

Judgment rendered December 3, 2008  
Application for rehearing may be filed  
within the delay allowed by Art. 922,  
La. C.Cr.P.

No. 43,735-KA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

STATE OF LOUISIANA Appellee

versus

ROBERT FITZGERALD WASHINGTON Appellant

\* \* \* \* \*

Appealed from the  
First Judicial District Court for the  
Parish of Caddo, Louisiana  
Trial Court No. 234,995

Honorable Leon L. Emanuel III, Judge

\* \* \* \* \*

PEGGY J. SULLIVAN Counsel for  
Louisiana Appellate Project Appellant

PAUL J. CARMOUCHE Counsel for  
District Attorney Appellee

TOMMY J. JOHNSON  
JOHN FORD McWILLIAMS, JR.  
GEYA D. WILLIAMS PRUDHOMME  
Assistant District Attorneys

\* \* \* \* \*

Before GASKINS, CARAWAY and LOLLEY, JJ.

NOT DESIGNATED FOR PUBLICATION.  
Rule 2-16.3, Uniform Rules, Courts of Appeal.

CARAWAY, J.

Robert Washington was convicted, after a bench trial, of two counts of armed robbery with a firearm in violation of La. R.S. 14: 64 and La. R.S. 14:64.3. Washington appeals urging insufficient evidence to convict and reversible error based upon the trial court order that he remain in prison clothing throughout the bench trial. We affirm.

*Facts*

Although originally charged with seven counts of armed robbery of several different locations, Washington was tried before a judge on only four counts of armed robbery. During trial, the state chose to submit for decision Counts One and Two of the bill of information before deciding whether to continue presenting evidence on the remaining two counts.<sup>1</sup> Prior to trial, defense counsel requested that Washington be allowed to change into street clothes provided for him. The trial court noted counsel's objection but denied the request on the grounds that "this is a bench trial." Defense lodged an objection to the ruling claiming possible prejudice with regard to in-court eyewitness identifications.

Count One involved the armed robbery of a Shreveport discount store on April 5, 2004. At trial, an employee of the store testified that while she was restocking, a man walked behind her, placed his hand on her shoulder and held a black gun to her side while telling her she needed to come with him. The employee recalled that the individual wore a green "Harrah's" jacket, white tennis shoes, a white tee shirt and a cap on his head. He kept

---

<sup>1</sup>According to Washington's brief, Counts Three and Four were dismissed on January 30, 2007.

repeating that he owed “these people too much money.” As she stood up, the man grabbed the employee around the collar and told her to take him to the safe in the back office. When the employee explained that the safe was not in the back office, the assailant threatened to shoot her and asked to speak to her supervisor. The employee complied and eventually opened the safe. The robber was given money (coins) located in the top section of the safe because the bottom section was on a time-delay. The money was placed in a store basket kept in the safe. The employee testified that the assailant also took money from cashiers at cash registers before choosing a man from a line who left the store with him.

After Washington was apprehended a short distance from the store, the employee was taken approximately fifteen minutes after the crime to Washington’s location to see if she could identify him as the robber. The employee testified that she saw a man wearing handcuffs and when asked if he was the robber, she stated that he was. At trial, the employee identified Washington, with absolute certainty more than once, as the man who had robbed her. In fact, she testified that during the robbery she focused on the man with the gun as he threatened her because she wanted to make sure that she could later identify him.

A cashier also gave a description of the event and the robber that was consistent with the testimony of the other employee, stating further that the money from the registers was placed into plastic bags bearing the store’s name and handed to the assailant. This employee was shown a photographic lineup at a later time on the day of the robbery, and identified

Washington as the perpetrator. This employee also identified Washington in court and testified that she was certain he was the man who had robbed the store.

Several detectives were called to testify on behalf of the state. Detective Shawn Parker stated that the cashier's description of the robber matched Washington's physical features and clothing when he was subsequently apprehended. Corporal Brent Mason located a blue basket and several bags bearing the store's name in a dumpster located approximately 100 yards from the discount store which had been robbed.

Deputy David Emberton was called to investigate the robbery and canvassed the surrounding area. He exited his vehicle and began to walk behind a vacant house when he saw Washington crouched behind it. When Washington saw Emberton, he got up, began to run and threw down a green jacket. Washington was subsequently apprehended by other officers.

Corporal Skylar VanZandt testified that he recovered the jacket, a handgun inside the jacket that had been wrapped in a skull cap and proceeds taken from the robbery. VanZandt testified that the money was found in the blue shopping basket in the dumpster. He testified that most of the items were rolled coins and the remainder was paper currency, neither of which contained detectable fingerprints. No conclusive fingerprints were found on the weapon. VanZandt also testified that he recovered one white tennis shoe from the scene but did not recall finding a hat or "do-rag."

Detective Lane Smith testified that he brought the store employee to identify Washington face-to-face within a matter of minutes after the

robbery. He testified that both store employees who testified at trial described the robber similarly. The cashier was not brought to the suspect for identification but she positively identified Washington as the perpetrator of the offense from a photographic lineup.

Count Two of the Bill of Information charged Washington with the armed robbery of a Shreveport furniture store on March 31, 2004. The collector/cashier at the store testified that she was on the telephone when she felt a gun in her back. She described the weapon as a small, black handgun. She looked over and a man was on his knees behind her demanding money from her register. The collector/cashier testified that she was nose-to-nose with the robber as he demanded money. She gave the robber money from the cash register, and he had her place it in a flannel jacket. The man realized there was a second cashier, and he also demanded and received money from her. The collector/cashier testified that the robber apologized to both employees, explaining that someone had his daughter and he needed the money to get her back. The witness also stated that the robber demanded a VCR tape from the other employee. When the employees explained that there was no tape in the television, the robber left. When detectives arrived, the collector/cashier was able to give a description of the robber. She described him as a tall slender black male who had his hair on top of his head. He had a brown and white flannel jacket draped over his arm and wore a white tee shirt and blue jeans.

At trial, the collector/cashier identified Washington as the perpetrator of the robbery. She was certain of his identity as she had been face-to-face

with him during the robbery. The collector/cashier stated that police contacted her the day after Washington was arrested (April 6, 2004) for the discount store robbery. She had seen Washington on television as he was being placed in the police car for the subsequent robbery of the discount store and recognized him as the man who robbed her. The collector/cashier also recognized him in a newspaper photograph. The witness stated that “[She] knew right away when [she] saw the photo of [Washington]” that he was the man who had robbed the store. The collector/cashier was able to tell the officers that Washington was the same man who had robbed the furniture store. The cashier corroborated the testimony of the collector/cashier. She identified Washington as the man on the news and in court.

Detective Chris Ray, who had investigated the furniture store robbery, was the last to testify. He said that the employees’ descriptions of the man who robbed the furniture store were consistent and matched Washington upon his arrest. The day after Washington was arrested for the robbery of the discount store, Ray received a phone call from the general manager of the furniture store indicating that both employees had identified Washington as the man who had robbed the furniture store. Thereafter, Ray contacted both witnesses to verify the identifications. Because of their identifications of Washington from television and the newspaper, Ray elected not to present the cashiers with a photographic lineup.

After a bench trial resulted in his conviction on both Counts One and Two on November 10, 2005, Washington was sentenced as a fourth felony

habitual offender on each count to serve 99 years at hard labor without benefit of probation, parole or suspension of sentence, to be served concurrently.<sup>2</sup> Washington's motions for new trial and post-verdict judgment of acquittal, alleging insufficient evidence to convict, were denied by the trial court. Washington appeals urging insufficient evidence to convict and that the eyewitnesses' in-court identifications were tainted because appellant was forced to wear his prison uniform in court.

### *Discussion*

In his first assignment of error, Washington argues that the state failed to bear its burden of proof of guilt beyond a reasonable doubt because there was no physical evidence connecting Washington to the crimes and that the eyewitness testimony was unreliable because descriptions of Washington differed widely and gave no distinguishing and obvious physical characteristics of the appellant. Washington argues that the eyewitnesses who identified him were mistaken in their identifications because none of the eyewitnesses described his head and face as being "clearly scarred" and that the face-to-face identification of Washington by the discount store cashier was suspect because she identified him when he was wearing handcuffs.

When issues are raised on appeal both as to the sufficiency of the evidence and as to one or more trial errors, the reviewing court should first determine the sufficiency of the evidence. The reason for reviewing sufficiency first is that the accused may be entitled to an acquittal under

---

<sup>2</sup>Washington also sought a timely motion for reconsideration of his sentences which was denied.

*Hudson v. Louisiana*, 450 U.S. 40, 101 S. Ct. 970, 67 L. Ed. 2d 30 (1981), if a rational trier of fact, viewing the evidence in accord with *Jackson v.*

*Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), in the light most favorable to the prosecution, could not reasonably conclude that all of the elements of the offense have been proved beyond a reasonable doubt.

*State v. Hearold*, 603 So. 2d 731 (La. 1992); *State v. Bosley*, 29,253 (La. App. 2d Cir. 4/2/97), 691 So. 2d 347, writ denied, 97-1203 (La. 10/17/97), 701 So. 2d 1333.

The standard of appellate review for a sufficiency of the evidence claim is whether, after 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 proven beyond a reasonable doubt. *Jackson v. Virginia, supra*; *State v. Tate*, 01-1658 (La. 5/20/03), 851 So. 2d 921, cert. denied, 541 U.S. 905, 124 S. Ct. 1604, 158 L. Ed. 2d 248 (2004); *State v. Murray*, 36,137 (La. App. 2d Cir. 8/29/02), 827 So. 2d 488, writ denied, 02-2634 (La. 9/05/03), 852 So. 2d 1020. This standard, now legislatively embodied in La. C. Cr. P. art. 821, does not provide the appellate court with a vehicle to substitute its own appreciation of the evidence for that of the fact finder. *State v. Pigford*, 05-0477 (La. 2/22/06), 922 So. 2d 517; *State v. Robertson*, 96-1048 (La. 10/4/96), 680 So. 2d 1165. The appellate court does not assess the credibility of witnesses or reweigh evidence. *State v. Smith*, 94-3116 (La. 10/16/95), 661 So. 2d 442.

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. *State v. Allen*, 36,180 (La. App. 2d Cir. 9/18/02), 828 So. 2d 622, *writs denied*, 02-2595 (La. 3/28/03), 840 So. 2d 566, 02-2997 (La. 6/27/03), 847 So. 2d 1255, *cert. denied*, 540 U.S. 1185, 124 S. Ct. 1404, 158 L. Ed. 2d 90 (2004). In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. *State v. Wiltcher*, 41,981 (La. App. 2d Cir. 5/9/07), 956 So. 2d 769; *State v. Burd*, 40,480 (La. App. 2d Cir. 1/27/06), 921 So. 2d 219, *writ denied*, 06-1083 (La. 11/9/06), 941 So. 2d 35. Such testimony alone is sufficient even where the state does not introduce medical, scientific, or physical evidence to prove the commission of the offense by the defendant. *State v. Robinson, supra*; See also *State v. Johnson*, 96-0950 (La. App. 4th Cir. 8/20/97), 706 So. 2d 468, *writ denied*, 98-0617 (La. 7/2/98), 724 So. 2d 203, *cert. denied*, 525 U.S. 1152, 119 S. Ct. 1054, 143 L. Ed. 2d 60 (1999).

In cases involving a defendant's claim that he was not the person who committed the crime, the *Jackson* rationale requires the state to negate any reasonable probability of misidentification in order to carry its burden of proof. *State v. Hughes*, 05-0992 (La. 11/29/06), 943 So. 2d 1047; *State v. Powell*, 27,959 (La. App. 2d Cir. 4/12/96), 677 So. 2d 1008, *writ denied*, 96-1807 (La. 2/21/97), 688 So. 2d 520.

Positive identification by only one witness may be sufficient to support a defendant's conviction. *State v. Youngblood*, 41,976 (La. App. 2d Cir. 5/9/07), 957 So. 2d 305, *writ denied*, 07-1226 (La. 12/14/07), 970 So.

2d 530; *State v. Davis*, 27,961 (La. App. 2d Cir. 4/8/96), 672 So. 2d 428, writ denied, 97-0383 (La. 10/31/97), 703 So. 2d 12; *State v. Miller*, 561 So. 2d 892 (La. App. 2d Cir. 1990), writ denied, 566 So. 2d 983 (La. 1990).

One-on-one confrontations between a victim and a suspect, while not favored by the law, are permissible when justified by the overall circumstances. Such identification procedures are generally permitted when the accused is apprehended within a short time after the commission of the offense and is returned to the scene of the crime for on-the-spot identification or when the identification is made shortly after the crime. *State v. Bickham*, 404 So. 2d 929 (La. 1981); *State v. Sewell*, 35,549 (La. App. 2d Cir. 2/27/02), 811 So. 2d 140, writ denied, 02-1098 (La. 3/21/03), 840 So. 2d 535. Such prompt identification, under appropriate circumstances, promotes accuracy as well as expediting the release of innocent suspects. *Id.*

The trier of fact is charged to make credibility determinations and may, within the bounds of rationality, accept or reject the testimony of any witness; the reviewing court may impinge on that discretion only to the extent necessary to guarantee the fundamental due process of law. *State v. Casey*, 99-0023 (La. 1/26/00), 775 So. 2d 1022, cert. denied, 531 U.S. 840, 121 S. Ct. 104, 148 L. Ed. 2d 62 (2000).

In this matter, Washington's convictions were based upon the eyewitness testimony of two employees of the discount store with regard to Count One, and two employees of the furniture store relating to Count Two and the corroborating physical evidence found near the scene of his arrest.

