

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **5th day of May, 2023** are as follows:

PER CURIAM:

2022-K-01205

STATE OF LOUISIANA VS. MARSHALL J. ALEXANDER, JR. (Parish
of St. Martin)

AFFIRMED. SEE PER CURIAM.

Weimer, C.J., dissents and assigns reasons.

Crain, J., dissents and assigns reasons.

McCallum, J., dissents.

SUPREME COURT OF LOUISIANA

No. 2022-K-01205

STATE OF LOUISIANA

VS.

MARSHALL J. ALEXANDER, JR.

On Writ of Certiorari to the Court of Appeal,
Third Circuit, Parish of St. Martin

PER CURIAM

Defendant Marshall J. Alexander, Jr. was found guilty as charged of the second degree murder of Scott Paul Latiolais. On March 29, 2002, Scott Paul Latiolais's body was found in a field in St. Martin Parish. He was killed by a shotgun wound to the back. It was the State's theory, which was evidently accepted by the jury, that defendant and his cousin, Timothy Roberts, intended to rob the victim, who was then shot in the back when he tried to flee. The State's own case predominantly established Roberts's guilt while the evidence against defendant, cobbled together from inconsistent statements and testimony, was minimal. The court of appeal found the evidence was insufficient to prove that defendant shot the victim or that defendant knew his cousin had intended to rob the victim before he shot him. *State v. Alexander*, 2021-0641 (La. App. 3 Cir. 5/25/22), ___ So.3d ___, available at 2022 WL 1766352. We agree.

Appellate review for minimal constitutional sufficiency of evidence is a limited one restricted by the due process standard of *Jackson v. Virginia*. See *State v. Rosiere*, 488 So.2d 965, 968 (La. 1986). Under the due process standard of *Jackson v. Virginia*, "the relevant question 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 beyond a reasonable doubt.” *Id.*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). “In reviewing the evidence, the whole record must be considered because a *rational* trier of fact would consider all of the evidence[.]” *State v. Mussall*, 523 So.2d 1305, 1310 (La. 1988).

Here, the State’s case rested largely on circumstantial evidence. Circumstantial evidence is “evidence of one fact, or a set of facts, from which the existence of the fact to be determined may reasonably be inferred.” *State v. Chism*, 436 So.2d 464, 468 (La. 1983), citing McCormick, *Law of Evidence*, p. 435 (2d ed. 1972). In criminal cases, the rule as to circumstantial evidence is: assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence. La. R.S. 15:438.

The *Jackson* standard “leaves juries broad discretion in deciding what inferences to draw from the evidence presented at trial, requiring only that jurors ‘draw reasonable inferences from basic facts to ultimate facts.’” *Coleman v. Johnson*, 566 U.S. 650, 655, 132 S.Ct. 2060, 2064, 182 L.Ed.2d 978 (2012). Importantly, the due process standard in *Jackson* does not allow a jury to speculate on the probabilities of guilt where rational jurors would necessarily entertain a reasonable doubt. *Mussall*, 523 So.2d at 1311. The requirement that jurors reasonably reject the hypothesis of innocence advanced by the defendant in a case of circumstantial evidence presupposes that a rational rejection of that hypothesis is based on the evidence presented, not mere speculation. *State v. Quinn*, 2019-0647, p. 7 (La. 9/1/20), 340 So.3d 829, 834, citing *State v. Schwander*, 345 So.2d 1173, 1175 (La. 1977).

Defendant, Roberts, the victim, and several witnesses all lived in the same area of Henderson in St. Martin Parish. Defendat was with Roberts on the night the crime occurred. That night, the victim approached Tony Mouton, who lived across the street from defendant and Roberts, wanting to buy \$50 worth of crack cocaine.

He had none, so Mouton asked Roberts if he had any to sell. Roberts did not. Roberts, who had been wearing a white t-shirt, went into this home and came out wearing a dark jacket. He and defendant, who was already wearing a long-sleeved jacket, pulled up their hoods and walked to a gravel path that cut through a nearby grassy field. About ten minutes later, the victim left Mouton's front yard and walked down the same gravel path. There he encountered defendant, Roberts, and Julius Charles, a mutual cousin of defendant and Roberts.

