

NOT DESIGNATED FOR PUBLICATION

COURT OF APPEAL

STATE OF LOUISIANA

FIRST CIRCUIT

2008 KA 1501

STATE OF LOUISIANA

VERSUS

RODERICK JARON VIDAU

Judgment rendered: MAR 27 2009

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Case Number: 01-06-0441; Sec: 7
The Honorable Todd Hernandez, Judge Presiding**

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Roderick Jaron Vidau**

BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

DOWNING, J.

Defendant, Roderick Jaron Vidau, was charged by bill of information with two counts of first degree robbery, violations of La. R.S. 14:64.1.¹ Defendant also was charged with three counts of attempted first degree robbery, violations of La. R.S. 14:27 and 64.1.² Defendant entered a plea of not guilty and was tried before a jury. The jury determined defendant was guilty as charged on Counts 1-4, and guilty of the responsive offense of attempted simple robbery (a violation of La. R.S. 14:27 and 65) on Count 5.

The trial court sentenced defendant as follows: Count 1 (first degree robbery) twenty years at hard labor without benefit of parole, probation, or suspension of sentence; Count 2 (attempted first degree robbery) ten years at hard labor; Count 3 (first degree robbery) twenty years at hard labor without benefit of parole, probation, or suspension of sentence; Count 4 (attempted first degree robbery) ten years at hard labor; Count 5 (attempted simple robbery) three and one half years at hard labor, with all sentences to run concurrently.

The State subsequently instituted habitual offender proceedings against defendant on all counts. Following a hearing, the trial court adjudicated defendant a third felony habitual offender. The trial court vacated the previous sentences and sentenced defendant as follows: Count 1 (first degree robbery) thirty-five years at hard labor; Count 2 (attempted first degree robbery) twenty years at hard labor; Count 3 (first degree robbery) thirty-five years at hard labor; Count 4 (attempted first degree robbery) twenty years at hard labor; Count 5 (attempted simple robbery) seven years at hard labor, with all counts to be served concurrently.

Defendant appeals, citing the following as error: the evidence was insufficient to convict defendant.

¹ Count 1 of the bill of information charged defendant with the first degree robbery of Patrick Rills. Count 3 of the bill of information charged defendant with the first degree robbery of Leslie Roy.

² Count 2 of the bill of information charged defendant with the attempted first degree robbery of Christen Wasiloski; Count 4 of the bill of information charged defendant with the attempted first degree robbery of Amy Birdsong; and Count 5 of the bill of information charged defendant with the attempted first degree robbery of Eric Pairier. (r. 15)

FACTS

On November 22, 2005, Patrick Rills and Christin Wasiloski were meeting friends at the Chimes Restaurant in Baton Rouge. Rills parked his vehicle in a parking lot behind the restaurant. When Rills and Wasiloski exited his vehicle, they were approached by a black male in his twenties, a little over six feet tall, wearing a light blue shirt and blue-jean shorts. The man, later identified as defendant, told Rills to “give me the cash.” Defendant had his arm out and a t-shirt covering his hand. Rills thought defendant was holding a weapon in his hand and gave defendant all of the cash he had, \$10.00. Defendant told Rills, “You got more,” but Rills showed defendant his empty wallet. Defendant turned and ran away.

Rills and Wasilowski began walking toward the restaurant and Wasiloski called 911 on her cell phone. Approximately five minutes after they arrived at the restaurant, the police arrived and obtained statements and a description of the defendant.

On that same evening Leslie Roy and her roommate, Amy Birdsong, had dinner at Serrano’s Restaurant, which is adjacent to The Chimes Restaurant on Highland Road. After dinner, Roy and Birdsong stopped at the Chimes to speak with Birdsong’s brother. As Roy and Birdsong walked back to their vehicle, which was parked in the lot behind the Chimes, defendant approached them. According to Roy, defendant approached the driver’s side door that she was preparing to open. Defendant had what appeared to be a weapon tucked inside his shirt. Defendant told Roy to “give me your cash.” Defendant walked Roy to the back of the vehicle and stated that if she and Birdsong gave him all their money, “nothing bad” would happen. Roy only had \$5.00 in cash on her, but gave it to defendant. Birdsong had no cash. Following this incident, Roy and Birdsong drove back to their residence and contacted the police.

Roy and Birdsong told the police that the person who robbed them was a black male wearing a light blue shirt, blue-jean shorts, in his twenties, approximately six feet tall with a thin build. At trial, Roy testified that although defendant was wearing a light blue shirt, he also had on a red shirt underneath it. Both Roy and Birdsong believed defendant was armed when he demanded money from them.

