

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 KA 2327

STATE OF LOUISIANA

VERSUS

WALLACE R. JAMES

Judgment Rendered: MAY - 7 2010

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On Appeal from the Eighteenth Judicial District Court
In and for the Parish of Iberville
State of Louisiana
Docket No. 1242-08

Honorable Alvin Batiste, Judge Presiding

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BEFORE: DOWNING, GAIDRY, AND McCLENDON, JJ.

McCLENDON, J.

The defendant, Wallace R. James, was charged by bill of information with first degree robbery, a violation of LSA-R.S. 14:64.1. He pled not guilty. Following a trial by jury, the defendant was convicted of the responsive offense of simple robbery, a violation of LSA-R.S. 14:65. See LSA-C.Cr.P. art. 814(A)(23.1). The defendant was sentenced to imprisonment at hard labor for five years, to run concurrently with any sentence he was currently serving. The defendant now appeals, urging in a single counseled assignment of error that the evidence presented by the state is insufficient to support the conviction. He has also filed a *pro se* supplemental brief alleging prosecutorial misconduct.

For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

James Washington, a law enforcement officer employed by the Iberville Parish Sheriff's Office, was working patrol on August 14, 2008, when he was dispatched to investigate an alleged armed robbery at a trailer on Choctaw Road in Iberville Parish. Upon arrival, Officer Washington spoke to Angie Hebert who advised that she had just been robbed at gunpoint. Angie explained that her friend Gloria Anderson visited her residence earlier that day and that Gloria was accompanied by another individual. Angie advised that approximately one hour after leaving the residence with Anderson, the individual who had accompanied Anderson returned to the residence. He had a brown paper bag over his hand and had shaped it into the form of a handgun. He demanded money and threatened to "shoot the house up" if Angie did not give him money. The perpetrator took approximately \$80.00 to \$100.00 and two cellular telephones from Angie before leaving the residence.¹ Angie stated the perpetrator was wearing a black and white polo-striped shirt, a black baseball cap, and dark blue jeans.

¹ According to Angie Hebert, one of the cellular phones was valued at approximately \$200 and the other was worth approximately \$50.00.

In response to this information, Officer Washington contacted Gloria Anderson. Anderson confirmed that she had been to Angie Hebert's residence earlier that day and advised that the individual in question was her nephew, the defendant.

Captain Blair Favaron, Chief Detective for the Iberville Parish Sheriff's Office, initiated a criminal investigation of the robbery. He compiled a photographic lineup of potential suspects and presented it to Angie for identification. Angie unequivocally identified the defendant as the individual who robbed her.

SUFFICIENCY OF THE EVIDENCE

In his sole counseled assignment of error, the defendant contends the evidence presented by the state in this case is insufficient to support the jury's verdict. Specifically, he argues that Angie and Craig Hebert, the state's key witnesses, had been engaged in illegal drug use shortly before the alleged robbery and thus, their trial testimony regarding what allegedly transpired at the residence should not have been deemed credible. He argues that their testimony was insufficient to meet the state's burden of proving his guilt beyond a reasonable doubt. In response, the state asserts there was ample evidence presented at the defendant's trial to support the simple burglary conviction.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, when viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude the state proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. See LSA-C.Cr.P. art. 821; **State v. Johnson**, 461 So.2d 673, 674 (La. App. 1st Cir. 1984). A reviewing court must consider the evidence to determine whether or not it meets the constitutional standards of **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), which has been incorporated in LSA-C.Cr.P. art. 821. **State v. McLean**, 525 So.2d 1251, 1255 (La.App. 1 Cir.), writ denied, 532 So.2d 130 (La. 1988). Louisiana Code of Criminal Procedure article 821 is an objective standard for

testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, Louisiana Revised Statutes 15:438 provides the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. **McClellan**, 525 So.2d at 1255; **State v. Nevers**, 621 So.2d 1108, 1116 (La. App. 1 Cir.), writ denied, 617 So.2d 906 (La. 1993). Ultimately, all evidence, both direct and circumstantial, must be sufficient under **Jackson** to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt. **State v. Shanks**, 97-1885, pp. 3-4 (La.App. 1 Cir. 6/29/98), 715 So.2d 157, 159.

This standard of review, in particular the requirement that the evidence be viewed in the light most favorable to the prosecution, obliges the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. See **State v. Mussall**, 523 So.2d 1305, 1308-11 (La. 1988). Thus, the reviewing court is not permitted to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. See **State v. Burge**, 515 So.2d 494, 505 (La.App. 1 Cir. 1987), writ denied, 532 So.2d 112 (La. 1988).

The defendant was convicted of simple robbery. Simple robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, but not armed with a dangerous weapon. LSA-R.S. 14:65(A).

At the trial, Gloria Anderson testified on behalf of the state. She identified the defendant, in open court, as her nephew. She further testified that on the date in question, the defendant accompanied her to the Hebert residence. She explained that Craig Hebert, Angie Hebert's ex-husband, owed her some money and she went to collect. On cross-examination, Anderson admitted that she took Lortab. She also admitted that, during the visit in question, Craig and Angie Hebert asked her to give them one of her Lortab pills and she complied.

