

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 1070

STATE OF LOUISIANA

VERSUS

ARTHUR STAMPLEY

Judgment Rendered: **FEB 18 2014**

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 12-11-0426**

The Honorable Donald R. Johnson, Judge Presiding

**Bertha M. Hillman
Thibodaux, Louisiana**

**Counsel for Defendant/Appellant
Arthur Stampley**

**Hillar C. Moore, III
District Attorney
Allison Miller Rutzen
Assistant District Attorney
Baton Rouge, Louisiana**

**Counsel for Plaintiff/Appellee
State of Louisiana**

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

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THERIOT, J.

The defendant, Arthur Stampley, was charged by bill of information with second degree kidnapping, a violation of La. R.S. 14:44.1. The defendant pled not guilty, waived his right to a trial by jury, and was found guilty of the lesser and included offense of simple kidnapping (a violation of La. R.S. 14:45). The State filed a habitual offender bill of information. The defendant was adjudicated a third-felony habitual offender and sentenced to ten years imprisonment at hard labor without benefit of probation or suspension of sentence.¹ The defendant now appeals, challenging the sufficiency of the evidence. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

STATEMENT OF FACTS

Kimberly Brown, the victim, began dating the defendant in 2009. According to the victim, their romantic relationship ended in early 2011, but the defendant remained in contact with the victim and her children. On October 21, 2011, the defendant went to the victim's residence located in Baton Rouge to visit her children and drop off the social security card for one of the children. After the defendant left, a male acquaintance who the victim only knew as Jay arrived to take the victim to see a midnight movie. When they left the residence, the victim noticed that the defendant was following them. She instructed Jay to drive faster and as they drove around a curve, she noticed that the defendant was waving out of his vehicle a silver object that appeared to be a gun. The defendant continued to pursue them as they drove down Bogan Walk, turned left on North Acadian Thruway, and turned right on Gus Young Avenue. The victim called 9-1-1 and reported that they were being chased, provided a description of the defendant's

¹ The defendant's habitual offender status is based on guilty pleas in 2000 to attempted first degree murder and attempted simple escape.

vehicle, asked for immediate assistance, and specifically stated that the person pursuing them had a gun. When they arrived at Lobdell Boulevard, a vehicle pulled in front of them and Jay lost control of his vehicle as it started spinning. The defendant's vehicle was also damaged at this point and when Jay's vehicle came to a stop it was inoperable. The defendant exited his vehicle and headed toward Jay's vehicle on foot. As Jay was unable to start his vehicle, the victim got out and attempted to flee on foot and the defendant ran after her. In an effort to escape, the victim attempted to get in a vehicle being driven by a female bystander, but the door was locked. The victim fell as the defendant physically attacked her. As he cursed the victim, he repeatedly hit her with a closed fist. The defendant continued to beat her while they were in the middle of the road and the gun fell to the ground. The defendant picked it up before the victim could determine if the gun was real or fake. The female bystander called 9-1-1 to report her observations, indicating that an unknown female tried to get into her car before a male knocked her down to the ground and dragged her to his vehicle.

The defendant drove the victim to the Hi Nabor Supermarket on Winbourne Avenue, parked in the back of the parking lot, and started hitting and cursing the victim. The victim made several attempts to exit the defendant's vehicle, but the defendant prevented her from escaping. At one point, when the defendant got out of the vehicle to check his flat tire, she was able to exit the vehicle but the defendant pulled her back in and demanded that she remain in the vehicle. When the defendant could not find his cigarettes, he forced the victim to walk to the gas station with him to purchase another pack and then took her to his brother's house. The defendant's brother provided him with tools to repair his tire. The defendant abruptly resumed beating the victim. He pulled her hair, bit her, and hit her

in the head with a car jack. The defendant told the victim to get in the back of his vehicle and remove her clothing, she complied, and they had sexual intercourse. The defendant then finally drove the victim back to her residence, instructed her to report the incident only as a car accident, and allowed her to exit his vehicle. The victim's mother immediately called the police, and after the police arrived they interviewed and took photographs of the victim depicting her battered face, scrapes, and bruises. The victim was treated at a hospital where she gave a written statement to the police detailing the incident, including descriptions of the defendant's violent behavior before and after he drove her away from the Lobdell Boulevard intersection. The defendant was placed under arrest when he came to the hospital while the victim was in the emergency room.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that the evidence is insufficient to support a conviction of simple kidnapping. The defendant notes that he admitted to an argument, a "tussle," and to biting and slapping the victim and argues that he committed battery as opposed to kidnapping.