According to Charles, the victim and Roberts stood apart from him and defendant talking. Suddenly, the victim ran, Roberts pursued him briefly, and then shot him in the back. Defendant, Roberts, and Charles all ran toward their respective homes. Roberts called Charles and told him not to say anything about the crime. Ignatius Patt, a cousin of Charles, testified that the next day he asked Charles if Roberts shot the victim and Charles said no. He then asked who did it, and Charles told Patt he did not know.

Initially, the State obtained an indictment against Roberts for first degree murder. Defendant was set to be a witness against him, but, at the request of Roberts, defendant did not show up to the trial and the charge was dismissed. The State obtained a second indictment of Roberts in 2008, but no trial occurred. In 2012, the Louisiana State Police reopened the investigation. They searched nearby ponds for the murder weapon (it was not found), tested clothing collected from the homes of Roberts and defendant for gunshot residue, and interviewed defendant two more times. In 2014, more than a decade after the shooting, the State obtained an indictment against defendant.

At defendant's trial, the State argued he could be convicted of second degree murder either as the shooter or under a felony-murder theory in which the victim was killed by Roberts in the course of an attempted armed robbery. Under this theory, the State had to prove that defendant was engaged in the perpetration or

attempted perpetration of armed robbery, even though he had no intent to kill or to inflict great bodily harm. La. R.S. 14: 30.1(A)(2). The evidence points to Roberts as the shooter. Defendant, and more compellingly, Charles have maintained since 2002 that Roberts shot the victim. The State relied on Charles's testimony to this effect in order to obtain two grand jury indictments of Roberts as the shooter and intended to call defendant as a witness against Roberts at trial.

The only direct evidence pointing to defendant as the shooter occurred during a police interview. Defendant said, in the middle of an exchange, "I actually shot him," then immediately clarified he did *not* shoot Roberts, and explained, he meant to say, "I actually saw him shoot him," referring to Roberts shooting the victim. This was the lone instance in the course of multiple interviews over an eleven-year period that defendant implicated himself as the shooter and not Roberts.

Since such a brief misstatement by defendant was unlikely to win a conviction, the State based its case against defendant almost entirely on the presence of gunshot residue (GSR) on a blue Nike jacket collected from his house. The State sought to use this circumstantial evidence to establish that defendant shot or handled the gun used to kill Latiolais. Of course, if defendant was not wearing that jacket that night, the GSR is not relevant to defendant's involvement in this crime. For that reason, a rational juror must first determine from the evidence presented that defendant was wearing that particular jacket on the night of the crime, independent of the fact that it contained particles of GSR. However, as explained below, without firm evidence, the jury was left to choose between two equally likely possibilities. As a result, a conclusion that defendant wore that jacket must have rested on conjecture alone.

The day after the crime, the police collected a variety of clothes from the homes of Roberts and defendant that fit the general description Mouton provided of what he saw them wearing the night before. Neither Mouton nor Charles identified

the Nike jacket as what they saw defendant wearing. In statements to police shortly after the crime, both witnesses described defendant wearing a dark colored, hooded jacket. The blue Nike jacket does not have a hood. In 2012, ten years after the crime, defendant told the State Police detective he did not remember what he and Roberts were wearing that night. Nine months later, in 2013, defendant was interviewed again. During that interview, the detective, without objective evidence of this, insisted that defendant was wearing the blue Nike jacket on the night of the crime. Defendant nodded, but demonstrated no independent recollection of what he was wearing that night. In the end, based on all of the evidence, the jury could only speculate as to whether defendant was wearing that jacket when the crime occurred.

Even if a rational juror *could* infer from this evidence that he wore the jacket on the night of the crime, the GSR nevertheless has limited evidentiary value in this case. The testing provided no information as to when or how the GSR got onto the jacket,¹ nor from what firearm it originated. Furthermore, the Nike jacket is not the only piece of clothing collected from defendant's house that fit the description provided by the witnesses. The police also collected a dark hooded sweatshirt which later tested negative for GSR. Moreover, the Nike jacket is not the only dark, hooded jacket collected that contained gunshot evidence—GSR and a partially burned gunpowder particle were found on a sweatshirt collected from Roberts's house. Again, the evidence, such as it was, required the jurors to guess as to whether the GSR found on the Nike jacket came from the gun used to kill the victim.

