

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 2041

STATE OF LOUISIANA

VERSUS

MICHAEL CHARLES OLIVIER

Judgment Rendered: May 4, 2007

**Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Case No. 398387**

The Honorable Reginald T. Badeaux, III, Judge Presiding

**Walter P. Reed
District Attorney
Covington, Louisiana**

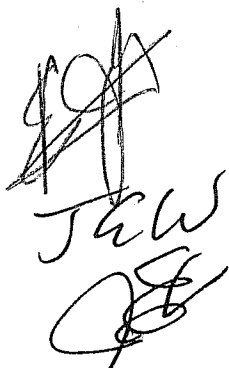
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**Counsel for Defendant/Appellant
Michael Charles Olivier**

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.



GAIDRY, J.

The defendant, Michael Olivier, was charged by bill of information with attempted second degree murder (count 1), a violation of La. R.S. 14:27 and 14:30.1, and attempted armed robbery (count 2), a violation of La. R.S. 14:27 and 14:64. He pleaded not guilty. Following a jury trial, the defendant was found not guilty of attempted second degree murder but guilty of attempted armed robbery. The defendant filed motions for new trial and postverdict judgment of acquittal, which were both denied. The defendant was adjudicated a third felony habitual offender and sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence, in accordance with La. R.S. 15:529.1(A)(1)(b)(ii). He filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating one assignment of error. For the following reasons, we affirm the conviction, the habitual offender adjudication, and the sentence.

FACTS

On April 11, 2005, the defendant and his girlfriend, Laurie Wilkes, went to Timothy Camper's trailer in the Alton community of St. Tammany Parish with the intention of obtaining drugs. The defendant asked Camper if Camper wanted to have sex with Wilkes in exchange for drugs. After Camper declined the offer and asked the defendant to leave, the defendant attacked Camper with a knife. The defendant slashed Camper's throat and repeatedly stabbed him. Camper managed to get the knife away from the defendant and threw it to the floor.¹ Camper and the defendant wrestled and

¹ There is conflicting trial testimony as to how many knives were used in the attack. The defendant testified that after he stabbed Camper and they began fighting, he lost his knife. Then, according to the defendant, "I grabbed his [Camper's] arm and pulled it out and he had the knife, and we just fought and the next thing you know I just grabbed the bottle and ran." Camper testified at trial that after the defendant cut his throat, Camper took the

engaged in fisticuffs until they fell through the front door of the trailer. The defendant and Wilkes then got in a car and drove away. Camper suffered serious injuries and was treated at a hospital for a gaping wound to his neck and puncture wounds to his chest, abdomen, and back.

The defendant was subsequently arrested and gave a videotaped statement to the police. In his statement, the defendant admitted that he tried to rob Camper. He also stated that while he and Camper were wrestling on the floor, he (the defendant) reached into Camper's pocket, grabbed a vial with crack cocaine "rocks" in it, and ran out of the trailer. However, at trial, the defendant testified that he did not go to Camper's to rob him. He testified that Camper had sold him "junk" crack that day, and he returned and offered Wilkes for sex in order to procure more drugs. The defendant also testified that Camper dropped the vial of crack while they were fighting, and he (the defendant) simply grabbed the vial and left. The defendant claimed that he initially stabbed Camper because Camper got angry, pushed the defendant, told him to get out of his house, and grabbed a rifle. Camper testified at trial that he did not have a gun in his trailer. No rifle, or any weapon other than the knife or knives used to stab Camper, was found at Camper's trailer.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the State failed to prove the *corpus delicti*, or the fact that an attempted armed robbery

knife from the defendant, bent it, and dropped it to the floor. As he continued to struggle with the defendant, the defendant pulled out another knife from a pocket on the side of his pants leg. The defendant then hit Camper in the head with the knife and stabbed him in the arm and back. Deputy Lloyd Thomas Morse, a crime scene technician with the St. Tammany Parish Sheriff's Office Crime Laboratory and a fingerprint expert, testified that he found one knife with suspected blood on the ground by the front door, and another knife inside the trailer. The knife inside had blood on it and was bent. There were no identifiable fingerprints on the knife found outside. The knife found inside had two identifiable prints, but Deputy Morse was unable to match them with any fingerprints of the defendant or Ms. Wilkes.

was committed. Specifically, the defendant contends that no attempted armed robbery occurred because the trial testimony of Camper established that Camper had nothing of value to rob, and because the defendant did not ask Camper for drugs or attempt to take anything.

It is well settled that an accused party cannot be legally convicted on his own uncorroborated confession without proof that a crime had been committed by someone; in other words, there can be no conviction without proof of the *corpus delicti*. *State v. Cruz*, 455 So.2d 1351, 1355 (La. 1984).² The *corpus delicti* must be proven by evidence which the jury may reasonably accept as establishing that fact beyond a reasonable doubt and may be proven by circumstantial evidence. When determining the existence of the *corpus delicti*, the issue is not whether there is sufficient evidence to convict the defendant, but rather whether there is any evidence at all, independent of the confession, that establishes the fact that a crime was committed. *See State v. Brown*, 236 La. 562, 108 So.2d 233, 236-37 (1959). This independent proof need not go to every element of the offense. *See State v. Thibodeaux*, 98-1673, p. 12 (La. 9/8/99), 750 So.2d 916, 926, *cert. denied*, 529 U.S. 1112, 120 S.Ct. 1969, 146 L.Ed.2d 800 (2000). Further, the source of the testimony is irrelevant to the establishment of the *corpus delicti*, so long as the statements are not those of the accused. No rule requires the State to establish *corpus delicti* exclusively through the testimony of the victim of the crime. *See State v. Lee*, 01-2082, pp. 6-7 (La. App. 4th Cir. 8/21/02), 826 So.2d 616, 623, *writ denied*, 02-2549 (La. 9/5/03), 852 So.2d 1019.

As defined in La. R.S. 14:64, armed robbery consists of the following elements: (1) the “taking” (2) “of anything of value belonging to another”

² This is generally known in the criminal law as the *corpus delicti* rule. Black’s Law Dictionary 369 (8th ed. 2004).

(3) “from the person of another or that is in the immediate control of another,” (4) “by use of force or intimidation,” (5) “while armed with a dangerous weapon.”

Under La. R.S. 14:27(A) an attempt is defined as follows:

Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Although specific intent may be proven by direct evidence, it need not be proven as a fact, but can be inferred from the circumstances of the transaction and the actions of the defendant. Thus, to be guilty of attempted armed robbery, a defendant must have a specific intent to commit armed robbery, and he must do or omit an act for the purpose of and tending directly toward the accomplishment of his object. *State v. Hicks*, 554 So.2d 1298, 1302 (La. App. 1st Cir. 1989), *writs denied*, 559 So.2d 1374 (La. 1990) & 604 So.2d 1297 (La. 1992).

In his recorded statement to the police, the defendant admitted several times that he robbed or attempted to rob Camper.³ Both the testimony of witnesses and independent physical evidence at the scene of the crime corroborated the defendant’s confession. Camper admitted that he sold drugs in his “younger days” and that some people in the neighborhood knew

³ The following are relevant excerpts of the defendant’s videotaped statement: “When we got right by the bedroom door, I tried to rob him”; “Either way I wanted to get loaded, and if he would have went for that [accepting sex in exchange for drugs], that would have been cool, and if not, I was going to take the s---”; “I run [*sic*] out the f----- house, but I grabbed his dope and run [*sic*] out the house”; “At first it was just, I tried to rob him and, you know, then it was just about, just getting out of there, you know”; “I went in his pocket and I got the rocks, you know, I did exactly what I wanted to.”

that. He also testified that in his neighborhood and in the “drug world,” it is known that users sometimes trade sex for drugs or money. Thus, when the defendant asked Camper if Camper wanted the defendant’s “old lady,” Camper understood this to mean that Camper could have sex with Wilkes if Camper gave the defendant drugs or money. Camper’s refusal of the offered sex with Wilkes meant that the defendant would not be getting drugs via that form of barter. The defendant thereupon pulled out a knife and intended to obtain the drugs by threatening Camper.⁴ Camper’s multiple stab wounds were the direct result of his resistance to the defendant’s attempted armed robbery. Camper testified at trial that he believed that the defendant and Wilkes were trying to rob him. Scott Polen, a friend Camper called after the altercation, testified at trial that Camper told him over the telephone that he had been stabbed, his throat was slit, and he had been robbed. Detective Chad Farrell with the St. Tammany Parish Sheriff’s Office investigated the crime scene. He testified at trial that Camper advised him that the defendant pulled a knife on him and robbed him or tried to rob him.

We find the State presented sufficient evidence at trial to establish the *corpus delicti* -- that an attempted armed robbery occurred at Camper’s trailer. The assignment of error is without merit.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

⁴ The defendant argues in his brief that there could not have been an attempted armed robbery because Camper did not have any money or drugs to rob. However, it is irrelevant whether Camper had any money or drugs to take. The robbery attempt materialized the moment the defendant pulled out his knife and stabbed Camper, and it was immaterial whether, under the circumstances, the defendant would have, or could have, taken anything of value as long as he had the specific intent to rob. *See* La. R.S. 14:27(A).