

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1356

STATE OF LOUISIANA

VERSUS

DERRICK ODOMS

DATE OF JUDGMENT: FEB 10 2012



ON APPEAL FROM THE SEVENTEENTH JUDICIAL DISTRICT COURT
NUMBER 482946, DIV. A, PARISH OF LAFOURCHE
STATE OF LOUISIANA

HONORABLE JOHN E. LEBLANC, JUDGE

Mr. Camille A. Morvant, II
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Thibodaux, Louisiana

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State of Louisiana

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Counsel for Defendant-Appellant
Derrick Odoms

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Defendant, Derrick Odoms¹, was charged by bill of information with one count of intimidating a witness, a violation of La. R.S. 14:129.1. (R. p. 15). He pled not guilty and, after a jury trial, was found guilty as charged. (R. p. 6, 13). Defendant was sentenced to five years imprisonment at hard labor. (R. p. 14). Defendant now appeals, alleging two assignments of error. For the following reasons, we affirm defendant's conviction and sentence.

FACTS

At trial, the state and defense stipulated that Deputy Haley Burkett of the Lafourche Parish Sheriff's Office was a witness to a pending obscenity charge against defendant. (R. p. 339). Deputy Burkett testified that on March 15, 2010, she was working as a corrections officer for the sheriff's office when she came into contact with defendant while serving dinner on his cell block. (R. p. 340, 346). Deputy Burkett was confronted by defendant, who said that he wanted to speak with her about the obscenity charge she previously had filed against him. (R. p. 347). Deputy Burkett informed defendant that she could not speak to him at that time. (R. p. 347). Defendant persisted, asking Deputy Burkett what she had seen that made her accuse him of obscenity. (R. p. 347). Deputy Burkett repeated that she would not speak with him about the matter. (R. p. 347). Deputy Burkett testified that defendant became very angry at that point and called her a "bitch," "stupid," and told her to "get off the block or [she] was gonna see another dick." (R. p. 347). As Deputy Burkett began to leave the cell block, defendant moved

¹ We note that both the defense and state briefs in this case refer to defendant as "Derrick Odomes," but the trial record, including the bill of information, name defendant as "Derrick Odoms." For that reason, we have used the latter spelling of defendant's name.

closer to the bars of his cell and he told her, "The charges aren't going to stick. I'm gonna get out. I'll get you, girl." (R. p. 348). Deputy Burkett stated that defendant's remarks made her feel nervous and scared. (R. p. 348). After meeting with her supervisor about the incident, Deputy Burkett filed a formal report alleging that defendant had committed the offense of intimidation of a witness. (R. p. 349, 16). On cross-examination, Deputy Burkett admitted that defendant never specifically told her not to go to court. (R. p. 356).

Deputy Burkett was the only witness to testify at defendant's trial. After deliberating, the jury returned a unanimous verdict finding defendant guilty of intimidating a witness. (R. p. 398).

ASSIGNMENT OF ERROR NUMBER TWO

In his second assignment of error, defendant argues that there was insufficient evidence to support his conviction for intimidating a witness.²

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, 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 La. C.Cr.P. art. 821(B); *State v. Ordodi*, 06-0207 (La.

² In cases such as the instant one, where the defendant raises issues on appeal both as to the sufficiency of the evidence and as to one or more trial errors, the reviewing court should preliminarily determine the sufficiency of the evidence before discussing the other issues raised on appeal. The sufficiency issue must be decided first because a finding of insufficient evidence to support the guilty verdict bars the retrial of a defendant based on the constitutional protection against double jeopardy. Thus, all other issues would be rendered moot. Accordingly, we will first consider whether the evidence was sufficient to support the defendant's conviction. See *State v. Herron*, 03-2304 (La. App. 1st Cir. 5/14/04), 879 So.2d 778, 781-82.

11/29/06), 946 So.2d 654, 660; *State v. Mussall*, 523 So.2d 1305, 1308-09 (La. 1988). The *Jackson* standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See *State v. Patorno*, 01-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

Defendant was charged with intimidating a witness in violation of La. R.S. 14:129.1(A), which provides, in pertinent part:

No person shall intentionally:

(1) Intimidate or impede, by threat of force or force, or attempt to intimidate or impede, by threat of force or force, a witness or a member of his immediate family with intent to influence his testimony, his reporting of criminal conduct, or his appearance at a judicial proceeding;

At trial, the state and defense stipulated that Deputy Burkett was a witness to an obscenity charge filed against defendant. Therefore, at trial, the state had to prove that defendant attempted to intimidate or impede Deputy Burkett, by threat of force or force, with the intent of influencing her testimony or appearance at a judicial proceeding.

Deputy Burkett's uncontroverted testimony reflects that defendant made contact with her in an attempt to find out why she had previously accused him of obscenity. (R. p. 347). When Deputy Burkett refused to speak to him, defendant referred to Deputy Burkett in derogatory terms and insinuated that she would be subject to future harassment. (R. p. 347). Further, defendant informed Deputy Burkett that his charges were not going to stick and that he was going to "get her"

when he got out of jail. (R. p. 348). Deputy Burkett testified that this encounter made her feel both nervous and scared. (R. p. 348).

Viewing the evidence in the light most favorable to the prosecution, we find the state established that defendant attempted to intimidate Deputy Burkett with threats of future force, with an intent to influence her future testimony or her appearance at future judicial proceedings on his obscenity charge. Although the evidence regarding defendant's intent is purely circumstantial, we note that the jury clearly rejected the theory offered by defense counsel in his closing argument that defendant made his statements to Deputy Burkett out of mere anger and frustration, and without any intent to influence her testimony or appearance at future judicial proceedings. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis fails, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. *State v. Moten*, 510 So.2d 55, 61 (La. App. 1st Cir.), *writ denied*, 514 So.2d 126 (La. 1987). In reviewing the evidence, we cannot say the jury's determination was irrational under the facts and circumstances presented to them. *See Ordodi*, 946 So.2d 654 at 662. Further, a reviewing court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the factfinder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. *State v. Calloway*, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). We find that the jury reasonably rejected defendant's hypothesis of innocence and that there was no other hypothesis of innocence presented by defendant which raises a reasonable doubt.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, defendant contends that the trial court erred in denying his right to impeach Deputy Burkett's testimony by limiting the ability of defense counsel to question her concerning the underlying charge of obscenity. Specifically, defendant argues that he should have been allowed to question Deputy Burkett about varying reports concerning the cell that defendant was in when he allegedly committed the underlying obscenity offense, because such questioning would have called into question Deputy Burkett's credibility and shown that she was biased.

As a general rule, a party may attack the credibility of a witness by examining her concerning any matter having a reasonable tendency to disprove the truthfulness or accuracy of her testimony. La. C.E. art. 607(C). The subject matter of the attack, however, is limited by the relevancy standard of La. C.E. art. 403, which provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time." Moreover, while La. C.E. art. 607(D)(1) provides that "[e]xtrinsic evidence to show a witness' bias, interest, corruption, or defect of capacity is admissible to attack the credibility of the witness," a witness cannot be cross-examined as to a fact that is collateral or irrelevant to the issue at hand merely for the purpose of contradiction or impeachment. *State v. Brumfield*, 96-2667 (La. 10/20/98), 737 So.2d 660, 668, cert. denied, 526 U.S. 1025, 119 S.Ct. 1267, 143 L.Ed.2d 362 (1999). Finally, a trial court's ruling on the scope and extent of cross-examination should not be disturbed absent an abuse of discretion. *State v. Coleman*, 406 So.2d 563, 568 (La. 1981).

In the instant case, the trial court stated that he was not going to allow testimony which was “not relevant to the issue of whether or not there was an act of intimidation or threat of force.” (R. p. 309). The trial court went on to note that “if the witness or the alleged victim in the intimidation charge gave prior inconsistent statements or it can be shown that she had bias,” then those would be valid ways for defendant to attack her credibility. (R. p. 309). However, the trial court said that it would not allow a “parade of people” to give testimony to the effect that they did not believe Deputy Burkett’s version of the prior incident. (R. p. 309-10). The court also noted that the facts necessary to prove the obscenity case were not at issue for the jury to decide and that it would not allow defendant to try the obscenity case within the trial on defendant’s intimidation charge. (R. p. 308, 353).

We find that the trial court did not abuse its discretion in limiting the scope of defendant’s cross-examination of Deputy Burkett to facts associated with the intimidation charge only. The issue regarding defendant’s location when he allegedly committed the underlying obscenity charge was irrelevant to the intimidation charge at issue, and it fails the Article 403 balancing test for impeachment evidence because of the potential that facts regarding the underlying obscenity charge would cause confusion of the issues or mislead the jury. Further, from the record, it appears that the only attempt at impeachment defendant made at trial was an attempt to question Deputy Burkett about frustration that she expressed regarding the lack of progress with the underlying obscenity charge when she met with the district attorney on August 2, 2010. (R. p. 350). Defendant argued that such frustration showed that Deputy Burkett harbored bias against him, which would cause her to make a false allegation of intimidation. (R. p.

351). However, the trial court sustained the state's objection to this line of questioning, noting that the meeting in question took place over four months after the incident giving rise to the instant charge, making it irrelevant to Deputy Burkett's state of mind at the time she accused defendant of intimidating her. (R. 351-53). This limitation of defendant's cross-examination of Deputy Burkett was also a valid restriction on the introduction of potentially confusing evidence.

This assignment of error is without merit.

CONCLUSION

For the foregoing reasons, defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.