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, 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 (La. 11/29/06), 946 So.2d 654, 660; *State v. Mussall*, 523 So.2d 1305, 1308-1309 (La. 1988). The *Jackson*

standard of review, incorporated in Article 821(B), 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 that the overall evidence excludes every reasonable hypothesis of innocence. See State v. Patorno, 2001–2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

Simple kidnapping is defined, in pertinent part, as the intentional and forcible seizing and carrying of any person from one place to another place without consent. La. R.S. 14:45(A)(1). Further, there is no requirement that the distance the victim is carried during the forcible seizure be of any particular length. See State v. Davillier, 99-1204 (La. 12/10/99), 752 So.2d 149 (per curiam); State v. Bertrand, 247 La. 232, 237, 170 So.2d 386, 388 (1964), cert. denied, 382 U.S. 960, 86 S.Ct. 442, 15 L.Ed.2d 364 (1965); State v. Steward, 95-1693 (La. App. 1st Cir. 9/27/96), 681 So.2d 1007, 1013.

The victim testified that the defendant had a bad temper, and that she and the defendant had been having problems since she told him that she no longer wanted to be in a romantic relationship with him. She further noted that when Jay arrived at her house, she was initially unaware of the fact that the defendant's vehicle was parked down the street. After Jay pulled up, the defendant put on his vehicle lights and chased them as they drove off. The victim's statement further indicated that the defendant was cursing and waving what she believed to be a gun. After Jay's vehicle spun out of control, got damaged, and was inoperable, she tried to get in the vehicle with the unknown female who happened to be in the area. The defendant then grabbed her and started punching her. After Jay had abandoned her at the scene, the victim felt she had no choice but to leave with the defendant in his car. When the female bystander called 9-1-1, she specifically stated that the

victim was being jumped on, drug on the ground, and taken to and put into a gray vehicle. The bystander also provided the license plate number for the defendant's vehicle and specifically stated, "she was trying to get away from him so she came to my car, he knocked her out of my car, knocked her from against my car and drug her all on the ground."

While she denied being dragged to the defendant's car during her trial testimony, the victim testified that she fell as a result of the defendant hitting her and she tried to get away to get into the bystander's vehicle. She further testified that all of her photographed injuries, including a skinned knee and elbow, resulted from the incident. Her written statement gave details as to the defendant beating her in the head and pulling her hair after he parked behind the Hi Nabor Supermarket on Winbourne Avenue. She testified that he kept her in that parking lot for hours and when he forced her to walk to the gas station with him he told her that he would shoot her if she alarmed anyone. He held the gun in the front pocket of the "hoodie" that he was wearing at the time.

The photographs also showed the bite mark and injuries to the victim's head and face. The victim further testified that she predicted that having sex with the defendant would change things because it would calm him down. She confirmed that he stopped hitting her after they had sex, took her home, and let her go. She testified that she was kept in the grocery store parking lot against her will, that she made several attempts to escape and several requests to be taken home, and that she did not want to be punched or to have sex with the defendant. Swabs collected from the back of the defendant's vehicle were tested and determined to consist of the victim's blood. During cross-examination, the victim clarified that she could not confirm her belief that the gun was not real until the police found

it in the defendant's car and informed her as such. During her testimony on redirect examination, the victim indicated that the defendant had a history of being physically violent toward her.

The defendant testified during the trial and stated as follows when describing his relationship with the victim: "I'm not disputing the fact that we had some arguments and tussles, nothing life threatening, over financial issues, simple phone calls or stuff typical relationships go through." He indicated that their relationship was "off and on" and that they would break up over infidelities and "stuff of that nature." The defendant also testified that he mistakenly believed that one of the victim's children was also his biological child until paternity testing revealed otherwise. On the night in question, he left the victim's house around 11:00 p.m. and went to a nearby corner store to get a snack. He went back down Bogan Walk, "chilled there" and saw Jay pull up. The defendant further testified that after the victim got in Jay's car, the defendant followed them out of curiosity, which eventually led to a chase. The defendant denied waving a gun and specifically stated that he did not own a gun, but then stated, "Honestly, for the record, it was a -- it's what you call a cap -- a cap gun. I'm going to state this, honestly. You know, I did have a cap gun, but waving it and trying to threaten, no. I did, yes, ma'am." The defendant stated that the gun was plastic and when asked if he waved it out of the car during the chase, he stated "I waved my hand, telling whoever the driver is could you pull over, let me talk to you and her for a little while." The defendant stated that the driver must have felt threatened because he kept going. The defendant confirmed that he was angry at the time.

