

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2011-KA-0973**
VERSUS *
DENZIL SIMMONS * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 493-110, SECTION "K"
Honorable Arthur Hunter, Judge

* * * * *

Judge Dennis R. Bagneris, Sr.

* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Max N. Tobias, Jr.,
Judge Roland L. Belsome)

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AFFIRMED

MARCH 21, 2012

The district court denied Eric Thompson's¹ motion to suppress identification and subsequently his motion for new trial and for a post-verdict judgment of acquittal. Simmons has filed the instant appeal, and for the reasons set forth, we affirm the district court.

On December 11, 2009, the State of Louisiana charged Thompson with simple robbery. At his January 7, 2010 arraignment, Thompson was appointed counsel and he also entered a plea of not guilty to the charge. On June 17, 2010, a preliminary hearing was held and the court heard Thompson's motion to suppress identification. At the conclusion of the hearing, the court denied Thompson's motion and found that sufficient probable cause existed to hold Thompson for the charge of simple robbery.

On December 6, 2010, a bench trial was held. After the trial, the judge found Thompson guilty of attempted simple robbery. Thereafter, on January 27, 2011, Thompson filed a motion for a new trial and for a post-verdict judgment of acquittal, which the court denied. On this same day, the trial court sentenced

¹ Eric Thompson is also known as Denzil Simmons. However, per the court transcript, Eric Thompson is the defendant's birth name. Therefore, for purposes of this appeal, we refer to the defendant as "Eric Thompson" or "Thompson".

Thompson to serve twenty-one months at hard labor with credit for time served.

This timely appeal follows.

At trial, Jose Laines testified that on July 11, 2009, at approximately 3:00 a.m., Mr. Laines was working as a bathroom attendant at the Fat Catz Bar. At some point, a group of men entered the bathroom. Several of the men asked Mr. Laines for his money, and he refused to give it to them. Mr. Laines subsequently tried to open the bathroom door but was hit by the several of the men. Mr. Laines grabbed his cell phone to call his boss; however, the men hit Mr. Laines' arm, and the cell phone fell onto the floor; the men left the club. Thereafter, Mr. Laines flagged down several police officers and reported to them that he had been robbed. Mr. Laines identified Mr. Thompson and his friend, Jeffery Turner, as his assailants. The officers detained the two men and conducted patdown frisks. The frisks uncovered a cellphone in Thompson's left pants pocket. The cellphone was eventually identified by Mr. Laines as his phone.

Mr. Laines testified that he works as a bathroom attendant at the Fat Catz Club on Bourbon Street. In this capacity, he cleans the bathroom and provides service to everyone who enters it. Mr. Laines testified that on July 11, 2009, he was robbed of his cellphone. Mr. Laines recalled that four or five men entered the bathroom, and two urinated while the others went inside the bathroom (stalls). At some point, one individual exited the bathroom (stall), and the other asked Mr. Laines for his money. Mr. Laines refused to give his money and attempted to open the door;² however, the men began to hit Mr. Laines. After Mr. Laines was hit, he "grabbed his phone" to call his boss, Pablo Leando. Mr. Laines was then hit on the

² Mr. Laines tried to open the door so the incident could be recorded on camera.

arm, and his phone fell onto the floor. Mr. Laines then stated that Thompson picked the phone up and “went out on the street”.

After Mr. Laines was robbed, his girlfriend³ told his manager Mr. Leando that he had been hit and that his phone was stolen. Thereafter, Mr. Laines, Mr. Leando, and the police officer went after Thompson because Turner was detained at the club. Once Thompson was located, Mr. Laines called his phone, and it was determined that Thompson had the phone.

Officer Scallan testified that on July 11, 2009, he worked patrolling the 300 to 400 block of Bourbon Street. The officer testified that Mr. Laines flagged him down regarding a robbery that had occurred. Officer Scallan stated that Mr. Laines spoke Spanish and because of this he had trouble understanding what Mr. Laines was saying. However, Mr. Laines’ manager, Mr. Leando, arrived shortly after Mr. Laines and was able to translate for Officer Scallan. The officer stated that Mr. Laines identified two men who committed a robbery against him while he was employed as a restroom attendant. After the men were identified, the police stopped the men and patted them down. During the pat down, Mr. Laines’ cellphone was found in Thompson’s left front pant pocket. Mr. Laines subsequently called the phone, and it was confirmed that the phone in Thompson’s pocket belonged to Mr. Laines. The officer also noted that Mr. Laines had a small abrasion on his cheek.

Thompson testified that on July 11, 2009, he was in the French Quarter with Sylvester Hope and Jeffery Turner, and the three of them decided to go to Fat Catz. Once inside, they “scattered out”. Mr. Hope and Thompson eventually ended up at

³ Mr. Laines’ girlfriend works in the woman’s bathroom at the club.

the bar near the bathroom, and Mr. Turner was somewhere else. Mr. Turner explained that they were in Fat Catz for a couple of hours. He said that a “commotion” broke out and a lot of scrambling was occurring near the restroom. He stated that he only saw Mr. Hope and had no idea where Mr. Turner was located. Thompson explained that the open cellphone was getting kicked across the floor during the commotion. He picked the cellphone up off of the floor and put it in his pocket. After picking up the phone, the group remained in the club for approximately twenty-five minutes. Mr. Hope then asked if Thompson was ready to leave, and they left. Thompson noted that Mr. Turner was already down the street when he and Mr. Hope left the club. As the group was walking, the police confronted them and made them stand against the wall. At that point Mr. Laines identified Mr. Turner as the individual that hit him, and Mr. Turner was handcuffed. The police checked Mr. Hope. He did not have anything and was let go. The police searched Thompson’s pockets and recovered the phone.

A review of the record reveals that there are no patent errors.

Thompson’s sole assignment of error is that the evidence is insufficient to support his conviction for attempted simple robbery⁴ because the State failed to negate any reasonable probability of misidentification. More specifically,

⁴ To convict a person of attempted simple robbery, the State must prove beyond a reasonable doubt that the defendant attempted to take something of value belonging to another from the person of another by use of force or intimidation, but not armed with a dangerous weapon. La. R.S. 14:64

La R.S. 14:27(A), defines attempt as:

A. 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.

Thompson asserts that the identification was unreliable because the formal statement Mr. Laines gave to the police and to the public defender's investigator directly contradicts his trial testimony. On the other hand, in its reply, the State argues that Mr. Laines identification of Thompson was sufficient to establish Thompson as the person who stole his cellphone.

Generally, when assessing the sufficiency of evidence to support a conviction, the reviewing court must determine whether, viewing the evidence in the light most favorable to the prosecution, a rational fact finder could have found the defendant guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 309, 99 S.Ct. 2781, 2784 (1979). This review must include the whole record, as a rational fact finder does. State v. Mussall, 523 So.2d 1305, 1310 (La. 1988). If rational finders of fact could disagree as to the interpretation of the evidence, the rational trier's view of all of the evidence most favorable to the prosecution must be adopted. Id. It is not the function of the appellate court to assess the credibility of witnesses or reweigh the evidence. State v. Johnson, 619 So.2d 1102 (La. App. 4 Cir. 1993), citing State v. Rosiere, 488 So.2d 965, 968 (La. 1986). Credibility determinations, as well as the weight to be attributed to the evidence, are soundly within the province of the fact finder. State v. Brumfield, 93-2404, p. 5-6 (La. App. 4 Cir. 6/15/94), 639 So.2d 312, 316. Moreover, conflicting testimony as to factual matters is a question of weight of the evidence, not sufficiency. State v. Jones, 537 So.2d 1244, 1249 (La. App. 4 Cir. 1989). Like all factual matters, credibility determinations are entitled to great weight and will not be disturbed unless contrary to the evidence. Id., citing State v. Vessell, 450 So.2d 938 (La. 1984). Absent internal contradiction or irreconcilable conflict with the physical evidence, a single witness's testimony, if believed by the fact finder, is sufficient to support a

factual conclusion. State v. Marshall, 2004-3139, p. 9 (La. 11/29/06), 943 So.2d 362, 369.

Furthermore, this Court also reviews the reliability of an identification in accordance with the factors set out Manson v. Brathwaite, 432 U.S. 98, 97 S. Ct. 2243, 53 L. Ed.2d 140 (1977), which are: (1) the opportunity of the witness to view the assailant at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the assailant; (4) the level of certainty demonstrated by the witness; and (5) the length of time between the crime and the confrontation. State v. Stewart, 2004-2219, p. 6 (La. App. 4 Cir. 6/29/05), 909 So. 2d 636, 639.

Contrary to Thompson's argument, reviewing this case utilizing the Manson factors establishes that Mr. Laines' identification of Thompson was reliable. First, Mr. Laines' testimony indicates that he had an opportunity to view Thompson at the time of the crime. Mr. Laines testified that the assailants asked him for money, hit him, and picked his phone up off of the floor before leaving the club. He also testified that when his arm was being hit, he took a good look at Thompson. This testimony establishes that Mr. Laines had an opportunity to view his assailants.

Mr. Laines was able to maintain a great deal of attention during the incident, because he approached the police officers and identified the individuals who committed the attempted robbery against him. Mr. Laines was also certain that Thompson was one of his assailants because he never lost sight of his assailants and was able to positively identify Thompson. Lastly, no enormous amount of time lapsed between the time that the crime was committed and the time that the confrontation occurred because testimony establishes that the police report was written "close in time" to when the incident occurred. A fact finder's credibility

determination is entitled to great weight and should not be disturbed unless it is contrary to the evidence. State v. Johnson, 2009-0259 (La. App. 4 Cir. 9/16/09), 22 So. 3d 205⁵; State v. Huckabay, 2000-1082 (La. App. 4 Cir. 2/6/02), 809 So. 2d 1093. In this instance, the trial court's determination will not be disturbed.

Decree

Based on the foregoing the State negated any reasonable probability of misidentification and Eric Thompson's conviction and sentence is affirmed.

AFFIRMED

⁵ Writ den. 2009-2263 (La. 4/16/10), 31 So. 3d 1054.