

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **13th day of May, 2021** are as follows:

PER CURIAM:

2020-K-01041

STATE OF LOUISIANA VS. MICHAEL YOUNG (Parish of Lafourche)

REVERSED AND REMANDED. SEE PER CURIAM.

Hughes, J., dissents.

Crichton, J., additionally concurs and assigns reasons.

05/13/21

SUPREME COURT OF LOUISIANA

No. 2020-K-01041

STATE OF LOUISIANA

versus

MICHAEL YOUNG

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF LAFOURCHE**

PER CURIAM:

Around 2:00 a.m. on June 13, 2016, B.J.'s Country Stop #3 in Houma was burglarized. The store was closed and there were no eyewitnesses. The burglar entered the store by breaking the glass door with a brick. He took the cash drawer from the register and left. The store's surveillance camera recorded the burglary. The video showed that the perpetrator was a Black male who concealed his face with a t-shirt, wore socks over his hands, and who was dressed in a white t-shirt and black basketball shorts with red and white stripes.

A manager for the B.J.'s Country Stop chain, Tracy LeBlanc, reviewed the video of the burglary. She also reviewed surveillance videos recorded over several days at Stop #3 prior to the burglary. She did not find anyone at the store earlier who appeared to be the perpetrator. Ms. LeBlanc also reviewed surveillance videos from B.J.'s Country Stop #1, which is less than a mile away from Stop #3. In video recorded at Stop #1 the evening before the burglary, she saw a Black male who she thought resembled the burglar purchasing gasoline at Stop #1. He wore a white t-shirt and black basketball shorts with red and white stripes. Ms. LeBlanc identified him as

defendant from the credit card he used to purchase the gasoline. Police identified defendant from his license plate, which also appeared in Stop #1 surveillance video.

Defendant was charged by bill of information with simple burglary, La. R.S. 14:62. A unanimous Lafourche Parish jury found him guilty as charged. The trial court denied defendant's motions for post-verdict judgment of acquittal and new trial, and sentenced defendant to serve 12 years imprisonment at hard labor.

The court of appeal affirmed the conviction and sentence in an unpublished opinion. *State v. Young*, 2019-1684 (La. App. 1 Cir. 7/24/20), available at 2020 WL 4250991. The court of appeal determined that the evidence, when evaluated in accordance with the due process standard of *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), was sufficient to support the conviction. Specifically, it found the jury could compare the surveillance videos and reasonably conclude that the defendant was the burglar. The court of appeal explained, "the footage and still shots clearly depict matching attire, including the white shirt and black, white, and red shorts, and a matching physical appearance (i.e., same build, stature, and complexion) such that there was no reasonable probability of misidentification in this case." *Young*, 19-1684, p. 9, 2020 WL 4250991 at *4.

The court of appeal also determined that the trial court did not err in ruling that defendant could not display his arm tattoos to the jury. Further, it found the trial court did not err in ruling that defendant could not present witnesses to testify that he had those tattoos at the time of the burglary. Defendant had sought to introduce this evidence to try to prove that he was not the perpetrator, who did not appear to be similarly tattooed in the surveillance video. The court of appeal found the trial court did not abuse its discretion because the jury viewed the surveillance video of defendant purchasing gas on the evening before the burglary. Consequently, the jury was able to

observe defendant's arms as they appeared at the time of the burglary, and determine whether their appearance corresponded to that of the burglar. *Young*, 19-1684, p. 17, 2020 WL 4250991 at *8.

“In reviewing the sufficiency of the evidence to support a conviction, an appellate court in Louisiana is controlled by the standard enunciated by the United States Supreme Court in *Jackson v. Virginia*. . . . [T]he appellate court must determine that the evidence, 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.” *State v. Captville*, 448 So.2d 676, 678 (La. 1984).

When the State's case is based on circumstantial evidence, “assuming every fact to be proved that the evidence tends to prove, in order to convict, [the circumstantial evidence] must exclude every reasonable hypothesis of innocence.” La. R.S. 15:438; *State v. Toups*, 2001-1875, p. 3 (La. 10/15/02), 833 So.2d 910, 912 (explaining that La. R.S. 15:438 does not establish a stricter standard of review than the more general rational juror's reasonable doubt formula; rather it serves as a helpful evidentiary guide for jurors). In addition, when the defendant disputes his identification as the perpetrator, rather than whether the crime was committed, the state is required to negate any reasonable probability of misidentification. *State v. Long*, 408 So.2d 1221, 1227 (La. 1981).

Simple burglary is the unauthorized entry of any structure with the specific intent to commit a felony or any theft therein. La. R.S. 14:62; *State v. Jones*, 426 So.2d 1323 (La. 1983). It is not disputed that a simple burglary occurred here; it is only disputed that defendant is the burglar. There were no eyewitnesses to the crime and the cash drawer was never recovered. The only evidence presented to identify defendant as the perpetrator is the surveillance videos and the opinions of a store manager and a

detective that the same person appears in the videos.

Defendant argues that—because the burglar concealed his face—race, sex, and clothing are insufficient to negate any reasonable probability of misidentification. While this presents a close question, after carefully reviewing the surveillance videos we find this evidence sufficient such that the jury’s verdict survives review under the *Jackson* standard.

Video shows defendant’s gasoline purchase at a B.J.’s Country Stop less than a mile from the burglarized B.J.’s Country Stop. He purchased the gasoline on the night before the burglary. Although the burglar concealed his face, the jury could reasonably conclude, after comparing the videos, that defendant was not only the same race and sex as the burglar, but that he wore the same clothing, and his build and other physical characteristics were identical. The *Jackson* standard “leaves juries broad discretion in deciding what inferences to draw from the evidence presented at trial, requiring only that jurors draw reasonable inferences from basic facts to ultimate facts.” *Coleman v. Johnson*, 566 U.S. 650, 655, 132 S.Ct. 2060, 2064, 182 L.Ed.2d 978 (2012) (internal quotation marks omitted). In addition, a reviewing court may intrude on the discretion of the fact finder “only to the extent necessary to guarantee the fundamental protection of due process of law.” *State v. Mussall*, 523 So.2d 1305, 1310 (La. 1988) (footnote and citation omitted).

However, the close nature of the question above informs our analysis of the next questions before the court, i.e. did the trial court err in excluding the tattoo evidence, and, if so, whether the error is harmless? For the reasons that follow, we find the trial court erred in excluding this evidence and thereby infringed on defendant’s right to present a defense. Considering the nature of the State’s evidence at trial and the *Jackson* inquiry above, we also find the error is not harmless.

A criminal defendant has the constitutional right to present a defense. U.S. Const. Amends. 6 and 14; La. Const. Art. I, § 16; *Crane v. Kentucky*, 476 U.S. 683, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986); *State v. Van Winkle*, 94-0947, p. 5 (La. 6/30/95), 658 So.2d 198, 201. The right to present a defense is so fundamental to the concept of a fair trial that even evidentiary rules are sometimes required to yield to it. *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed. 2d 297 (1973). In general, a defendant should be allowed to present evidence on any relevant matter. *State v. Shoemaker*, 500 So.2d 385 (La.1987). However, this right is not without limits and the state retains a legitimate interest in barring unreliable evidence from criminal trials. See *Rock v. Arkansas*, 483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987); see also *State v. Casey*, 1999-0023, p. 18 (La. 1/26/00), 775 So.2d 1022, 1037.

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La.C.E. art. 401. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of Louisiana, this Code of Evidence, or other legislation. Evidence which is not relevant is not admissible. La.C.E. art. 402. Although 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. La.C.E. art. 403.

The State argues that defendant’s tattoos were irrelevant because they did not form the basis of the identification. That is, no witnesses testified that they identified defendant in the videos based on the presence of tattoos. However, if it was proved that defendant had extensive arm tattoos at the time of the burglary and the burglar did not, that would clearly be relevant.

The jurisprudence does not support the State's position. In *State v. Martin*, 519 So.2d 87 (La. 1988), a rape victim testified that her attacker had a tattoo on his arm, which she described with specificity, and she testified that he had no other tattoos that she saw. In *Martin*, this court observed:

To begin with, the state's case against Martin rested almost entirely on the victim's testimony. Any evidence which might tend to discredit or weaken her identification of Martin as the rapist was clearly material. Further, the court of appeal failed to recognize that the proper evidentiary foundation for the physical display was well in place at the time that the defendant sought to make the demonstration. The victim put in issue the question of whether or not the defendant had a certain type of tattoo on his right upper arm when she described her assailant and the type of tattoo that she observed on his arm. She also vested with relevance the question of whether the defendant had any other tattoos on his arms when she testified that she did not recall seeing any tattoos on the attacker other than the one which said "something like Angela."

The victim's testimony alone constituted a sufficient evidentiary foundation to allow the defendant to display his arms to the jury. Certainly had the state desired to have the defendant display his right upper arm to the jury, the victim's testimony would have entitled it to an order requiring such a demonstration, and no further "foundation" would have been required.

Martin, 519 So.2d at 92. Similarly, Ms. LeBlanc acknowledged on cross-examination that she did not see any distinctive markings on the burglar's arms in the surveillance videos. This "vested with relevance" the question of whether defendant had any distinctive markings on his arms and, therefore, constituted a sufficient evidentiary foundation to allow defendant to display his arms to the jury and to call one or more witnesses to testify that he had those tattoos at the time of the burglary.¹

¹ *State v. Pettus*, 11-861 (La. App. 5 Cir. 5/22/12), 96 So.3d 584, which is cited by the State, is distinguishable. The perpetrator in *Pettus* wore a long-sleeved shirt when he committed simple robbery, and therefore it was not surprising that the victim and other witnesses did not report seeing a tattoo on his arm. Moreover, the court of appeal in *Pettus*, 11-861, p. 13, 96 So.3d at 592, observed:

In the instant case, Pettus' identification was the primary issue because no one positively identified him as the robber and the case against him was circumstantial. Therefore, it would have been relevant if he had a tattoo on his right forearm at the time of the robbery that was not, but could have been, seen by the victim during the robbery.

The State, however, argues that the testimony of defendant's proposed witnesses regarding defendant's tattoos at the time of the burglary would have been irrelevant because it is not certain—given the lighting, camera angles, defendant's skin tone, and the quality of the videos—that any tattoos on the perpetrator would have been discernable on the videos. However, the State cannot cut off a defendant's fundamental right to present a defense preemptively simply because the State believes it may be possible to challenge the evidence. Instead, the State could present evidence pertaining to the effects of lighting, video quality, etc., on rebuttal. Furthermore, as this court observed in *Martin*, evidence from witnesses regarding when a defendant obtained the tattoos “must be considered as further establishing a relevance foundation for the proposed tattoo display.” *Martin*, 519 So.2d at 92.

Finally, the State reiterates the views of the courts below that the tattoos were not relevant because the jurors could simply compare the videos and make their own determination as to whether the same person appears in both. We observe that the State's argument in this regard is inconsistent with its assertions regarding the quality of the videos and the likelihood that defendant's tattoos would be discernable. Regardless, the fact that the jurors observed the videos does not justify the exclusion of additional evidence from the defense on the question of whether defendant is the person in the videos. That evidence was clearly relevant, and the trial court erred in excluding it.

Under La.C.Cr.P. art. 921, a judgment or ruling “shall not be reversed ... because of any error ... which does not affect substantial rights of the accused.” In *State v. Gibson*, 391 So.2d 421 (La. 1980), this court adopted the test for “harmless error,” as stated in *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). Under that test, the question is whether there is a reasonable possibility that the

admission or exclusion of certain evidence “might have contributed to the conviction.” Furthermore, the error must be “harmless beyond a reasonable doubt.” *Gibson*, 391 So.2d at 427. Considering the importance of the video surveillance evidence in the State’s case-in-chief, and the lack of any other evidence connecting defendant to the burglary, we cannot conclude beyond a reasonable doubt that the exclusion of evidence that defendant had extensive tattoos was harmless.

Accordingly, we reverse the ruling of the court of appeal, which affirmed defendant’s conviction and sentence. We find that defendant is entitled to a new trial. Therefore, we vacate defendant’s sentence and we set aside his conviction. We remand to the trial court for further proceedings consistent with the views expressed here.

REVERSED AND REMANDED

05/13/21

SUPREME COURT OF LOUISIANA

No. 2020-K-01041

STATE OF LOUISIANA

versus

MICHAEL YOUNG

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF LAFOURCHE**

CRICHTON, J. additionally concurs and assigns reasons:

I would agree with the court of appeal that the jury could simply compare the surveillance videos and reasonably conclude that the defendant was the burglar, which reasonable conclusion would survive a *Jackson v Virginia* review, if that was the only evidence available to be presented to the jury.

However, that was not the only evidence available. The defendant here wished to stand and briefly roll up his sleeves to display his arm tattoos to the jury, but he was prohibited by the district attorney's objection and the trial court's rulings that the evidentiary requirements of foundation and relevance were not met. I agree with the majority that those rulings were in error.

I write separately to emphasize that a defendant who stands accused of a crime must have a fair opportunity to present a defense and to respond to the State's evidence. Clearly, the testimony by the proffered defense witnesses that defendant had those tattoos at the time of the crime laid the necessary foundation for defendant to briefly display his tattoos to the jury. Moreover, whether defendant had tattoos on his arms at the time of the crime clearly has a "tendency to make the existence of any fact that is of consequence to the determination of the

action more probable or less probable that it would be without the evidence” and would thus have been relevant. *See* La.C.E. art. 401.

Further, the probative value of this evidence is certainly not 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” and thus, the balancing test of La.C.E. art. 403 is satisfied.

As instructed by the landmark case taught in most law schools in this country, *Chambers v Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed. 2d 297 (1973), “the right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State’s accusations.” In contrast with *Chambers*, where the district court’s evidentiary rulings were indisputably correct under Mississippi law, here the district court’s rulings were incorrect under our Code of Evidence. Therefore, the infringement upon the right to present a defense was even more egregious than in *Chambers*. In my view, the cavalier exclusion of such relevant evidence calls into question the ultimate “integrity of the fact-finding process,” see *Chambers*, 410 U.S. at 295, 93 S.Ct. at 1046, and a reversal and new trial warranted. Due process requires no less.