

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 KA 1231

STATE OF LOUISIANA

VERSUS

CAMERON MICHAEL FULCO

Judgment Rendered: MAR 06 2015

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On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 531561 "J"

Honorable William J. Knight, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

McCLENDON, J.

Defendant, Cameron Michael Fulco, was charged by bill of information with two counts of simple burglary of a vehicle, violations of LSA-R.S. 14:62 (counts one and two), and one count of simple burglary of an inhabited dwelling, a violation of LSA-R.S. 14:62.2 (count three). He pled not guilty. The state severed counts two and three and proceeded to trial on count one only.¹ Following a jury 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. Subsequently, the state filed a habitual offender bill of information alleging defendant to be a second-felony habitual offender.² Defendant admitted the allegations of the habitual offender bill of information, and the trial court adjudicated him a second-felony habitual offender. The trial court then vacated defendant's earlier sentence of twelve years at hard labor and imposed a new sentence of twenty years at hard labor, without probation or suspension of sentence. The court ordered this sentence to run concurrently with the sentences from defendant's pleas on the severed counts. Defendant now appeals, alleging one assignment of error relating to the sufficiency of the evidence at his trial. For the following reasons, we affirm defendant's conviction, habitual offender adjudication, and sentence.

FACTS

On December 13, 2012, Linda Young went to Wal-Mart in Covington to return an item. Before she exited her vehicle to enter the store, Young took her driver's license from her purse. She placed a jacket over her purse, exited her vehicle, and went into the store. Upon returning to her vehicle, Young was unable to find her purse.

When Young discovered that her purse was missing, she returned to the store and approached St. Tammany Parish Sheriff's Deputy Mark Liberto to

¹ Defendant later pled guilty to these two severed offenses, but they are not the subject of the instant appeal.

² The alleged predicate was a simple burglary conviction on April 7, 2007, under St. Tammany Parish docket number 418368.

inform him that she believed her purse had been stolen. Deputy Liberto contacted a Wal-Mart loss prevention associate to confirm that Young had not misplaced her purse inside the store. She had not. Deputy Liberto then viewed video from a parking lot surveillance camera. From that video, Deputy Liberto was able to determine that the driver of a truck parked next to Young's car had exited his own vehicle and entered Young's car while she was inside the store. He appeared to grab Young's purse and reenter his truck.

From the surveillance video, Deputy Liberto was able to get a detailed description of the suspect's truck, and based on the video he tracked the suspect's vehicle out of the Wal-Mart parking lot. The video further indicated that the suspect's vehicle exited the parking lot traveling southbound on La. Hwy. 190 toward Mandeville. Deputy Liberto then used the Automated License Plate Recognition ("ALPR") system to attempt to identify the license plate of the truck from its general description. Using timestamps from the Wal-Mart surveillance video and a ten-minute window on the ALPR system, Deputy Liberto retrieved a license plate number for a vehicle strongly resembling the suspect's vehicle – a four-door Dodge Dakota silver pickup truck with window rain visors. A search of the license plate number revealed that the vehicle was registered to defendant. Deputy Liberto determined that defendant's driver's license photo strongly resembled still photographs that he was able to obtain from in-store surveillance cameras. These cameras had captured the suspect's face when he entered and exited the store before the victim arrived. As a result, Deputy Liberto prepared an arrest warrant for defendant.

In January 2013, defendant was arrested pursuant to the arrest warrant. Following his arrest, he made a recorded statement in which he admitted to stealing Young's purse.

INSUFFICIENT EVIDENCE

In his sole assignment of error, defendant argues that the evidence presented at trial was insufficient to support his conviction for simple burglary of a vehicle. He contends that the state failed to prove his identity as the person who stole Young's purse from her vehicle.

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 LSA-C.Cr.P. art. 821(B); **State v. Ordodi**, 06-0207 (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, LSA-R.S. 15:438 provides that the factfinder 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.

Defendant does not dispute that a simple burglary of Young's vehicle occurred. Therefore, we need not address the elements of this offense. Instead, he argues only that there was insufficient evidence to prove that he was the person who committed the offense. Specifically, he contends that there were no eyewitnesses to the actual burglary and that his confession was the result of coercion because he was cold and suffering from a drug addiction at the time of the interrogation.

At trial, the state introduced a substantial amount of circumstantial evidence tying defendant to the simple burglary of Young's vehicle. First, an individual with a strong resemblance to defendant was captured on video

entering and exiting the Wal-Mart store prior to Young's arrival.³ Next, the truck ultimately discovered to be registered to defendant was parked directly next to Young's vehicle in the Wal-Mart parking lot. Finally, although the parking lot surveillance video lacks the resolution to positively identify the individual who entered Young's vehicle, that video clearly shows an individual exiting defendant's truck and entering Young's car. Defendant did not testify at trial.

In addition to the above circumstantial evidence, the jury also viewed a video of defendant's confession to the incident. Confessions are considered to be direct evidence. See State v. Marr, 626 So.2d 40, 45 (La.App. 1 Cir. 1993), writ denied, 93-2806 (La. 1/7/94), 631 So.2d 455. Further, once the crime itself has been established, a confession alone may be used to identify one accused as the perpetrator. See State v. Carter, 521 So.2d 553, 555 (La.App. 1 Cir. 1988). As a result, the state presented the jury with both circumstantial and direct evidence of defendant's guilt.

Viewing the evidence in the light most favorable to the prosecution, we are convinced that the evidence presented at trial was sufficient to support defendant's conviction for the simple burglary of Young's vehicle. 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 evidence to overturn a fact finder's determination of guilt. State v. Taylor, 97-2261 (La.App. 1 Cir. 9/25/98), 721 So.2d 929, 932. Here, the jury clearly gave weight either to the circumstantial evidence presented by the state or to defendant's confession, or to both. We note that the jury reached its conclusion of defendant's guilt despite being presented with evidence that defendant said he was cold during his interrogation.⁴ We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See State v.

³ Defendant also admits in his brief that he was at Wal-Mart when Young's purse was taken.

⁴ However, defense counsel did not cross examine the interrogating officer about whether he perceived defendant to be suffering from a drug addiction.

Mitchell, 99-3342 (La. 10/17/00), 772 So.2d 78, 83. After a thorough review of the record, we cannot say that the jury's determination of defendant's guilt was irrational under the facts and circumstances presented to them. See **Ordodi**, 946 So.2d at 662.

This assignment of error is without merit.

CONCLUSION

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

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.