NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 0814

STATE OF LOUISIANA

VERSUS

TRAVIS S. BROWN

Judgment Rendered: December 27, 2013

* * * * * * * *

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 496700

The Honorable Richard A. Swartz, Judge Presiding

* * * * * * * *

Walter P. Reed
District Attorney
Covington, Louisiana

Kathryn Landry
Baton Rouge, Louisiana

Counsel for Plaintiff/Appellee
State of Louisiana

James A. Williams
Roger W. Jordan, Jr.
Gretna, Louisiana

Counsel for Defendant/Appellant
Travis Brown

* * * * * * * *

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

THERIOT, J.

The defendant, Travis S. Brown, was charged by bill of information with resisting a police officer with force or violence, a violation of La. R.S. 14:108.2 (count 1); and simple escape, a violation of La. R.S. 14:110 (count 2). He pled not guilty and, following a jury trial, was found guilty on count 1 of the responsive offense of resisting an officer, a violation of La. R.S. 14:108, and guilty as charged on count 2. The defendant filed a motion for post-verdict judgment of acquittal, which was denied. The defendant was sentenced to six months in the parish jail for count 1 and he was sentenced to five years imprisonment at hard labor for count 2. The sentences were ordered to run consecutively. The State filed a multiple offender bill of information and, following a hearing on the matter wherein the defendant stipulated to his identity and his three prior felony convictions, the defendant was adjudicated a fourth-felony habitual offender. The trial court vacated the original five-year sentence and imposed an enhanced sentence of twenty years imprisonment at hard labor without benefit of probation or suspension of sentence. The defendant now appeals, designating one assignment of error. We affirm the convictions, habitual offender adjudication, and sentences.

FACTS

On September 14, 2010, Agent Carli Messina,[1] the defendant's parole officer with the Louisiana Department of Public Safety and Corrections ("Probation and Parole"), was attempting to make contact with the defendant to arrest him on a parole warrant for a parole violation. When it was determined through an anonymous tip that the defendant would be on Third

[1] At the time of this incident, she was Agent Messina, but subsequently she was married and began working at the St. Tammany Parish Sheriff's Office; therefore, at trial, she was referred to as Detective Farrell.

Street in Mandeville, Louisiana, four agents, including Agent Messina, in three patrol units converged on that location. The other three agents were Joseph Cotton, Brandon Pohlmann, and Lindsey Norton, all with Probation and Parole. The unmarked units had emergency lights on the front and rear of them. Agent Pohlmann was wearing a shirt with a gold Louisiana badge on the chest. The other three agents were wearing a black tactical vest with the word "POLICE" on the front and back. As the defendant was preparing to drop his wife off at work, he passed near Agent Messina's vehicle and saw her. When the defendant recognized his parole officer, he kept driving. The three units followed the defendant with their emergency lights on, but the defendant continued to drive. When the defendant eventually came to a stop, Agent Cotton pulled his unit in front of the defendant's vehicle and Agent Pohlmann pulled his unit directly behind the defendant's vehicle. Agents Cotton and Pohlmann approached the defendant's vehicle with weapons drawn, identified themselves as the police and shouted at the defendant to show his hands. The defendant raised his hands. They then ordered the defendant to put the vehicle in park and to turn off the engine. The defendant complied without incident.

Agent Pohlmann holstered his weapon and removed the defendant from the vehicle. Agent Pohlmann then applied an arm bar - a type of compliant escort technique - on the defendant and escorted the defendant to the back of the defendant's car. An eyewitness to this event, Zachary Lloyd, testified at trial that he saw the parole officers make the defendant place his hands on the trunk. When the defendant saw Agent Messina approach him with handcuffs, the defendant broke away from Agent Pohlmann's hold and began to run away. Agents Cotton and Pohlmann immediately caught up with the defendant and attempted to subdue him; however, the defendant

fought to break away and, during the struggle, he managed to slip out of the basketball jersey he was wearing and run away.

