NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 1751

STATE OF LOUISIANA

VERSUS

MICHAEL CALVIN ALCORN, JR.

Judgment rendered: February 9, 2007

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On Appeal from the 22nd Judicial District Court
Parish of St. Tammany, State of Louisiana
Number 394525 "I"
The Honorable Reginald T. Badeaux, III, Judge Presiding

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BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

DOWNING, J.

The defendant, Michael C. Alcorn, Jr., was charged by bill of information with second degree battery, a violation of La. R.S. 14:34.1. He pled not guilty and waived the right to trial by jury. After a bench trial, he was found guilty as charged. He received a sentence of five years at hard labor. The trial court suspended the sentence, placed the defendant on five years supervised probation, and imposed a $1,000 fine, and other special conditions of probation. On appeal, the defendant alleges as his sole assignment of error that the evidence was insufficient to support the instant conviction. We affirm.

FACTS

The defendant and the victim, Rhonda Williams, were in a relationship for three to four years. At some point after they separated, the victim made some trips back to the defendant's residence in St. Tammany Parish to retrieve her belongings. During her previous trips, the defendant had not been present. However, on January 24, 2005, the victim had no such luck. The defendant flagged down the victim. She stopped, rolled down her window, and turned off the ignition. The defendant wanted Ms. Williams' key to the house and reached inside her car to get it. He then threw her keys across a ditch and began punching the victim in the face. The victim still seated in the car and wearing the seat belt, could not escape. Her nose was bleeding. She told the defendant to stop, but according to the victim, he threatened to kill her, grabbed her arm, and tried to pull her out of the car. After the beating, he stated: "Oh, I guess you are going to have me arrested now. Now I am going to go to jail and you gonna go running around crying telling everybody I beat you up. Just go inside and get cleaned up."

The victim was scared to get out of the car. When the defendant went back inside, she remembered that she had a spare set of car keys in her purse

and escaped. However, she explained at trial that she could not go to the hospital immediately because she was afraid of being arrested due to outstanding "bad checks." Approximately one week later, she obtained the money to pay the bad checks. On January 31, 2005, she went to the hospital, where it was confirmed that she had sustained a broken nose during the beating.[1]

The defendant admitted to a confrontation with the victim. He testified that she had been coming to the house "and taking things." According to the defendant, when he reached inside the victim's car to retrieve his house key, she began punching him on the side of the head. However, the defendant explained that he injured the victim while jerking the keys out, as follows: "I pulled the key out, jerked it out. And I came out and I am sure I did hit her a little. Maybe with an elbow[.]" (R94). After retrieving his house key, he threw the victim's keys in a ditch. When he realized the victim was bleeding, he asked her to please go inside and clean up. Then he went to the ditch to get her keys, but the victim drove away.

On cross-examination, explaining that the victim's injury was an accident, the defendant stated: "I did not intend to injury (sic) her at all. I wouldn't."

ASSIGNMENT OF ERROR

In his only assignment of error, the defendant contends that the evidence was insufficient to support the instant conviction.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the State proved the essential elements of the crime and the defendant's identity as the perpetrator

[1] While the bill of information lists the date of the offense as January 31, 2005, this was actually the date the victim went to the hospital.

of that crime beyond a reasonable doubt. La. Code Crim. P. art. 821; **State v. Johnson**, 461 So.2d 673, 674 (La. App. 1 Cir. 1984). The **Jackson v. Virginia,** 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), 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. **State v. McLean,** 525 So.2d 1251, 1255 (La. App. 1 Cir. 1988).

La. R.S. 14:34.1 provides, in pertinent part:

> Second degree battery is a battery committed without the consent of the victim when the offender intentionally inflicts serious bodily injury.
>
> For purposes of this article, serious bodily injury means bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death.

Second degree battery is a specific intent offense. **State v. Daigle**, 439 So.2d 595, 598 (La. App. 1 Cir. 1983). Specific intent is that state of mind that 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). Specific intent may be proved by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. **State v. Johnson**, 461 So.2d 1273, 1277 (La. App. 1 Cir. 1984).

In his brief to this court, the defendant does not deny that he was involved in an incident with the victim while she was attempting to retrieve some of her belongings. Nor does he deny that the victim's broken nose would clearly fall within the definition of serious bodily injury. Instead,

pointing to his trial testimony wherein he explained that he might have accidentally struck the victim with his elbow while removing her keys from the ignition, he contends that he lacked the intent necessary for a conviction of second degree battery. The defendant also calls into question the victim's credibility, asserting that she "is hardly a model citizen." (Defendant's brief p. 9). As the trier of fact, the trial court was free to accept or reject, in whole or in part, the testimony of any witness. **State v. Richardson**, 459 So.2d 31, 38 (La. App. 1 Cir. 1984). Furthermore, 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 weight of the evidence, not its sufficiency. **State v. Richardson**, 459 So.2d at 38. Moreover, when a case involves circumstantial evidence, and the trier of fact reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. See **State v. Captville**, 448 So.2d 676, 680 (La. 1984).

The guilty verdict returned in this case indicates that the trial court rejected the defendant's accident theory. The court clearly determined that the defendant struck multiple blows that injured the victim and that he intended serious bodily injury to result therefrom. In dismissing self-defense as an implausible theory, the court noted that even if the victim began slapping the defendant, he simply had to step away from her car to "be out of the situation." The trial court then found the defendant guilty, concluding: "But you proceeded to break her nose. And, I don't believe for a second that was a stray elbow. That may have been the elbow blow across her face. But she has two black eyes, a broken nose, multiple contusions and bruises." On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to

overturn a fact finder's determination of guilt. **State v. Creel**, 540 So.2d 511, 514 (La. App. 1 Cir. 1989).

The circumstantial evidence also supported the State's case. The photographs (State Exhibits 1 and 2) and medical records (State Exhibit 3) introduced into evidence corroborated the victim's testimony that she suffered a beating involving multiple blows and resulting in a broken nose and other bruises. Under these circumstances, we find the State proved the defendant possessed the specific intent necessary to support a conviction of second degree battery.

After a careful review of the record, we conclude that a rational trier of fact, viewing all of the evidence as favorable to the prosecution as any rational fact finder can, could have concluded that the State proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of second degree battery.

This assignment of error is without merit.

ARTICLE 930.8 NOTICE

The defendant notes a discrepancy between the minutes and the transcript. According to the minutes, the trial court advised him of the two-year time limitation contained in La. Code Crim. P. art. 930.8 for the filing of post-conviction relief applications. However, as the defendant correctly notes, the sentencing transcript reflects no such advice.

As the issue has been raised herein, it is apparent that the defendant has notice of the limitation period and/or has an attorney who is in a position to provide him with such notice. Although we have done so in the past, we decline to remand for the trial court to provide such notice. Instead, out of an abundance of caution, and in the interest of judicial economy, we note that Article 930.8A generally provides that no application for post-

conviction relief, including applications that seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of La. Code Crim. P. arts. 914 or 922. See **State v. Godbolt,** 2006-0609, pp. 7-8 (La. App. 1 Cir. 11/3/06), ___ So.2d ___, ___, 2006 WL 3103380. However, the precatory language of La. Code of Crim. P. art. 930.8A does not bestow an enforceable right on an individual defendant. Failure of a trial court to give an Article 930.8A notice has no bearing on the validity of the sentence imposed, and is not grounds for reversal of the sentence or a remand for re-sentencing. ***Id.***

DECREE

We affirm the defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED