a

security guard in the past, but he has not been employed recently because of a nervous condition. He receives social security payments, and his mother handles his financial affairs. Mr. Cornin told the court that on March 19, 2003 he went to the Winn Dixie for soap, a two-dollar pint of whiskey, and a six-pack of beer. He drank one beer with several teaspoons of whiskey in it, and then he got on a bus to go to Walgreen Drugstore in the French Quarter. There he bought a small television set. He expected to have enough change left to take the bus home; however, he miscalculated and was forty-seven cents short of the amount he needed. The first two people he asked for money contributed a dime and a quarter. He then needed only twelve cents to ride the bus. He noticed a man coming toward him who looked “kind of psychotic” or like a “hoodlum.” He asked the man for a quarter. Mr. Cornin, who was carrying the small television in one hand and a bag containing soap and beer in the other, suddenly thought that the man coming toward him was a terrorist and began to back away from him. The man grabbed Mr. Cornin and showed him a police badge. Mr. Cornin stated that he could not attack the man because his hands were full, and he would not resist because he knew his assailant was a policeman. Under cross-examination, Mr. Cornin admitted he has a prior offense from 2001 for public intoxication.

In a single assignment of error, the defendant now argues that the evidence is insufficient to support his conviction.

The standard for reviewing a claim of sufficiency of the evidence is well settled. Simply stated, all evidence, direct and circumstantial, must meet the reasonable doubt standard enunciated in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979). See *State v. Jacobs*, 504 So.2d 817 (La.1987).

Mr. Cornin was convicted of attempted simple robbery. Simple robbery is defined as “the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, but not armed with a dangerous weapon.” La. R.S. 14:65. To be guilty of an attempt, a person must have “specific intent to commit a crime” and perform an “act for the purpose of and tending directly toward the accomplishing of his object.” La. R.S. 14:27.

The defendant argues that the State failed to prove that Mr. Cornin had specific intent to rob Officer Mortell. He claims that the evidence indicates only that he was panhandling while intoxicated. Furthermore, he points out that the officer had no reason to feel threatened or intimidated by the forty-nine year old defendant.

The jury heard the testimony and weighed the officer’s credibility

with that of the defendant's. Officer Mortell testified that the defendant first asked him for money, then followed him, grabbed him by his shirt, and demanded his money. The officer specifically stated that based on his experience, the defendant was not panhandling when he asked for money; when asked if he had been intimidated by the defendant's actions, the officer answered affirmatively. The jury found the officer's version of events to be the more credible. The jury did not abuse its discretion in accepting the officer's testimony. "If credible, the testimony of a single witness may establish the elements of a crime beyond a reasonable doubt." *State v. Boudreaux*, 2000-0073, pp. 6-7 (La.App. 4 Cir. 12/20/00), 777 So.2d 596, 599; *State v. Allen*, 94-1895 (La.App. 4 Cir. 9/15/95), 661 So.2d 1078, 1084. Viewing all of the evidence in a light most favorable to the prosecution, any rational trier of fact could have found all of the essential elements of the crime of attempted simple robbery present beyond a reasonable doubt, including the fact that the defendant had specific intent to rob the officer.

Accordingly, Mr. Cornin's conviction and sentence are affirmed.

AFFIRMED