

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 0441

STATE OF LOUISIANA

VERSUS

TABVIS LAVELL WILLIAMS

Judgment Rendered: NOV 01 2013

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On Appeal from the
32nd Judicial District Court,
In and for the Parish of Terrebonne,
State of Louisiana
Trial Court No. 601956

Honorable John R. Walker, Judge Presiding

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Joseph L. Waitz, Jr.
District Attorney
Ellen Daigle Doskey
Assistant District Attorney
Houma, LA

Attorneys for Appellant,
State of Louisiana

Bertha M. Hillman
Louisiana Appellate Project
Thibodaux, LA

Attorney for Defendant-Appellee,
Tabvis Lavell Williams

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

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HIGGINBOTHAM, J.

Defendant, Tabvis Lavell Williams, was charged by bill of information with possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1.¹ He pled not guilty and waived his right to a jury trial. After a bench trial, defendant was found guilty as charged. The trial court denied defendant's motions for new trial and postverdict judgment of acquittal, and sentenced him to twelve years at hard labor, without benefit of parole, probation, or suspension of sentence. The trial court also denied his motion to reconsider sentence. Defendant now appeals, alleging one assignment of error arguing that the evidence presented at trial was insufficient to support his conviction. For the following reasons, we affirm defendant's conviction and sentence.

FACTS

On April 1, 2011, Samantha Leonard walked into the Houma Police Department on Honduras Street to report that defendant, her ex-boyfriend, had threatened to kill three police officers. According to Leonard, defendant had made this threat early that morning, while he was armed with a pistol. Officer Cory Beal received Leonard's complaint and traveled to her apartment on Chateau Court, where he encountered defendant. Officer Beal spoke with defendant, who he described as cooperative. The officer was not able to locate a pistol in plain view during the brief period he was at the apartment. Defendant agreed to leave Leonard's apartment, and was transported by police to a nearby gas station.

Leonard returned to her apartment after defendant left. Within an hour of returning to her apartment, Leonard located the pistol, a revolver, in the underwear drawer of her children's dresser. Leonard again called the police, and Officer Beal returned to the apartment to collect the pistol.

¹ Defendant's prior felony offense, stipulated to by both parties at trial, was a February 28, 2005 conviction for possession of cocaine in Terrebonne Parish, under docket number 423,803.

Defendant agreed to be interviewed by Detective Robert Lottinger, III, on April 7, 2011. After being informed of his **Miranda**² rights, defendant initially denied any ownership of the pistol, stating that Leonard bought and used it for protection in her job as a taxi driver. However, he stated that he and Leonard would occasionally go into the woods and shoot the pistol. Detective Lottinger then lied to defendant and told him that his fingerprints were found on the pistol. At that point, defendant changed his story and stated that Leonard had bought the pistol for defendant so that he could use it for his own protection from some people with whom he had trouble. Defendant also admitted to owning a .22 caliber rifle. When Detective Lottinger told defendant that he would be arrested, defendant asked if he could make a deal to work off his charges. Leonard later brought the .22 caliber rifle to the police.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant argues that the evidence presented at trial was insufficient to support his conviction for possession of a firearm by a convicted felon.

A conviction based on insufficient evidence cannot stand, as it violates due process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. In reviewing claims challenging the sufficiency of the evidence, this court must consider whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See also La. Code Crim. P. art. 821(B); **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988). The **Jackson** standard of review, incorporated in Article 821(B), is an objective standard for testing the overall evidence, both direct

² **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. **State v. Patorno**, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

To prove a violation of La. R.S. 14:95.1, the state must prove: (1) the defendant's status as a convicted felon; (2) possession by the defendant; and (3) the instrumentality possessed was a firearm. See **State v. Mose**, 412 So.2d 584, 585 (La. 1982). The state must also prove that ten years have not elapsed since the date of completion of the punishment for the prior felony conviction. La. R.S. 14:95.1(C). Here, the state and the defense stipulated to the existence of defendant's 2005 felony conviction for possession of cocaine, so the only element at issue is whether the state proved beyond a reasonable doubt that defendant was in possession of a firearm.

At trial, Leonard testified that defendant hid himself in the trunk of her van as she drove her children to school on the morning of April 1, 2011. Once Leonard's children exited the van, defendant revealed himself and sat in the front seat. At that time, Leonard saw the pistol stuck in defendant's pants.

In addition to Leonard's testimony, the trial court heard Detective Lottinger's testimony regarding defendant's statement. Defendant told Detective Lottinger that Leonard had bought the pistol to use for his own protection. He also admitted to possessing an additional firearm, a .22 caliber rifle.

Defendant did not testify at trial. On appeal, defendant argues that Leonard concocted her story regarding defendant's threats and gun possession as a way to "frame" him following their break up on March 31, 2011. Defendant contends that Leonard was motivated to lie in order to get defendant to leave her apartment. He also asserts that his inculpatory statements to Detective Lottinger were unreliable

because they were made under duress, and he states that he believed he could avoid prison by giving a false confession and working off time.

After a thorough review of the record, viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the state proved, beyond a reasonable doubt, that defendant was guilty. There was no dispute at trial about defendant's status as a prior felony offender, or about the cleansing period for that prior conviction. To prove that defendant possessed a firearm, the state presented evidence from Leonard, who actually saw defendant in possession of both the pistol and the rifle, and from Detective Lottinger, to whom defendant admitted possessing both the pistol and the rifle.

In its oral reasons following the trial, the trial court recognized that Leonard and defendant had "some sort of break up," but the court apparently found this fact to be irrelevant outside of the fear it caused Leonard. When a case involves circumstantial evidence and the factfinder reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. See State v. Moten, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the factfinder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the factfinder. See State v. Calloway, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

In reviewing the evidence, we cannot say that the trial court's determination was irrational under the facts and circumstances presented to it. See Ordodi, 946 So.2d at 662. The state presented sufficient evidence for the trial court to determine that defendant committed the offense of possession of a firearm by a convicted felon.

This assignment of error is without merit.

REVIEW FOR ERROR

Under La. Code Crim. P. art. 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. See State v. Price, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277. After a careful review of the record, we have found a sentencing error.

For his conviction for possession of a firearm by a convicted felon, defendant was sentenced to twelve years at hard labor, without benefit of parole, probation, or suspension of sentence. Whoever is found guilty of violating the possession of a firearm by a convicted felon provision shall be imprisoned at hard labor for not less than ten nor more than twenty years, without the benefit of parole, probation, or suspension of sentence, and be fined not less than one thousand dollars nor more than five thousand dollars. See La. R.S. 14:95.1(B). The trial court failed to impose the mandatory fine. Accordingly, defendant's sentence, which did not include the mandatory fine, is illegally lenient. However, since the sentence is not inherently prejudicial to defendant, and neither the state nor defendant has raised this sentencing issue on appeal, we decline to correct this error. See Price, 952 So.2d at 124-25.

CONVICTION AND SENTENCE AFFIRMED.