

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 0595

STATE OF LOUISIANA

VERSUS

FELTON D. BUTLER

Judgment Rendered: NOV - 9 2011

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On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket No. 493046

Honorable Reginald T. Badeaux, III, Judge Presiding

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

JP Pettigrew, J. Conners

McCLENDON, J.

Defendant, Felton David Butler, was charged by bill of information with aggravated burglary, a violation of LSA-R.S. 14:60. He pled not guilty. After waiving his right to a jury trial, he was tried and found guilty as charged by the trial court. The trial court sentenced him to imprisonment for three years at hard labor. Defendant now appeals, alleging in his sole assignment of error that the evidence was insufficient to support his conviction. For the following reasons, we affirm defendant's conviction and sentence.

FACTS

In the early morning hours of June 27, 2010, Thomas Ducre was entertaining Edora Butler, defendant's estranged wife, at Thomas's home in Lacombe, Louisiana. According to Thomas, he and Edora, who lived in the same trailer park, were merely friends and were not involved in a romantic relationship. On the date in question, they were visiting and preparing food for a neighborhood gathering that was to be held in the trailer park the next day. For a large portion of the evening, they sat outside on the porch.

At approximately 2:00 a.m., they went inside so that Thomas could turn over a roast he had put in the oven earlier and Edora could use the restroom. As Thomas closed the oven door, he suddenly saw defendant standing near him. When he told defendant to get out of his house, defendant challenged, "who is going to make me." Edora came out the restroom during the confrontation. Thomas pushed at defendant in an effort to remove him from the trailer, but defendant still refused to leave. At that point, Thomas took a swing at defendant.¹ Defendant then struck Thomas on the side of the head with a heavy, blunt object, and Thomas fell to the floor. When Thomas regained consciousness thirty to forty-five seconds later, defendant was gone and Edora helped him up from the floor.

¹ There was conflicting testimony as to whether defendant was struck. The victim testified that he did hit defendant. However, in his testimony, defendant did not mention being struck. Moreover, he argues in brief that the fact that the victim missed hitting him at such close proximity was an indication that the victim was intoxicated at the time. In any event, the result we have reached herein is the same regardless of whether defendant was hit by the victim.

Thomas telephoned 911 and reported the incident. Both he and Edora identified defendant as the perpetrator to the responding officer. Thomas attributed defendant's aggression to his mistaken belief that Thomas was involved in a sexual relationship with Edora. Although Thomas sustained a serious gash on his head that was bleeding profusely and appeared to require stitches, he refused the officer's suggestion that he seek medical treatment, explaining that he could not afford it.

Defendant was arrested later the same day. After being advised of his rights and signing a waiver form, he admitted that he struck Thomas, but adamantly denied entering his residence. At trial, defendant gave the following account. He testified that he was searching for his wife when he passed by Thomas's trailer and happened to see her and Thomas sitting on the porch. According to defendant, he stopped and confronted his wife about drinking alcohol, since she was on probation at the time and he was paying her probation fees. He then attempted to leave, but Thomas, who was highly intoxicated, suddenly grabbed him and would not let go. To obtain his release, he struck Thomas with his fist and knocked him to the ground. Defendant claims the entire incident occurred in the yard of Thomas's trailer.

At trial, Thomas described an incident approximately three months prior to the date in question when defendant entered Thomas's residence uninvited while looking for his wife, who was present in the trailer. Defendant refused to leave when ordered to do so, and Thomas had to enlist the aid of a neighbor to make defendant leave. At that time, he made it clear to defendant that he was never to come back to Thomas's residence under any circumstances.

DISCUSSION

In his sole assignment of error, defendant argues that the evidence presented at trial was insufficient to support his conviction for aggravated burglary because it failed to establish either that he entered the victim's trailer or that he used a dangerous weapon to injure him. He maintains that he only entered the victim's yard, and never went inside the trailer. In support of his

contentions, defendant points out that the victim gave the only testimony indicating entry into the trailer, that there were no signs of unauthorized entry, and that no dangerous weapon was ever found.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, 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 v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See also LSA-C.Cr.P. art. 821B; **State v. Ordodi**, 06-0207 (La. 11/29/06), 946 So.2d 654, 660. The **Jackson v. Virginia** standard of review incorporated in LSA-C.Cr.P. art. 821 is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. Furthermore, when analyzing circumstantial evidence, LSA-R.S. 15:438 provides that the trier-of-fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Patorno**, 01-2585 (La.App. 1 Cir. 6/21/02), 822 So.2d 141, 144. When a case involves circumstantial evidence and the trier-of-fact reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984).