Relative to Count One, both eyewitnesses were able to immediately give corroborating descriptions of the man who robbed them to police. Each had clearly seen his face. Moreover, within less than an hour's time, police apprehended Washington who matched the description given to them by the witnesses. Washington ran from police and threw down a green jacket like that described by both eyewitnesses. Afterwards, police recovered a gun wrapped in a hat in the jacket which matched the description of the gun described by the eyewitness. Consistent with the eyewitness statements, police also recovered money in a basket and bags bearing the name of the discount store in a dumpster located only 100 yards from the store.

Shortly after the robbery, a store employee was able to identify Washington as the man who robbed her and the other employee identified him as the robber from a photographic lineup the day of the crime. Both victims identified Washington as the perpetrator at trial. The trial court obviously determined that the immediate face-to-face identification of Washington by the store employee was reliable despite his wearing of handcuffs. Considering that Washington made a memorable impression on both victims and the short lapse of time between the crime and the face-to-face identification, such a determination is supported by the evidence. *See, State v. Robinson*, 404 So. 2d 907 (La. 1981) (face-to-face identification of robber by victim immediately after crime was found to be reliable despite suspect's wearing of handcuffs at the time).

Notably, the armed robber in both crimes also sought to verbally justify his actions to the victims. After viewing these uniform actions, the

consistent descriptions of the perpetrator given by both victims immediately after the crime, the discovery of Washington shortly after the crime in close proximity to the store wearing a jacket like that described by the victims, his furtive actions and disposal of both the jacket and the gun as he ran from police, and the discovery of the funds taken from the store, a fact trier could have reasonably found the identifications to be reliable and that the state negated any reasonable probability of misidentification of Washington as the robber of the discount store.

Regarding Count two, the witnesses were also able to give police an accurate description of the robber of the furniture store immediately after the event. Both of the furniture store employees were in close proximity to his face during the robbery which they estimated lasted about five to six minutes. Without prompting by police, both witnesses also independently identified Washington as the robber of the furniture store when they saw him on television. One of the witnesses also identified him from a newspaper photograph. Ultimately, both witnesses clearly identified Washington as the perpetrator at trial. Washington argues that these identifications are unreliable. However, in the context of an identification which is unplanned and unexpected, and not an identification procedure, conducted by the state, Washington's argument is merely one of credibility. *See State v. Jacobs*, 04-1219 (La. App. 5th Cir. 5/31/05), 904 So. 2d 82, writ denied, 05-2072 (La. 4/28/06), 927 So. 2d 282, cert. denied, \_\_U.S.\_\_, 127 S. Ct. 385, 166 L. Ed. 2d 276 (2006).

During direct and cross-examination of these eyewitnesses, the trial judge was fully apprised of any inconsistencies in the witnesses' description of Washington including the fact that neither mentioned scarring on his face in describing him and the length of time between the crime and the identifications by the witnesses. The trial judge obviously accepted the testimony of the two witnesses that Washington was the man who robbed them. Those identifications, if believed, along with the pattern of verbal justifications utilized by the robber in both crimes, are adequate to negate any reasonable probability of misidentification.

Defendant's assignment of error concerning the sufficiency of the evidence is without merit.

Washington next argues that the trial court prejudiced the witnesses by requiring that he be tried in his prison clothes. Washington argues that the witnesses' in-court identifications of him were tainted by his attire.

The facts of *State v. Jacob, supra*, are very similar to the present case. In *Jacobs*, the armed robbery victim identified the defendant as the robber from a newspaper photograph and in court while the defendant was seated at the defense table wearing prison clothing. Jacobs argued that because he was the only African American man in the courtroom and was dressed in prison attire, that the in-court identification was inherently prejudicial. Citing *State v. Johnson*, 343 So. 2d 155 (La. 1977), the court held that the conspicuous seating of defendant at the defense table did not suggest that he was guilty of the crime, only that he was charged with its commission. Further, the court noted that ample opportunity at cross-examination was

sufficient to remedy any suggestiveness inherent in the in-court identification. Because counsel had extensively cross-examined the witness regarding both the in-and out-of-court identifications and the victim repeatedly expressed his certainty that defendant had robbed him, the court rejected Jacobs' argument.

Even more compelling in this case is that each of the four eyewitnesses to the robberies had extensive opportunity to view the face of the man who robbed them. Each was able to give a description of the individual at the time of the crimes and made unfaltering pretrial identifications of Washington through the face-to-face identification, a photographic lineup and news media recognition. At trial, each of the eyewitnesses remained unwavering in their certainty that Washington was the man who committed the two robberies. The record shows that at trial, each witness was focused on identifying the features of Washington's face which each had observed during the robbery rather than his clothing. The full cross-examination of these witnesses and the certainty expressed in the out-of-court identifications remedied any suggestiveness and cured any possible prejudice in the in-court identifications. Washington's argument is without merit.

For the foregoing reasons, Washington's convictions and sentences are affirmed.

**AFFIRMED.**