The alternative theory proposed by the State was that defendant carried the gun to the field where he and Roberts laid in wait to rob the victim. To support the felony-murder theory, the State argued that the two men had just learned that the

¹ As would be expected, testing showed that defendant was the major donor of the DNA found on the jacket collected from his house. However, it also contained DNA from at least one other person, suggesting it was worn by someone other than defendant at some point.

victim had \$50, they were wearing dark clothes, and that the GSR on the jacket showed defendant hid the gun in his sleeve before passing it to Roberts who then shot the victim. As described above, jurors could only speculate as to whether the GSR on the Nike jacket connected defendant to the gun used in this crime. Furthermore, there was no evidence of any plan between defendant and Roberts to rob the victim. Defendant and Roberts walked down the gravel path through the field *before* the victim left Mouton's yard ten minutes later. The State presented nothing suggesting either man could have predicted that the victim would have followed them. Defendant told the State Police detective that he did not know where the victim lived.

Furthermore, Mouton told police that only Roberts went inside his home and came out dressed in long sleeves. If this is when the gun was acquired, then Roberts must have passed the gun to defendant first and then defendant must have passed it back to Roberts in the field. Yet neither Mouton nor Charles saw a gun in defendant's possession or passed between the two men. Finally, the motive of the crime was ostensibly to rob the victim, however, his wallet and over \$200 in cash was on his person when he was found the next morning.

Considering all of the evidence in the light most favorable to the prosecution, no rational juror could find the State proved beyond a reasonable doubt that defendant either shot the victim or participated in a plan to rob the victim. The State's circumstantial case against defendant failed to exclude every hypothesis of innocence. "A trial jury's inference that an accused aided and abetted in a crime cannot be 'mere speculation based upon guilt by association.'" *Schwander*, 345 So.2d at 1175. Based on this record, however, speculation based upon guilt by association is all the jury's inference can be. In light of the absence of evidence that defendant knew in advance of any plan to rob the victim, the only explanation for the jury finding defendant guilty in this case was based upon his association with

Roberts. Accordingly, we affirm the decision of the appellate court, which reversed defendant's conviction.

AFFIRMED

SUPREME COURT OF LOUISIANA

No. 2022-K-01205

STATE OF LOUISIANA

VS.

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On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of St. Martin

WEIMER, C.J., dissenting.

Respectfully, I must dissent from the majority opinion because I find defendant's conviction is supported by sufficient evidence under the due process standard of **Jackson v. Virginia**, 443 U.S. 307 (1979).

The conclusions of the majority can only be reached by not providing sufficient weight to the credibility choices made by the jurors in this case. When considering a claim of insufficient evidence, our role as a reviewing court is only to determine 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 beyond a reasonable doubt. **Jackson**, *supra*; **State v. Stowe**, 93-2020 (La. 4/11/94), 635 So.2d 168, 171 (La. 1994). The **Jackson** standard "leaves juries broad discretion in deciding what inferences to draw from the evidence presented at trial, requiring only that jurors 'draw reasonable inferences from basic facts to ultimate facts.'" **Coleman v. Johnson**, 566 U.S. 650, 655 (2012).

While there is no question the jury was presented with conflicting evidence regarding the identity of the shooter and defendant's participation in an attempted armed robbery, the evidence was sufficient to support the jury's guilty verdict. Evidence was presented that defendant was interviewed by police, and told a series

of shifting stories, making adjustments each time police confronted him with new information. For instance, defendant variously claimed: he knew nothing about the murder; he did not know Roberts had a shotgun; Roberts concealed the shotgun under his clothes; Roberts stashed the shotgun along the path; he did not see the shotgun until Roberts shot the victim; and he only saw the gun when they were disposing of the gun in a pond after the shooting. Defendant also stated that Roberts intended to “jack” the victim and that Roberts shot the victim because he wanted to rob him of the \$50 the victim planned to spend on crack cocaine. And, as the majority notes, defendant even stated to police that he himself shot the victim, albeit the defendant quickly retracted that statement. Defendant denied he had ever shot a gun in his life, yet gunshot residue (GSR) was detected on his clothing.

