

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

03-180

STATE OF LOUISIANA

VERSUS

ROBERT GLENN JONES A/K/A ERNEST HANCOCK

THIBODEAUX, J., dissenting.

The majority's reliance on *State v. Taylor*, 96-320 (La.App. 3 Cir. 11/6/96), 638 So.2d 1309, *writ denied*, 96-2828 (La. 6/20/97), 695 So.2d 1348 and *State v. Percy*, 02-255 (La.App. 5 Cir. 6/26/02), 822 So.2d 823 is misplaced. The facts in *Taylor* and *Percy* were far more egregious than the facts which exist here. Those facts are adequately detailed in the majority's opinion and need not be repeated.

The Defendant along with an accomplice were leaving the scene of a home burglary when they were pursued by Deputy Green. The Defendant drove down Robert Bihm Road, a dead-end street. Deputy Green followed the Defendant onto Robert Bihm Road, stopped his patrol car and left it parked more to the right side of the road. The deputy testified it appeared that the Defendant looked in the rearview mirror and saw that Deputy Green was standing in the street to the left of the driver's door of his patrol car, which was slightly open. After the lapse of a minute or two, Deputy Green heard the Defendant's truck engine "rev" and saw that the truck started backing out of the road at a high rate of speed. Deputy Green testified that the Defendant was looking back and coming straight toward him at thirty-five to forty miles per hour and kept getting faster and faster. The truck came very close to hitting

the deputy such that he had to jump on top of the trunk of his patrol car. The Defendant's truck continued to increase its speed after passing Deputy Green and eventually flipped over.

Ms. Leger's testimony corroborates that of Deputy Green with respect to the location of his patrol car on the road. She further corroborated Deputy Green's testimony regarding the speed and direction with which the Defendant backed his truck out of the road. She saw Deputy Green jump on top of his trunk when the Defendant's truck passed the deputy's patrol car.

There is no doubt that the Defendant backed his car out from a dead-end street instead of turning around in one of the yards to do so. However, the Defendant's specific acts directed toward Deputy Green involved swerving his vehicle toward the deputy's patrol car, while in the process of backing out of a street. The Defendant's truck did not contact or cause damage to the patrol vehicle. In fact, after passing the deputy's patrol car, the Defendant, as testified to by Ms. Leger and Deputy Green, continued to go even faster until he flipped the truck. I am convinced that this evidence did not provide a sufficient basis for a rational trier of fact to conclude beyond a reasonable doubt that the Defendant committed attempted second degree murder. Neither the circumstances of the chase—escaping from a recent burglary, no contact between the vehicles, and no damage to the deputy's vehicle as well as the Defendant's speed when backing out of the one-way street—nor the testimony of Ms. Leger that the Defendant could have turned around in her yard to get out of the street supplies proof beyond a reasonable doubt that the Defendant had the specific intent to kill Deputy Green. The fact that the Defendant could have turned around is of no consequence when, because he was on a dead-end-street, he still would have had to pass near Deputy Green. This evidence, without more, shows the Defendant's intent was merely to escape to avoid arrest. Because the State's evidence was insufficient to establish the essential element of intent to kill, I would reverse the Defendant's

attempted second degree murder conviction, vacate the forty-year sentence imposed, and order the entry of an acquittal.

For the foregoing reasons, I dissent.