Angie Hebert testified that on the date in question, Craig Hebert, her ex-husband, was present at her residence because he was doing some flooring work

for her. According to Angie, Anderson arrived at her residence accompanied by the defendant. She introduced the defendant as her nephew. Angie had never met the defendant prior to this visit. Angie testified the monetary exchange took place after Anderson asked to borrow ten dollars for gas. She denied that Craig owed Anderson money.

Approximately one hour later, the defendant returned to the residence, forced his way in after she opened the door, and demanded money. Angie testified that the defendant's hand was covered with a brown bag, but he held his arm toward her in a manner that led her to believe he was armed with a handgun. Angie denied ever seeing a gun, but she explained that she feared for her life and the lives of her children, because the defendant threatened to shoot if she did not comply with his demand for money. She stated that Craig advised her to just "give him the money."

On cross-examination, Angie denied receiving any Lortab from Anderson or using any Lortab on the date in question. She also denied ever asking the defendant to purchase crack cocaine for her. Angie testified she never voluntarily gave any money to the defendant.

Craig Hebert also testified as a state's witness. Craig testified that he was previously married to Angie Hebert. At the time of the incident in question, he was unemployed and staying at Angie's for a few days, and he had agreed to install flooring for Angie. He further testified that Gloria Anderson was a friend of his and that she visited him at Angie's residence on the date in question to collect money he owed her. Like Angie, Craig testified that the defendant accompanied Anderson on this visit. Shortly thereafter, the defendant returned to the residence and robbed them. Craig testified that since the defendant did not actually brandish a weapon, he was not convinced that the defendant was really armed with one. However, since he was unsure and because he feared for the safety of his children, Craig instructed Angie to comply with the defendant's demands. The defendant took approximately \$80.00-\$100.00 from the Heberts

before leaving the premises. On cross-examination, Craig denied getting any illegal drugs from Anderson on the day in question.

On appeal, the thrust of the defendant's sufficiency argument appears to be that the jury should not have believed Angie and Craig Hebert's account of what transpired at Angie Hebert's residence. He claims both witnesses lacked credibility due to an existing "drug relationship" with him and Gloria Anderson.

Initially, we note that it is the function of the jury to determine which witnesses are credible. It is obvious from the verdict rendered that the jury in this case found Angie and Craig Hebert credible and accepted their accounts of the events. The jury chose to believe the clear and certain testimony of Angie and Craig Hebert that the defendant returned to the residence, pretended to be armed with a weapon, and demanded money. Despite the defendant's unsubstantiated claims of illegal drug activity between him and the victims (as suggested through defense questioning), the jury apparently rejected the claim that the incident was a drug deal gone awry.

On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a jury's determination of guilt. **State v. Williams**, 02-0065, pp. 6-7 (La.App. 1 Cir. 6/21/02), 822 So.2d 764, 768, writ denied, 03-0926 (La. 4/8/04), 870 So.2d 263. With the evidence presented, the state proved, at a minimum, that the defendant took cash and two cellular phones from Craig and Angie Hebert by use of force or intimidation, i.e., threatening to physically harm them if they failed to comply with his demands.

Viewing the trial evidence in the light most favorable to the prosecution, we find it to be sufficient to convince any rational trier of fact that all the elements of the crime of simple robbery and the defendant's identity as the perpetrator were proven beyond a reasonable doubt. Contrary to the defendant's claims on appeal, there was ample evidence to support defendant's simple robbery conviction. See State v. Moten, 510 So.2d 55, 61 (La.App. 1 Cir.), writ denied, 514 So.2d 126 (La. 1987). This assignment of error is without merit.

PROSECUTORIAL MISCONDUCT

In his supplemental *pro se* brief, the defendant argues that a "grave miscarriage of justice" occurred in this case because Dana Larpenteur, the Assistant District Attorney who prosecuted the case, was also the victim in an unrelated simple burglary charge pending against the defendant.² The defendant argues that Larpenteur's failure to recuse himself from the prosecution of this matter constitutes prosecutorial misconduct and warrants reversal of the conviction.

However, based on the record presently before us, we are unable to reach the defendant's prosecutorial misconduct claim, the record being devoid of any evidence, testimonial or documentary, to support the defendant's assertions regarding the unrelated case. The only evidence of the existence of charges relating to the burglary of the Law Office of Dana Larpenteur is presented in an attachment to the defendant's *pro se* brief. This Court, as an appellate court rather than a court of original jurisdiction, is limited in its review to matters contained in the appellate record. We have no authority to receive or review evidence not contained in the trial court record. **State v. Smith**, 447 So.2d 565, 569 (La.App. 1 Cir. 1984). See also **State v. Oubichon**, 422 So.2d 1140, 1141 (La. 1982). Therefore, we cannot review whether the assistant district attorney should have recused himself in this case. See LSA-C.Cr.P. art. 681. Rather, this issue would be more properly raised by an application for post-conviction relief filed in the district court where a full evidentiary hearing may be conducted. See **State v. Sylvas**, 558 So.2d 1192, 1203 (La. App. 1st Cir. 1990). Accordingly, this *pro se* assignment of error is not subject to appellate review.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.

² In the earlier portion of his brief, the defendant states that Mr. Larpenteur was the victim "in this case." However, the attachment provided with the brief, and the argument contained therein, reflect that the prosecution for the simple burglary of the Law Office of Dana Larpenteur is unrelated to the instant case.