

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 KA 1299

STATE OF LOUISIANA

VERSUS

MARVIN MITCHELL WILLIAMSON, JR.

Judgment rendered December 23, 2009.



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Appealed from the
16th Judicial District Court
in and for the Parish of St. Mary, Louisiana
Trial Court No. 2008-175670
Honorable Paul J. deMahy, Judge

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* * * * *

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

PETTIGREW, J.

The defendant, Marvin Mitchell Williamson, Jr., was charged by bill of information with aggravated criminal damage to property, a violation of La. R.S. 14:55, and pled not guilty. A jury found him guilty as charged, and the court sentenced the defendant to serve two years at hard labor. The defendant now appeals, designating three assignments of error for review. Finding no error, we affirm the conviction and sentence.

FACTS

On December 12, 2007, Brenda Aucoin was working at Friend's Tavern in Morgan City. When her shift was over, she went into the parking lot where she found the defendant waiting for her. Aucoin and the defendant had had a romantic relationship for years, living together for part of that time and separating for periods of time as well. On December 12, the defendant wanted Aucoin to come home with him, but she refused. At this point, Aucoin and the defendant were in their respective pickup trucks, the defendant's having special "heavy duty" bumpers. The defendant pulled away from Aucoin's truck, angled his truck so that his rear-bumper faced Aucoin's driver's side, accelerated, and rammed her truck while she was sitting in it. Aucoin had dropped her keys on the floorboard and was reaching down to get them when she felt the impact, which occurred with enough force to cause Aucoin's truck to "fish-tail." The defendant left, and Aucoin called the police. She was taken to Teche Regional Medical Center, where she was treated for dizziness, headache, and neck, shoulder, and spinal pain.

ASSIGNMENTS OF ERROR

In one argument, the defendant combines the following assignments of error:

1. Failure of the Court to grant a directed verdict at the close of the State's case under Code of Criminal Procedure Article 778.
2. Failure of the Court to list L.A.R.S. 14:56 as a lesser [sic] included offense on the verdict form Code of Criminal Procedure Article 814 36 [sic].
3. Manifest [sic] error in the jury finding that it was foreseeable that human life might be endangered by any means other than fire or explosion on the facts presented at trial based on the legal definitions of foreseeable.

Directed Verdict

In his first assignment of error, the defendant contends that the court should have granted his motion for a directed verdict. Article 778 of the Code of Criminal Procedure provides, in pertinent part:

In a trial by the judge alone the court shall enter a judgment of acquittal on one or more of the offenses charged, on its own motion or on that of defendant, after the close of the state's evidence or of all the evidence, if the evidence is insufficient to sustain a conviction.

A defendant is not entitled to a directed verdict of acquittal in a jury trial. **State v. Allen**, 440 So.2d 1330, 1332 (La. 1983); **State v. Parfait**, 96-1814, p. 18 (La. App. 1 Cir. 5/9/97), 693 So.2d 1232, 1242, writ denied, 97-1347 (La. 10/31/97), 703 So.2d 20. In a jury trial, the jury is the fact finder, and it must consider all of the evidence and render the verdict. See La. Code Crim. P. arts. 802, 809, & 810. Thus, the denial of the defendant's motion was proper. This assignment of error is without merit.

Responsive Offense

In his second assignment of error, the defendant alleges that the court erred by failing to include simple criminal damage to property on the verdict form. The record shows no objection to the verdict form, nor any request that a responsive verdict be included, nor any request for a jury charge on simple criminal damage to property.

Louisiana Code of Criminal Procedure article 801(C) provides that:

A party may not assign as error the giving or failure to give a jury charge or any portion thereof unless an objection thereto is made before the jury retires or within such time as the court may reasonably cure the alleged error. The nature of the objection and grounds therefor shall be stated at the time of objection. The court shall give the party an opportunity to make the objection out of the presence of the jury.

The contemporaneous objection rule is specifically designed to promote judicial efficiency by preventing a defendant from gambling for a favorable verdict and then, upon conviction, resorting to appeal on errors that either could have been avoided or corrected at the time or should have put an immediate halt to the proceedings. **State v. Taylor**, 93-2201, p. 7 (La. 2/28/96), 669 So.2d 364, 368-369, cert. denied, 519 U.S. 860, 117 S.Ct. 162, 136 L.Ed.2d 106 (1996). An irregularity or error cannot be availed of after

verdict unless it was objected to at the time of its occurrence. La. Code Crim. P. art. 841(A).

Accordingly, the defendant has waived any error based on this allegation by his failure to enter a contemporaneous objection. See La. Code Crim. P. art. 841(A); **State v. Sisk**, 444 So.2d 315, 316 (La. App. 1 Cir. 1983), writ denied, 446 So.2d 1215 (La. 1984). This assignment of error lacks merit.

Manifest Error

In his last assignment of error, the defendant contends that manifest error resulted from the jury's verdict. He seems to argue that there was insufficient evidence to support a finding that it was foreseeable that his actions might endanger human life.

In reviewing the sufficiency of the evidence to support a conviction, a Louisiana appellate court is controlled by the standard enunciated by the United States Supreme Court in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). That standard of appellate review, adopted by the Legislature in enacting Code of Criminal Procedure article 821, is whether the evidence, when viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt. La. Code Crim. P. art. 821(B); **State v. Ordodi**, 2006-0207, p. 10 (La. 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 fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001-2585, pp. 4-5 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

As the trier of fact, a jury is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, where 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 fact finder's determination of guilt. **State v. Taylor**, 97-2261, pp. 5-6 (La. App. 1 Cir. 9/25/98), 721 So.2d 929, 932. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1 Cir.), writ denied, 514 So.2d 126 (La. 1987).

Aggravated criminal damage to property is the intentional damaging of any structure, watercraft, or movable, wherein it is foreseeable that human life might be endangered, by any means other than fire or explosion. La. R.S. 14:55. Although the defendant did not testify or call any witnesses, he presented a defense through argument and cross-examination challenging the sufficiency of the evidence to support a finding that it was foreseeable that his actions might endanger human life. He likewise limits his contention on appeal to the foreseeability element of the offense.

The State had to prove only that it was foreseeable that human life *might* be endangered. La. R.S. 14:55. The evidence established that the defendant was angry with Aucoin and intentionally rammed his truck, with "heavy duty" steel or chrome bumpers, into the driver's side of her truck, knowing that she was sitting in the driver's seat. The defendant hit Aucoin's truck with enough force to cause it to "fish-tail," with damage repairs estimated at about \$2,300.00. Aucoin sustained injuries from the defendant's actions, including neck, shoulder, and spinal pain, and she experienced dizziness and headaches as a result. The jury could rationally conclude that Aucoin's life was endangered by the defendant's conduct. See, e.g., State v. Bates, 37,282, pp. 3-4 (La. App. 2 Cir. 10/16/03), 859 So.2d 841, 845, writ denied, 2004-0141 (La. 5/21/04), 874 So.2d 173.

This assignment of error lacks merit.

CONCLUSION

Having found no merit in the defendant's assignments of error, the conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.