

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 1635

STATE OF LOUISIANA

VERSUS

ERROL FARRAR

Judgment Rendered:

MAR 24 2014

**Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 474320**

The Honorable Allison H. Penzato, Judge Presiding

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Mandeville, Louisiana**

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Errol Farrar**

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

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

THERIOT, J.

The defendant, Errol Farrar, was charged by bill of information with three counts of armed robbery, violations of La. R.S. 14:64. He pled not guilty on all counts. The state severed counts one and three, and it proceeded to trial on count two only. Following a jury trial, the defendant was found guilty as charged on that count. The state filed a habitual offender bill of information, alleging the defendant to be a second-felony habitual offender.¹ The defendant subsequently admitted to the allegations in the habitual offender bill, and the trial court sentenced him as a second-felony habitual offender to fifty years at hard labor, without benefit of parole, probation, or suspension of sentence.² Following his sentencing as a habitual offender, the defendant filed a motion for new trial and a motion for post-verdict judgment of acquittal. The trial court denied both motions as untimely. In addition, the defendant filed a motion to reconsider sentence over thirty days after his sentencing as a habitual offender. The trial court also denied that motion as untimely.

The defendant filed an earlier appeal, but this court dismissed that appeal as untimely under La. Code Crim. P. art. 914. See *State v. Farrar*, 2011-2261 (La. App. 1st Cir. 4/23/12) (unpublished). He subsequently filed an application for post-conviction relief with the trial court, seeking an out-of-time appeal. The trial court granted the defendant's request for an out-of-time appeal, and this appeal follows. In this appeal, the defendant asserts a single assignment of error which challenges the sufficiency of the evidence

¹ The habitual offender bill of information alleged that defendant had previously been convicted of aggravated battery on October 12, 2000, in the 24th Judicial District Court under docket number 00-03678.

² On the same date (August 1, 2011) he admitted to the contents of the habitual offender bill, defendant also pled guilty to the previously-severed charge of armed robbery in count three of his felony bill of information, and to two counts of simple robbery from another bill of information. None of those convictions are at issue in defendant's instant appeal.

supporting his conviction. For the following reasons, we affirm the defendant's conviction, habitual offender adjudication, and sentence.

FACTS

On May 20, 2009, Tiffany Mitchell was working as a cashier at a Circle K convenience store in Slidell, Louisiana. Around 4:30 a.m., she heard someone enter the store. Shortly thereafter, Mitchell noticed a black male walk in the direction of her counter, peer into the rear office where her manager was located, and then enter the immediate area where she was standing. The male told Mitchell that if she valued her life, she would open the cash register drawer. As he made that statement, the male showed Mitchell a black and brown gun that was secured in his waistband. After taking money from the register, the male fled the store. Mitchell called the police to report the robbery. During the subsequent investigation, Mitchell unequivocally identified the defendant in a photographic lineup as the black male who entered her store and robbed her.

Slidell Police Officer Mark Michaud was in his patrol vehicle when he heard radio traffic about an armed robbery. A vehicle traveling on Florida Avenue near Front Street drew his attention because its headlights were initially turned off, but were subsequently turned on as the vehicle passed. Officer Michaud made a U-turn and illuminated his emergency lights in an attempt to stop the vehicle. A brief high-speed pursuit ensued until the vehicle skidded to a stop in a parking lot bordered by a privacy fence. The driver exited the vehicle and hopped the fence. Officer Michaud did not pursue the suspect further, but he ran the vehicle's VIN number, which identified it as belonging to Serena Jackson.

Detective Stacey Callender and Sergeant George Cox, both of the St. Tammany Parish Sheriff's Office, questioned Serena Jackson later the same

day. Jackson told them that she lived at her home on Palm Drive with her boyfriend, the defendant. When Detective Callender and Sergeant Cox accompanied Jackson to her home in an attempt to arrest the defendant, he again fled on foot. After a brief manhunt, Slidell Police Officer Michael Rice arrested the defendant with the assistance of his K-9.

The defendant gave a videotaped confession to Slidell Police Sergeant Shawn McLain in which he admitted to the instant robbery and several other robberies. However, defendant adamantly denied using a gun in any of the robberies, including that of Tiffany Mitchell. The police never recovered a gun.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the evidence presented at his trial was insufficient to support his conviction for the armed robbery of Tiffany Mitchell. Specifically, he contends that the state failed to prove beyond a reasonable doubt that he was armed with a dangerous weapon at the time he committed the robbery.

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 and

circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied that 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.

In order to secure a conviction for armed robbery, the state must prove beyond a reasonable doubt that an offender took something 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, while the offender is armed with a dangerous weapon. See La. R.S. 14:64(A). In the instant case, the defendant does not dispute that a robbery took place or that he was the person who perpetrated it. In fact, he testified at trial admitting to his culpability for the robbery. However, he asserts that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that he was armed with a dangerous weapon at the time of the robbery.

The only evidence presented at trial that defendant was armed with a dangerous weapon came from the victim, Tiffany Mitchell. The police were unable to recover a weapon during their searches, and defendant was adamant, in both his videotaped interview and his trial testimony, that he did not possess a weapon during the robbery.

Despite the state's inability to introduce into evidence the weapon used during the commission of the robbery, the victim's testimony alone was sufficient to establish that the robbery was committed with a dangerous weapon. See *State v. Rash*, 444 So.2d 1204, 1206 (La. 1984); see also *State v. Craddock*, 2010-1473, (La. App. 1st Cir. 3/25/11), 62 So.3d 791, 795, writ denied, 2011-0862 (La. 10/21/11), 73 So.3d 380; see also *State v. Sterling*, 453 So.2d 625, 630-31 (La. App. 1st Cir. 1984). The victim testified that the defendant showed her a gun in his waistband after he instructed her to open

the cash register and threatened her life. Although the victim was not familiar with specific types of guns, she was certain that the item she saw in defendant's waistband was a gun of some type. Viewed in the light most favorable to the prosecution, this testimony was sufficient to establish the fact that the defendant was armed with a dangerous weapon at the time of the robbery.

The defendant testified, in contrast to the victim's testimony, that he did not have a weapon at the time of the robbery. Where there is conflicting testimony about factual matters, the resolution of which depends on the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given to testimony is not subject to appellate review. Thus, an appellate court will not reweigh the evidence to overturn a factfinder's determination of guilty. See *State v. Williams*, 2001-0944 (La. App. 1st Cir. 12/28/01), 804 So.2d 932, 939, writ denied, 2002-0399 (La. 2/14/03), 836 So.2d 135. Here, the jury clearly believed the victim's testimony more than it believed the defendant's own self-serving testimony. In reviewing the evidence, we cannot say that the jury's determination of the defendant's guilt was irrational under the facts and circumstances presented to it. See *Ordodi*, 946 So.2d at 662.

This assignment of error is without merit.

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