The defendant testified that his own car got damaged when he hit a fire hydrant to avoid hitting Jay's car when a vehicle cut in front of Jay's

vehicle. He immediately got out of his car after he hit the fire hydrant, noted that his tire and rim were damaged, and observed the victim as she ran across Greenwell Springs Road. The defendant further testified that the victim was "ducking through cars, almost got hit by this one car, that's the lady who called on the -- the 9-1-1 call." The defendant further stated, "She tried to get in her car out of fear, you know, typical. You know, I didn't come to harm her, like that, you know. I just wanted to simply talk to her about the situation." Regarding Jay leaving the victim when the defendant confronted her in the street, the defendant stated, "[h]e didn't want no dealings with it." When asked if he was hitting the victim, the defendant stated, "I -- Yeah. We tussled. I'm not disputing that." Regarding the knot on the victim's head that she indicated was the result of her head hitting the concrete, the defendant stated, "Yeah. She did -- she messed herself, I guess, out of fear, fell and hit her head, you know ... I did ask her ... 'Bitch, why you did this to me?' ... All the pain and being hurt, yes, sir. I did hit her, not with a closed fist. I slapped her." The defendant testified that he told the victim that there was no need for her to be scared and suggested that they go somewhere to talk. According to the defendant, the victim asked for reassurance that the defendant would not hurt her and he told her that he would not do anything to her. The defendant stated that the fake, plastic gun was in his "hood" at the time. He denied pointing it at the victim and confirmed that it fell, but indicated that he left it in the street. He stated that he drove back to where he dropped the gun and retrieved it because the victim told him to do so.

The defendant stated that he stopped at the grocery store to check the damage to his vehicle again and while they were in the vehicle, he repeatedly questioned the victim and stated that he was hurt and frustrated,

adding, "Again, I did, I slapped her, then, you know." He stated that he needed to smoke a cigarette because he was "hot." The defendant further testified that he and the victim walked side-by-side when he went to get cigarettes from the Circle K and denied holding her at gunpoint. When he and the victim were in the vehicle talking again, he asked her if she would have slept with Jay. According to the defendant, the victim admitted that she and Jay would have had sex after the movie. While still in the parking lot of the Hi Nabor Supermarket, she told the defendant that she loved him before they got in the back seat of his vehicle and had sex. They left because it was "getting pretty late" and "getting cold." The defendant noted that his rims were damaged and he drove on the broken rims to his brother's house. His brother did not initially answer the door and they slept in the defendant's vehicle for the night. The defendant's brother ultimately gave him the tools he needed to repair his tire. The defendant testified that he and the victim had sex a total of three times, once in the Hi Nabor parking lot and twice at his brother's house. He indicated that the cap gun was near the victim on the backseat rest when they were having sex in the Hi Nabor parking lot. The defendant stated that the victim actually held the gun at one point, asked him if it was fake, and he confirmed that it was fake. The defendant admitted to having a "scuffle" with the victim while in the car at his brother's house and admitted to biting the victim. When asked why he bit the victim, the defendant stated, "Because it got you -- it got you in a position you can't get out of and you got to go for what you know." The defendant confirmed that he was at the hospital checking on the victim when he was arrested.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, 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 the weight of the evidence, not its sufficiency. *State v. Richardson*, 459 So.2d 31, 38 (La. App. 1st Cir. 1984). The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. *State v. Taylor*, 97-2261 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932. Further, a reviewing court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the fact finder. See *State v. Calloway*, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). When a case involves circumstantial evidence and the fact finder 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 that raises a reasonable doubt. *State v. Captville*, 448 So.2d 676, 680 (La. 1984).

In this case, the evidence clearly shows that the defendant used physical violence and that the victim feared for her life when she entered the defendant's vehicle. Based not only on the victim's testimony, but also upon the 9-1-1 recordings and the defendant's own testimony, the victim was physically injured and clearly terrified. She was forced to leave the Greenwell Springs Road area with the defendant and had to stay in the grocery store parking lot for an extended period of time. After several attempts to escape, and being brutally beaten and threatened, the victim was finally brought home after complying with the defendant's desire to have sexual intercourse. In reviewing the evidence, we cannot say that the trial

court's determination was irrational under the facts and circumstances presented. See *Ordodi*, 946 So.2d at 662. After a thorough review of the record, we are convinced that any rational trier of fact, viewing the evidence presented at trial in the light most favorable to the State, could have found the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of simple kidnapping. We find no merit in the sole assignment of error.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION,
AND SENTENCE AFFIRMED.**