When the defendant broke away from Agents Cotton and Pohlmann, he outran them until the agents lost sight of him. Agent Norton radioed St. Tammany Parish Sheriff's Office for assistance. A perimeter was set up and the Sheriff's Office sent the canine division and a helicopter to locate the defendant. At about 2:30 p.m. the search was called off because children were being dismissed from the schools in the area. The next day, after speaking with the defendant's wife, the police found the defendant at a Super Eight Motel in Covington. The defendant was arrested without incident.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the evidence was insufficient to support the simple escape conviction. Specifically, the defendant contends he was not in lawful custody at the time he fled from the agents.[2]

DISCUSSION

A conviction based on insufficient evidence cannot stand as it violates due process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, 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. *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, p. 10 (La. 11/29/06), 946 So.2d 654, 660; *State v. Mussall*, 523 So.2d 1305, 1308-09 (La. 1988). The

[2] The defendant does not challenge his conviction for resisting an officer.

Jackson standard of review, incorporated in La. Code Crim. P. art. 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 factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. *State v. Patorno*, 2001-2585, p. 5 (La.App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

Louisiana Revised Statutes 14:110 provides in pertinent part:

> A. Simple escape shall mean any of the following:
>
> (1) The intentional departure, under circumstances wherein human life is not endangered, of a person imprisoned, committed, or detained from a place where such person is legally confined, from a designated area of a place where such person is legally confined, or from the lawful custody of any law enforcement officer or officer of the Department of Public Safety and Corrections.

The defendant argues that the State did not prove he was in lawful custody as required under the simple escape statute. The defendant contends he was not in lawful custody when he ran from the officers. According to the defendant, the officers had not placed him under arrest, handcuffed him, or told him there was an arrest warrant for his arrest; rather the only actions the officers took before the defendant ran was to have him exit the vehicle and escort him to the back of that vehicle.

The substance of the defendant's contention is that he was not in custody, i.e., under arrest, at the time he fled. If the defendant was fleeing to avoid arrest, then he cannot be guilty of simple escape. Thus, the issue is whether the defendant was under arrest at the time he fled from the agents. See *State v. Smith*, 96-0222, p. 4 (La.App. 1 Cir. 12/20/96), 686 So.2d 137, 141, writ denied, 97-0070 (La. 5/16/97), 693 So.2d 796.

Arrest is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint

may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him. La. Code Crim. P. art. 201. An arrest occurs when circumstances indicate an intent to effect an extended restraint on the liberty of an accused, rather than at the precise time an officer tells an accused he is under arrest. *State v. Jarmon*, 543 So.2d 93, 98 (La.App. 1 Cir. 4/11/89), writ denied, 551 So.2d 1334 (La. 1989). Restraint may be imposed by either or both an officer's words and actions. *State v. Siggers*, 490 So.2d 716, 721 (La.App. 2 Cir.), writ denied, 494 So.2d 1182 (La. 1986).

Arrest is a question which must be determined objectively and in retrospect, in light of the circumstances of the particular case. Factors to be considered include time, place, police intent, the suspect's belief, and existence of a warrant or, if no warrant exists, probable cause to arrest. No one factor will solely control every determination. The subjective intent of the police, if disclosed to the suspect, is relevant, but only to the extent it would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his freedom of action. The suspect's belief must be determined objectively, in retrospect, from the totality of the circumstances. *Smith* at pp. 4-5, 686 So.2d at 141.

In *State v. Raheem*, 464 So.2d 293, 296 (La. 1985), the supreme court found that an arrest occurred when officers stopped a car, drew their weapons, ordered the defendants out of the car, and had them place their hands on the vehicle. The fact the defendants were not verbally advised of their arrest until after a detective searched a defendant's purse did not alter the fact of arrest. In *Jarmon*, 543 So.2d at 98, the officers had drawn their weapons during the stop of the defendant's jeep. This court concluded the

defendant was under arrest from the moment he exited the jeep in compliance with the police and was patted down by them.