The jury heard evidence regarding GSR found on a Nike jacket that was collected from defendant’s house. Although there was conflicting testimony regarding who wore what clothing at the time of the crime, the majority discounts any finding by the jury that defendant was wearing that jacket as mere speculation. I disagree. The jury heard inconsistent testimony: defendant and Roberts both wore dark colored sweatshirts with hoods; Roberts was wearing a hood and defendant was not; defendant wore a dark sweatshirt with a hood and Roberts wore a white t-shirt; defendant wore a white shirt and Roberts wore a navy blue sweater (later a jacket); and either defendant or Roberts wore a hoodless blue Nike jacket. The police collected numerous items of clothing from the residences of defendant and Roberts, yet forensic testing revealed significant amount of GSR on only one item—the Nike jacket belonging to defendant. Such evidence suggested it was worn by someone who had discharged or carried a firearm. Notably, defendant initially agreed when a detective suggested he wore the blue Nike jacket on the night of the shooting, but

when confronted with the GSR evidence, he then claimed Roberts had probably borrowed the jacket from him. But DNA testing revealed a mixture of DNA on the jacket, with defendant as a major contributor to the DNA mixture and Roberts excluded as a contributor.

When faced with all of the inconsistent testimony, the jury was free to assess credibility and weigh that conflicting evidence. The jury clearly did so when it unanimously found defendant guilty. By affirming the court of appeal's decision, the majority opinion discounts certain witness testimony and credits others, essentially substituting its appreciation of the evidence at trial for that of the jurors. After conviction, a reviewing court only "makes a limited inquiry tailored to ensure that a defendant receives the minimum that due process requires: a meaningful opportunity to defend against the charge against him and a jury finding of guilt beyond a reasonable doubt." **Mussachio v. United States**, 577 U.S. 237, 243 (2016) (internal quotes omitted). Our function as a reviewing court is not to assess credibility or reweigh the evidence. **Stowe**, 93-2020, 635 So.2d at 171.

Reviewing a conviction that rests on circumstantial evidence is often difficult, and there can be a fine line between permissible inferences from circumstantial evidence and mere speculation. Nonetheless, even when, as here, substantial conflicting evidence is presented at trial, a sufficiency of the evidence review does not permit an appellate court to intrude on the jury's role "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." **Musacchio**, 577 U.S. at 243, quoting **Jackson v. Virginia**, 443 U.S. at 319. The majority opinion errs in doing just that.

I would reinstate defendant's conviction and remand to the court of appeal to consider any pretermitted assignments of error.

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No. 2022-K-01205

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CRAIN, J., dissenting.

The jury was presented with conflicting testimony about critical facts in this case, including the identity of the trigger person, the clothing worn by the alleged perpetrators, their respective locations at the time of the shooting, statements preceding the shooting, who fled and in what direction after the shooting, and the whereabouts of the murder weapon. Depending on what testimony the jury believed, much of this evidence, including the defendant's own admission, indicates he was the shooter. Even if he was not the shooter, his conviction of second degree murder can be maintained if he was a principal to the crime, which the evidence likewise supports; or if he was engaged in an attempted armed robbery when the homicide occurred. *See* La. R.S. 14:24 (“All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense . . . are principals.”) and La. R.S. 30.1A(2) (felony-murder).

A jury could rationally conclude from the evidence that defendant and Timothy Roberts knew the victim had money and defendant accompanied Roberts to lie in wait for the victim. Defendant fled after the shooting, did not alert police, lied about the crime, and presented shifting accounts of what happened, which a jury could reasonably interpret as reflecting the “guilty mind” of the active participant in an attempted armed robbery. *Cf. State v. Mitchell*, 99-3342 (La. 10/17/00), 772 So. 2d 78, 85.

The jury was free to assess credibility and weigh the conflicting evidence. After conviction, however, “a reviewing court makes a limited inquiry tailored to ensure that a defendant receives the minimum that due process requires: a meaningful opportunity to defend against the charge against him and a jury finding of guilt beyond a reasonable doubt.” *Mussachio v. United States*, 577 U.S. 2137, 243, 136 S.Ct. 709, 715, 193 L.Ed.2d 639 (2016) (internal quotes omitted). A sufficiency of the evidence review does not permit an appellate court to intrude on the jury’s role “to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Musacchio*, 577 U.S. at 243, 136 S.Ct. at 715 (quoting *Jackson v. Virginia*). The court of appeal erred by doing just that. I would reverse the court of appeal and reinstate the jury’s verdict.