11/28/01 "See News Release93 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

No. 00-K-1437

STATE OF LOUISIANA

versus

EARL BLAKE YOUNG

KNOLL, Justice,[*] concurring in part and dissenting in part

I agree with the majority's affirmation of defendant's conviction for the crime of second degree battery. However, I dissent from its conclusion that the defendant's conviction for the crime of attempted simple robbery must be reversed because the State provided insufficient evidence that the defendant attempted to take anything of value from Mr. Hambrick.

On appellate review, the reviewing court "does not determine whether another possible hypothesis suggested by a defendant could afford an exculpatory explanation of the events." State v. Mitchell, 99-3342 (La. 10/17/00), 772 So. 2d 78, 83, quoting State v. Davis, 92-1623 (La. 5/23/94), 637 So. 2d 1012, 1020. Rather, the reviewing court must evaluate the evidence in a light ***most favorable*** to the State and determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. Mitchell, 772 So. 2d at 83. When circumstantial evidence partly forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. State v. Shapiro, 431 So. 2d 372 (La. 1983); State v. Austin, 399 So. 2d 158 (La. 1981).

In the present case, the main fact to be inferred was that the defendant entered

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[*] Retired Judge Robert L. Lobrano, assigned as Justice Pro Tempore, participating in the decision.

Hambrick's Grocery to take something of value from the owner. Although there was no showing that the defendant attempted to open the cash register or to take any groceries, the evidence reflected that when Mr. Hambrick recognized the defendant, he pointedly asked why defendant had attacked him and received no response from the defendant. In addition, the defendant attacked Mr. Hambrick on the side of the counter which would have given him access to the cash register.[1] Significantly, Mr. Hambrick fought defendant off and threw him out of the store before defendant had an opportunity to take or demand anything.[2] A reasonable juror could have inferred from Mr. Hambrick's question that no pre-existing dispute or feud existed between him and the defendant which would have explained defendant's actions. Thus, this possible alternative hypothesis was negated. Moreover, relying upon the common sense experience of the jurors, the evidence showed that the defendant attacked Mr. Hambrick when he was alone in his place of business where money and other items of value were located, that the defendant increased the severity of his attack after Mr. Hambrick recognized his assailant's identity, and that Mr. Hambrick fought the defendant off before he could take or demand anything. Accordingly, I find that the State's evidence sufficiently negated any motive for the defendant's attack other than robbery, and conclude that the evidence precluded beyond a reasonable doubt a reasonable hypothesis of defendant's innocence. Accordingly, I would affirm the jury's resolution of this issue. For these reasons, I respectfully dissent from this portion of the majority opinion.

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[1] Compare State v. Stone, 615 So. 2d 38 (La. App. 3 Cir. 1993), which held there was insufficient evidence that defendant intended to take anything from the store to support her conviction for attempted armed robbery. In that case, the appellate court noted that although the defendant attacked the store clerk with a knife, *the attack took place away from the cash register* and there was nothing on the store videotape which revealed that the defendant desired to take anything of value.

[2] Because the defendant was charged with attempted simple robbery, the act of taking need not be established. See State v. Nguyen, 95-1055 (La. App. 5 Cir. 3/26/96), 672 So. 2d 988, 991, writ denied, 96-1019 (La. 10/4/96), 679 So. 2d 1377, 96-2087 (La. 10/7/96), 680 So. 2d 639 (holding that the act of taking need not be established to prove an attempted armed robbery).