In *State v. Foley*, 570 So.2d 171, 174 (La.App. 5 Cir. 1990), writ denied, 576 So.2d 27 (La. 1991), the defendant was found to be under arrest when the officers approached the vehicle he was in with a weapon drawn, removed the defendant from the vehicle, and placed his hands on it; the fact the defendant had not been advised verbally of his arrest until later did not alter the fact of arrest. See *State v. Simmons*, 95-309 (La.App. 5th Cir. 10/18/95), 663 So.2d 790, 794, p. 5 (where the court found the circumstances indicated an arrest occurred when a detective ordered the defendant to exit the car and commanded him to step to the rear of the car and to place his hands on it); *State v. Francise*, 597 So.2d 28, 33 (La. App. 1 Cir. 1992), writ denied, 604 So.2d 970 (La. 1992) (where this court found that where the officers successfully stopped the defendant's vehicle, drew their weapons, ordered the defendant and a passenger out of the vehicle, and had them place their hands on the vehicle, an arrest occurred); *State v. Knight*, 574 So.2d 483, 486 (La.App. 4 Cir. 1991) (where the court concluded that the officers lawfully had the defendant under arrest when they stopped his vehicle, ordered him out of the car and placed his hands on the vehicle prior to searching his person); *State v. Desdunes*, 576 So.2d 520, 528 (La.App. 4 Cir. 1990) (where the court found that when an officer approached the defendant and forcibly opened his hand to determine whether it contained drugs, the officer had "effected an extended restraint" on the defendant and he was effectively under arrest); *State v. Davis*, 558 So.2d 1379, 1382 (La.App. 5 Cir. 1990) (where the court found an arrest occurred when officers, after a drug transaction by the defendant, drove their

car into the lot, got out, and ordered the defendant and his companion to put their hands on the car).

In the instant matter, where the numerous factors of arrest include at a minimum those factors in the foregoing jurisprudence, the circumstances clearly indicate an intent by the agents to effect an extended restraint on the liberty of the agents. The defendants were executing a parole warrant for a parole violation. The agents surrounded the defendant's vehicle with their units to prevent him from driving any further. With their weapons drawn, the agents shouted commands at the defendant. The defendant was ordered to show his hands, park the vehicle and turn off the engine. The defendant complied immediately without incident. The defendant was then physically removed from the vehicle and escorted by arm-bar to the back of the vehicle. At this point, the defendant had submitted himself to the custody of the agents. See La. Code Crim.P. art. 201. The defendant proceeded to break away from the agent to avoid being handcuffed. When the defendant ran and was subdued shortly thereafter by the two male agents, the defendant struggled again to get away. During this fracas, the agents trying to subdue the defendant were screaming at him to stop resisting. When the defendant broke away, the agents chased him, but the defendant kept running until he could no longer be seen or found. All of the actions by the agents indicated an intent to restrain the defendant for an extended period, and the defendant's reaction to the agents, in doing anything in his power to not remain constrained, clearly suggests he knew or should have known he was under arrest. The totality of the circumstances evidence a restraint on the defendant's liberty to an extent that any reasonable person would have believed he was in custody. *Smith* at p. 5, 686 So.2d at 141-42.

The jury heard the testimony and viewed the evidence presented to it at trial and found the defendant guilty. It is clear from the finding of guilt that the jury believed Agents Messina's and Pohlmann's version of events. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. *State v. Clouatre*, 2012-0407, p. 8 (La.App. 1 Cir. 11/14/12), 110 So.3d 1094, 1100. When 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 the weight of the evidence, not its sufficiency. *Id.* The trier of fact's determination of the weight to be given evidence is not subject to appellate review. *Id.* An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. *Id.* at pp. 8-9, 110 So.3d at 1100. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. *State v. Quinn*, 479 So.2d 592, 596 (La.App. 1 Cir. 1985). The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. *Id.* The assignment of error is without merit.

CONCLUSION

After a thorough review of the record, we find that the evidence supports the jury's verdict. Viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of simple escape. See *State v. Calloway*, 2007-2306, pp. 1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

CONVICTIONS, HABITUAL OFFENDER ADJUDICATION, AND SENTENCES AFFIRMED.