On this same night between 8:00 and 9:00 p.m., Eric Pairier was walking near Carlotta Street, which is in the vicinity of the previous incidents. As Pairier was speaking on his cell phone, he was walking near one of the church buildings off Dalrymple Drive. A man approached Pairier from behind and said he had a gun and wanted Pairier's wallet. Pairier testified that this person had something wrapped in a cloth holding it at his side and pointing it at him. Pairier thought it was a gun and told the person he was speaking with on the phone that it appeared he was being robbed. Pairier testified that the person wanted him to go into a dark alley, but Pairier refused and told the robber that he should just shoot him now. Pairier's statement apparently took the robber by surprise, and Pairier then threw his hot chocolate in the robber's direction and began to run. Pairier later explained he was not sure if the hot chocolate struck defendant, since he only threw it at him as a diversion.

Pairier ran approximately fifty feet away and called the police on his cell phone. At trial, Pairier recalled that his assailant was a black male in his twenties or thirties, wearing blue-jean shorts, and possibly a red shirt. Approximately five to ten minutes later, as Pairier was again on the phone, he saw the person who had tried to rob him run past him with a policeman chasing him. Pairier noted his assailant was wearing a different colored shirt than he had worn during their encounter. Pairier observed the individual being apprehended by the police and walked over and identified himself as someone who had reported being robbed.

Pairier voluntarily identified the apprehended individual as the person who tried to rob him a short time earlier.

Pairier identified defendant in court as the individual who attempted to rob him. Pairier also noted that at the time of this incident, defendant's hair was cut shorter and he had less facial hair. Pairier admitted at the preliminary examination that he could not definitely identify defendant in court as the individual who tried to rob him.

Officer Jason Dohm was the initial Baton Rouge City Police Officer dispatched to the Chimes Restaurant after Rills and Wasiloski reported being robbed. After meeting with Rills and Wasiloski at the restaurant, Officer Dohm received a second dispatch to meet Roy and Birdsong at their residence on Delgado Street. While meeting with Roy and Birdsong, Officer Dohm received a third report of attempted robbery in the vicinity of the first two incidents.

Officer Brian Hunter of the Baton Rouge City Police was still in the area of the Chimes Restaurant following the report of the third robbery of the evening (Pairier). As Officer Hunter patrolled along State Street, he noticed a tall thin black male wearing a blue shirt walk between two houses. Because this individual matched the description of the individual associated with all three prior incidents in the area that evening, Officer Hunter exited his vehicle and identified himself as a police officer to the individual. The suspect immediately began to run away from Officer Hunter. Despite losing sight of defendant for approximately three seconds when defendant began to run, Officer Hunter pursued the suspect and apprehended him within two minutes along Dalrymple Drive near University Methodist Church.

Officer Al-Mutakabbir Sims of the Baton Rouge City Police had arrived on the scene to join in the pursuit of defendant along Dalrymple Drive. Officer Sims identified defendant in court as the individual he assisted in apprehending that night. According to Officer Sims, when defendant was apprehended, he was

wearing a blue short-sleeved shirt with a red shirt underneath, and blue-jean shorts. Officer Sims testified that soon after defendant was apprehended, Pairier approached them and identified defendant as the individual who tried to rob him.

Once defendant was apprehended, Officer Dohm returned to the Delgado Street residence of Roy and Birdsong and took them to a location near the Chimes Restaurant to view defendant. Officer Dohm allowed Roy and Birdsong to view defendant as they sat in the back of his police unit and defendant was in the back of another police unit. Roy and Birdsong immediately identified defendant as the individual who robbed them.

Rills and Wasiloski also were allowed to view defendant soon after he was apprehended. Both Rills and Wasilowski identified defendant as the person who robbed them.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, defendant argues the evidence was insufficient to establish he was guilty of these offenses. Specifically, defendant points to the fact that he had no money on his person when apprehended, the identification procedures used by the police were unduly suggestive, and, in the courtroom, at least one witness identified a person other than defendant as the perpetrator.

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 conclude that the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. See La. Code Crim. P. art. 821(B); **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed. 560 (1979). The **Jackson** standard of review is an objective standard for testing the overall evidence. When analyzing circumstantial evidence, La. R.S. 15:438 provides that,

in order to convict, the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 02-1492, p. 5 (La. App. 1 Cir. 2/14/03), 845 So.2d 416, 420.

The appellate court will not assess the credibility of witnesses or reweigh the evidence to overturn the determination of guilt by the factfinder. **State v. Polkey**, 529 So.2d 474, 476 (La. App. 1 Cir. 1988). As the trier of fact, the jury is free to accept or reject, in whole or in part, the testimony of any witness. Where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of witnesses, the question is one of the weight of the evidence, not its sufficiency. **State v. Young**, 99-1264, p. 10 (La. App. 1 Cir. 3/31/00), 764 So.2d 998, 1006. A determination of the weight to be given evidence is a question of fact for the trier of fact and is not subject to appellate review. **State v. Payne**, 540 So.2d 520, 524 (La. App. 1 Cir. 1989).

The focus of defendant's assignment of error centers on whether the State carried its burden of identifying defendant as the perpetrator of these crimes. After viewing the evidence in the light most favorable to the prosecution, we conclude the evidence sufficiently supports defendant's convictions.

Although two witnesses testified that they gave defendant cash that would have totaled \$15.00, no cash was recovered from defendant after he was apprehended. The record reflects defendant was not constantly under observation by any witness as he committed these crimes; thus, it is conceivable that he may have been keeping whatever cash he obtained from his victims at a location other than on his person. Moreover, we note that when Officer Hunter identified himself to defendant, defendant immediately began running. Officer Hunter admitted he briefly lost sight of defendant at the beginning of his pursuit. The jury could have reasonably concluded the defendant dropped whatever cash he obtained during this period.

Second, we do not find the record reflects the identification process used by the police was unduly suggestive. Although Roy and Birdsong were interviewed at the same time, this was only to provide the police with a description of the robber. We note that Rills and Wasiloski had provided a nearly identical description of the person who robbed them in the same vicinity in close temporal proximity to the incident involving Birdsong and Roy, and that this description had been broadcast to all police in the area. Moreover, although there was conflicting testimony regarding whether defendant was standing in front of a police car or inside of a police car when the victims were asked to identify him, the jury was aware of these inconsistencies, and all of the victims were able to immediately identify defendant as the perpetrator. Finally, Officer Dohm, Rills, and Wasiloski all denied that there was any suggestion made prior to the identification near the restaurant that defendant was anything other than a suspect. The jury heard evidence regarding the language Officer Dohm used to describe the identification process in his report and obviously found that based on witness testimony, there was nothing unduly suggestive about the process.

Third, defendant points to the fact Roy failed to identify him as the perpetrator at trial and instead identified another individual sitting in the courtroom. Our review of the record indicates that defendant was apprehended shortly after attempting to rob Roy, and she was able to immediately identify defendant as the perpetrator. The record also established that defendant's appearance had changed in the eighteen months following this incident in that his hair was longer and he had more facial hair. Thus, the jury could take defendant's change in appearance and the time that had elapsed since the incident into account regarding Roy's failure to identify defendant at trial.

Finally, defendant argues that Pairier could not identify defendant as the perpetrator at the preliminary exam, but was able to identify defendant at trial. We

note that the record established Pairier immediately approached the police after they had apprehended defendant and identified defendant as the individual who had attempted to rob him some twenty minutes earlier.

We also note that when defendant was brought to the district office for booking, he initially identified himself as Roderick Jaroe, and then later identified himself as Roderick Sears. Defendant also provided the police with two different addresses of 2125 Jake Lane in Sunshine and 5545 La. Highway 75 in Carville.

Although an individual's flight does not in and of itself indicate guilt, it can be considered as circumstantial evidence that the individual has committed a crime. Flight shows consciousness of guilt, and is one of the circumstances from which guilt may be inferred. **State v. Williams**, 610 So.2d 991, 998 (La. App. 1 Cir. 1992). Moreover, "lying" has been recognized as indicative of an awareness of wrongdoing. **State v. Alpaugh**, 568 So.2d 1379, 1384 (La. App. 1 Cir. 1990).

The jury was presented with evidence establishing that a black male, approximately six feet tall, thin build, wearing blue-jean shorts and a light blue shirt had been involved in five robbery incidents near the area of the Chimes Restaurant on November 22, 2005, between 8:00 and 9:00 p.m. When Officer Hunter observed defendant, who matched this description and was in the area, he stopped and identified himself to defendant. Defendant immediately fled from the police. Once apprehended, one of the victims, Pairier, voluntarily approached the police and identified defendant as the individual who tried to rob him. The fact that defendant did not have any hot chocolate on his clothing is not dispositive of Pairier's identification since Pairier admitted he threw the cup at defendant as a diversion. All of the other four victims immediately identified defendant as the perpetrator. Further, in reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them.

See **State v. Ordodi**, 06-0207, p. 14 (La. 11/29/06), 946 So.2d 654, 662.

This assignment of error is without merit.

DECREE

For the foregoing reasons, we affirm the convictions and sentences.

CONVICTIONS AND SENTENCES AFFIRMED