In order to prove the crime of aggravated burglary, the state was required to show that defendant without authorization entered an inhabited dwelling where a person was present with the specific intent to commit a felony or theft therein, and either: (1) was armed with a dangerous weapon; (2) armed himself with a dangerous weapon after entering; or (3) committed a battery upon any person while in such place, or in entering or leaving such place. See LSA-R.S. 14:60. Specific intent is that state of mind that exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. LSA-R.S. 14:10(1). Specific intent need not be proven as a fact, but may be inferred from the circumstances present and the

actions of the defendant. **State v. Graham**, 420 So.2d 1126, 1127 (La. 1982). Specific intent is a legal conclusion to be resolved ultimately by the trier-of-fact. **State v. Shanks**, 97-1885 (La.App. 1 Cir. 6/29/98), 715 So.2d 157, 159.

In arguing that the evidence was insufficient to establish an unauthorized entry, defendant contends that, although Thomas testified unequivocally that the confrontation occurred inside the trailer, it is highly possible that he was confused about where the incident occurred, since he had been drinking alcohol and had sustained a head injury. Defendant further alleges that Thomas also was using illegal drugs, which was the reason that he refused medical treatment. Defendant additionally contends that Thomas's testimony was internally inconsistent as to where the confrontation occurred. He argues that, while Thomas testified he was in the kitchen when he first noticed defendant standing behind him, there was testimony later in the trial reflecting that Thomas and Edora were sitting on the porch when defendant approached.

We note that the only evidence that Thomas had been drinking alcohol was defendant's own testimony that Thomas was drunk at the time of the confrontation. Further, there was absolutely no evidence of illicit drug usage by Thomas, who indicated that he refused medical treatment because he could not afford it. Moreover, our review of the record revealed no internal inconsistency in Thomas's testimony regarding where the confrontation occurred. To the contrary, he consistently maintained that it took place inside his trailer, although he testified that he and Edora had only gone inside shortly before the confrontation with defendant occurred. While defendant contends that there was inconsistent trial testimony to the effect that Thomas and Edora were on the porch as defendant approached, that testimony was given by defendant himself, rather than by Thomas. As such, it constituted conflicting testimony between witnesses, a matter for the trier-of-fact, rather than an internal inconsistency in Thomas's own testimony.

Furthermore, in addition to Thomas's testimony that the altercation occurred inside the trailer, the responding officer testified that defendant's wife,

Edora, advised him that she observed defendant inside the residence. The officer also observed and photographed what appeared to be blood smeared on the kitchen counter, and the photograph was introduced into evidence at trial.

We also find no merit in defendant's contention that the evidence was insufficient merely because no dangerous weapon was ever recovered. Since defendant left the scene of the altercation hours before he was arrested, more than ample time existed for him to dispose of any object he may have used to strike Thomas. Although Thomas did not see anything in defendant's hands and could not state with certainty what he was hit with, he described it as a heavy, blunt object. Due to the way the blow felt to him and the resulting indentation in his head, he testified that his head injury could not have been inflicted by defendant's fist. Furthermore, an instrumentality may be a "dangerous weapon" not only because of the inherent danger it poses, but also because it is used in a manner likely to result in death or great bodily harm. LSA-R.S. 14:2(A)(3); **State v. Johnson**, 598 So.2d 1152, 1158 (La.App. 1 Cir.), writ denied, 600 So.2d 676 (La. 1992). Whether an object constitutes a dangerous weapon due to the manner in which it is used is a factual question for the trier-of-fact. **Johnson**, 598 So.2d at 1158.

Given the victim's testimony describing the blow to his head, as well as the resulting injury he sustained, there was sufficient evidence for the trial court to have concluded that defendant was armed with an instrumentality that constituted a dangerous weapon in the manner in which it was used to strike Thomas. The fact that the object was not specifically identified or recovered does not preclude such a conclusion.

In any event, an aggravated burglary also occurs if the offender commits a battery upon a person inside the dwelling where he has made an unauthorized entry with felonious intent. See LSA-R.S. 14:60(3). Louisiana Revised Statutes 14:33 provides that a "[b]attery is the intentional use of force or violence upon the person of another...." In the instant case, defendant admits that he struck

Thomas, but denies that he did so without provocation. He argues that he was provoked into defending himself when Thomas threw the first punch.

In a non-homicide situation, a claim of self-defense requires a dual inquiry: first, an objective inquiry into whether the force used was reasonable under the circumstances, and, second, a subjective inquiry into whether the force used was apparently necessary. **State v. Taylor**, 97-2261 (La.App. 1 Cir. 9/25/98), 721 So.2d 929, 931. However, LSA-R.S. 14:21 provides that "[a] person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict."

Despite defendant's contention to the contrary, the evidence indicates that he was the initial aggressor and brought on the conflict when he entered Thomas's trailer after being forbidden from doing so. Moreover, defendant not only refused to leave when Thomas ordered him to, but aggressively challenged the order, stating "who is going to make me." When Thomas attempted to push him out of the trailer, defendant resisted. After Thomas's efforts to remove defendant were unsuccessful, he finally took a swing at defendant. At no time during the altercation did defendant attempt to withdraw or discontinue the conflict that he had brought about, despite the fact that he could have done so by simply leaving. Thus, considering the circumstances in the light most favorable to the prosecution, the evidence was sufficient to convince any rational trier-of-fact beyond a reasonable doubt that defendant did not act in self-defense.² See **State v. Robinson**, 37,043 (La.App. 2 Cir. 5/14/03), 848 So.2d 642, 647 (defendant found to be initial aggressor when he entered property

² This court previously has noted that Louisiana law is unclear as to whether the State or the defendant bears the burden of proving self-defense in a non-homicide case. **Taylor**, 721 So.2d at 931. In prior cases dealing with this issue, this court has analyzed the evidence under both standards of review, that is, whether the defendant proved self-defense by a preponderance of the evidence or whether the state proved beyond a reasonable doubt that the defendant did not act in self-defense. **Id.** Similarly, we need not decide in this case who has the burden of proving (or disproving) self-defense, because under either standard the evidence was sufficient to establish that defendant did not act in self-defense.

without invitation and refused victim's request that he leave, even though victim took the first swing).

Finally, defendant asserts that the trial court's verdict was against the weight of the evidence and that the court found him guilty merely because he had several misdemeanor battery convictions and several domestic-related offenses. However, this claim is not substantiated by the record. Trial courts have a duty to remain impartial and neutral and to properly apply the law. See State v. Baldwin, 388 So.2d 679, 686 (La. 1980). There is nothing in the record to indicate the trial court violated its duty in the instant case.

Based upon our review of the record, we find that that the evidence supports the guilty verdict. The trial court had the opportunity to observe the testimony of all of the witnesses and view all of the evidence presented. In finding defendant guilty as charged, the trial court specifically accepted the victim's testimony and rejected that of defendant, finding it to be incredible. The trier-of-fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier-of-fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a trier-of-fact's determination of guilt. **Taylor**, 721 So.2d at 932.

Based upon the totality of the evidence, we cannot say that the trial court's determination was irrational under the facts and circumstances presented to it. See Ordodi, 946 So.2d at 662. The trial court specifically accepted the victim's account of what occurred and rejected defendant's conflicting testimony, including his claim that he did not enter the victim's trailer. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the trier-of-fact and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected, by the trier-of-fact. See State v. Calloway, 07-2306 (La. 1/21/09), 1 So.3d 417, 418

(per curiam). Thus, we are convinced that, viewing all of the evidence in the light most favorable to the State, any rational trier-of-fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that defendant was guilty of aggravated burglary.

The assignment of error lacks merit.

CONCLUSION

For the foregoing reasons, we affirm defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED.