NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 1629

STATE OF LOUISIANA

VERSUS

REAGAN TAYLOR

Judgment Rendered: JUL 30 2014

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
No. 03-12-0403, Sec. "8"

The Honorable Trudy M. White, Judge Presiding

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* * * *

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

DRAKE, J.

The defendant, Reagan Taylor, was charged by grand jury indictment with armed robbery, a violation of La. R.S. 14:64.[1] The defendant entered a plea of not guilty. After a trial by jury, the defendant was found guilty as charged. The trial court denied the defendant's oral and subsequent written motion for postverdict judgment of acquittal and motion for new trial. The defendant was sentenced to ten years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, assigning error to the sufficiency of the evidence in a counseled brief and raising additional arguments challenging the sufficiency of the evidence in a pro se supplemental brief. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

In or about July of 2010, Edward Daniels (the victim) was robbed while visiting a friend, Darius Byrd (who was deceased at the time of the trial). During the afternoon, Byrd and the victim were standing in the driveway outside of Byrd's Baton Rouge residence when a red Ford Expedition pulled up. The defendant, who the victim testified that he knew from school and the neighborhood,[2] exited the vehicle from the back passenger door while other occupants waited in the vehicle. As the defendant, the victim, and Byrd began to converse, other occupants of the vehicle exited from the front and back passenger side armed with guns. At that point, the defendant pulled a gun out, pointed it at the victim's face, and demanded that he give him everything he had. In compliance, the victim gave the defendant the contents of his pockets, which specifically included his medication (consisting of prescribed hydrocodone according to the victim) and the

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1 The defendant was charged and tried along with codefendant Dalvin Sewell.

2 The victim also admitted to getting "high" with the defendant on occasion before this incident, but responded negatively when asked if he ever had any altercations or "run-ins" with the defendant before the offense.

money he had at the time (between $300.00 and $400.00). The victim positively identified the defendant as the perpetrator. Derricka Leduff, Byrd's sister who observed the incident from inside of the residence, also positively identified the defendant and codefendant Dalvin Sewell as perpetrators.

ASSIGNMENTS OF ERROR

In the sole counseled assignment of error, the defendant argues that the evidence was insufficient to prove the elements of armed robbery.[3] The defendant specifically contends that the State failed to prove beyond a reasonable doubt that the offense was committed while he was armed with a dangerous weapon. The defendant notes that the eyewitness, Derricka Leduff, initially testified that she saw what looked like a gun, but changed her testimony the next day to indicate that she was certain she saw a gun. The defendant argues that Leduff's inconsistent testimony as to whether he possessed a gun or merely something that looked like a gun necessitated a finding of reasonable doubt.

In the pro se supplemental brief, the defendant raises the following additional arguments regarding the sufficiency of the evidence (labeled as pro se assignment of error number two). The defendant contends that the State presented conflicting testimony, specifically noting that while the victim testified that he gave the defendant the contents of his pockets, Leduff testified that she did not see the victim give the defendant anything. The defendant notes that no physical evidence of a taking was presented by the State and argues that this element of the offense was not proven beyond a reasonable doubt. As raised in the counseled brief, as well as in the defendant's pro se brief, he argues that the requirement that the evidence show he was armed with a dangerous weapon in committing the offense was not met. The defendant argues that his continued incarceration would

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[3] The defendant contends that, based on the evidence, he should have been acquitted, or, in the alternative, found guilty of first degree robbery.

be unconstitutional based on the inadequacy of the evidence presented in support of the conviction.[4]

DISCUSSION

In reviewing a claim 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. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). *See also* La. C.Cr.P. art. 821(B); *State v. Ordodi*, 06-0207 (La. 11/29/06), 946 So. 2d 654, 660. The *Jackson* standard of review, incorporated in Article 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, in order to convict, the fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. *See State v. Patorno*, 01-2585 (La. App. 1 Cir. 6/21/02), 822 So. 2d 141, 144. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. *State v. Smith*, 03-0917 (La. App. 1 Cir. 12/31/03), 868 So. 2d 794, 799. In the absence of internal contradiction or irreconcilable conflict with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient support for a requisite factual conclusion.

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[4] In raising the sufficiency of the evidence arguments in his pro se supplemental brief, the defendant argues that the trial court erred in denying his motion for postverdict judgment of acquittal and motion for new trial on that basis. We note that, to the extent that defendant's motion for new trial is based on his contention under La. C.Cr.P. art. 851(1) that the verdict is contrary to the law and evidence, the denial of the motion is not subject to review on appeal. *See State v. Guillory*, 10-1231 (La. 10/8/10), 45 So. 3d 612, 615 (per curiam); *State v. Brooks*, 01-1138 (La. App. 1 Cir. 3/28/02), 814 So. 2d 72, 81, *writ denied*, 02-1215 (La. 11/22/02), 829 So. 2d 1037. Nevertheless, since the defendant's arguments in his brief focus on his claim that the evidence was insufficient due to the lack of credibility of the State's witnesses and sufficient proof of a taking and the use of a weapon in the commission of the offense, we will address his arguments in considering the issue of the constitutional sufficiency of the evidence.

State v. Higgins, 03-1980 (La. 4/1/05), 898 So. 2d 1219, 1226, *cert. denied*, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005).

Louisiana Revised Statutes 14:64(A) provides that "[a]rmed 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, while armed with a dangerous weapon." A "dangerous weapon" is defined as any instrumentality which, in the manner used, is calculated or likely to produce death or great bodily harm. La. R.S. 14:2(A)(3). Armed robbery is a general intent crime. In general intent crimes, the criminal intent necessary to sustain a conviction is shown by the very doing of the acts that have been declared criminal. *State v. Payne*, 540 So. 2d 520, 523-24 (La. App. 1 Cir.), *writ denied*, 546 So. 2d 169 (La. 1989). Herein, the defendant does not challenge his identity as the perpetrator of the offense in the counseled or pro se supplemental brief. Instead, in the counseled and pro se briefs, the defendant argues that the evidence is insufficient regarding the use of a dangerous weapon in the commission of the offense. Additionally, the defendant challenges the evidence that there was a taking, noting the conflict between the testimony of the victim and eyewitness Leduff.

Detective Elvin Howard of the Baton Rouge Police Department investigated the September 2010 homicide of Byrd and, after speaking with Leduff and Daniels in connection with that case, he began the instant armed robbery investigation. Daniels testified that he knew the defendant was coming to Byrd's residence on the day in question because Byrd ("Deedee") told him the defendant was coming over to "chill." According to Daniels, when the defendant took his belongings, Byrd stated, "Y'all don't do this, man. Give the man his stuff back. Man y'all tripping." The victim further described the defendant's gun as a pistol and stated that he pulled it from his right side. He stated that he looked inside the barrel of

the gun. When asked if he was paying attention to everyone out there at the time, the victim stated, "It's like I was paying attention but, you know, when you got a gun to your face, you see everything but you're not like focused in on it." When asked if the perpetrators took anything from Byrd, the victim stated, "He ain't have nothing." Daniels further testified that Byrd told him that he would get his "stuff" back.

In regard to his failure to report the robbery to the police, Daniels testified, "I just went home. I wasn't tripping, know what I'm saying? Stuff happens." Regarding his inability to positively identify the codefendant, Daniels testified, "I'm not sure because I don't remember. Remember, I told you it was like I seen everybody but with the gun in my face, I couldn't, you know what I'm saying, focus to like actually pay attention to them, and it's been, like, three years, almost."

Leduff was sitting on the couch when she saw the defendant and Sewell pull up in a red SUV truck. Leduff knew the defendant and Sewell because they were her brother's friends. Leduff specified that the driver was a female and that the driver did not exit the vehicle. She testified that after the defendant and Sewell exited the vehicle, they pulled her brother and the victim to the side and an argument ensued. Leduff testified that she could not hear what was being said but could tell that it was confrontational, specifically explaining, "Because you can tell by how they lips was moving and they hands." When asked if the defendant or Sewell had anything in their hands, she testified, "It looks like it." When further questioned, she specified that the defendant in particular had the object and when asked what it looked like, she said, "A gun." She further described the object as a handgun and noted that the defendant was pointing it at the victim ("Eddie"). Leduff did not see the perpetrators take any items. She testified that she saw the defendant and Sewell quickly get back in the vehicle before it sped off. Leduff

noted that there were other occupants of the vehicle but she did not see them get out or see their faces. She further testified that the incident lasted only about one minute. The State again questioned Leduff regarding the object that she saw in the defendant's hand as follows, "Okay. And you saw Reagan with something in his hand?" Leduff responded, "Yes," and when asked what the object was, she stated, "A gun." Leduff's testimony was continued the next day[5] and she was again questioned in the same manner regarding the object in the defendant's hand and again stated, "A gun."

During cross-examination, Leduff noted that she was sitting on the couch by the window closest to where the vehicle was parked at the time of the incident and that the view was unobstructed. She got up and stood in front of the window as she observed the incident. When asked if the defendant pointed the gun at the victim's face, Leduff responded negatively and specified that the gun was low. When asked why she referred to the incident as a robbery, even though she did not actually see anything taken, Leduff stated that Byrd told her that the defendant took the victim's gun. Leduff was also questioned as to why she did not contact the police after the incident and she stated, "I thought they knew." She confirmed that when the police ultimately interviewed her, she did not tell them that the victim had a gun. Leduff reiterated that she did not actually see the victim with a gun though she recalled her brother telling her that the defendant took a gun from the victim. During further cross-examination of Leduff, the following colloquy took place:

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[5] The State elicited testimony from Leduff regarding a statement made by Byrd after he reentered the home immediately following the incident. The trial court granted the defense's motion in limine to exclude the statement as hearsay. The trial court granted the State a stay to file a writ to this Court for review of the ruling on the defense's motion in limine. This Court reversed the trial court's ruling, finding the statement was made "while under the stress of excitement caused by the event or condition" and therefore admissible as an exception to the hearsay rule under La. C.E. art. 803(2). *State v. Taylor*, 13-0512 (La. App. 1 Cir. 4/4/13)(unpublished writ action). As to Byrd's statement, Leduff subsequently testified, "He said that it was wrong for what they did and that he knew somebody was gonna die."

Q. You didn't see Reagan Taylor with a gun out there, did you?

A. Excuse me?

Q. I said, you didn't see Reagan with a gun, did you?

A. Yes.

Q. You did, okay.

A. Well, I didn't see the gun, but I seen him with something in his hand.

Q. Okay. You didn't see a gun but you saw him with something in his hand.

A. Yes.

The defense did not present any witnesses.

Even an artificial gun constitutes a dangerous weapon when the interaction between the offender and the victim created a highly-charged atmosphere whereby there was a danger of serious bodily harm resulting from the victim's fear for his life. *See State ex rel. Richey v. Butler*, 572 So. 2d 1043, 1044 (La. 1991) (per curiam); *Reed v. Butler*, 866 F.2d 128 (5th Cir.), *cert. denied*, 490 U.S. 1050, 109 S.Ct. 1963, 104 L.Ed.2d 431 (1989). *See also State v. Cittadino*, 628 So. 2d 251, 255 (La. App. 5 Cir. 1993) (where a victim's belief that a toy pistol pointed at her face was a real gun and that the defendant was going to kill her was sufficient to support a conviction for armed robbery). A lay witness may testify as to opinions rationally based on his perception. La. C.E. art. 701. No weapon need ever be seen by the victim, or witnesses, or recovered by the police for the trier of fact to be justified in finding that the defendant was armed with a dangerous weapon. *State v. Page*, 02-689 (La. App. 5 Cir. 1/28/03), 837 So. 2d 165, 176, *writ denied*, 03-0951 (La. 11/7/03), 857 So. 2d 517. Moreover, it is not necessary in every armed robbery case to introduce the money or other items taken. The testimony of the victim is sufficient to establish the elements of the offense. *State v. Glover*, 98-

2632 (La. App. 1 Cir. 9/24/99), 754 So. 2d 1044, 1048, *writ denied*, 99-3200 (La. 4/7/00), 759 So. 2d 94.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. 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 factfinder's determination of guilt. 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. Taylor*, 97-2261 (La. App. 1 Cir. 9/25/98), 721 So. 2d 929, 932. Accordingly, the fact that the record contains evidence that conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient.

An appellate 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 trier of fact. *See State v. Calloway*, 07-2306 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam). After a thorough review of the record, we find that the evidence supports the jury's verdict. We note that while Leduff did not see the victim relinquish any items, she observed the offense from inside of the residence and testified that everything occurred quickly. We further note that while the instant offense took place around July of 2010, the investigation did not begin until the police initiated an investigation of the September 2010 homicide of Byrd. Often the money or other items taken are never recovered in offenses such as this, and the fact that no physical evidence was recovered in this case is of no significance as to the sufficiency of the evidence. Moreover, while Leduff ultimately equivocated as to whether she could positively identify the object being held by the defendant during the offense as a gun, she stated several times that she

believed it was a gun. Finally, the victim unequivocally testified that the defendant held a gun on him during the robbery and demanded his items, which he relinquished. We are convinced that, 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 armed robbery. The counseled and pro se assignments of error are without merit.

CONVICTION AND SENTENCE AFFIRMED.