

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 KA 0372

STATE OF LOUISIANA

VERSUS

WILLIAM WASHINGTON

DATE OF JUDGMENT: NOV 02 2018

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 15-CR6-128860, DIVISION J, PARISH OF WASHINGTON
STATE OF LOUISIANA

HONORABLE WILLIAM J. KNIGHT, JUDGE

* * * * *

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William Washington

* * * * *

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

JEW
gdl

CHUTZ, J.

The defendant, William Washington, was charged by an amended bill of information with failure to register and notify as a sex offender or child predator, second offense, a violation of La. R.S. 15:542 and 15:542.1.4(A)(2). 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 motion for post-verdict judgment of acquittal and motion for new trial. The trial court sentenced the defendant to seven years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, assigning error to the sufficiency of the evidence. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

The State presented evidence at the trial to show that on October 28, 2005, the defendant was convicted of indecent behavior with juveniles, a violation of La. R.S. 14:81. Further, the State presented evidence at trial to show that on August 14, 2012, the defendant was convicted of failure to register and notify as a sex offender or child predator, a violation of La. R.S. 15:542. On May 28, 2015, the defendant met with Corporal Angela Whaley of the Washington Parish Sheriff's Office (WPSO), the officer in charge of sex offender registry since 2012. The defendant informed Corporal Whaley that he had recently been released from custody and provided documentation specifically showing that he was released on May 22, 2015, from the LaSalle Correctional Center. The documentation further included the defendant's name, date of birth, and address. Corporal Whaley provided the defendant with a document listing the requisite information, including a state ID, a signed and notarized proof of residence affidavit (in lieu of two bills that lists the offender's name and address), registration with the local police

department, and a deadline, June 8, 2015, for the submission thereof. The document further listed the required money orders for specified fees, and a deadline, June 18, 2015, for the submission thereof. The document further advised that non-compliance will result in a warrant for an arrest. On June 18, 2015, Corporal Whaley obtained a warrant for the defendant's arrest for failing to submit the requisite documentation. The following day, June 19, 2015, Corporal Whaley arrested the defendant for the instant offense.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant asserts that the evidence is insufficient because the State failed to prove all of the elements beyond a reasonable doubt. In maintaining that he timely appeared for registration within three business days of his release, the defendant notes that Corporal Whaley testified that he was released on May 22, 2015, and appeared at the WPSO on May 28, 2015.¹ The defendant further urges that some of the WPSO registration requirements are in conflict with the statutory requirements. He specifically contends that a state ID is not statutorily required. He further suggests that while Corporal Whaley testified that he was required to pay the annual fee within twenty-one days, he is statutorily required to pay the fee within thirty days. Noting that he was arrested on June 19, 2015, he insists that he was arrested before he could fully comply with La. R.S. 15:542. The defendant also asserts that the State failed to present evidence to prove that the statutory requirements were accurately and adequately explained to him and that he understood everything that was required of him after he timely reported to register. Finally, the defendant claims that the requirements were difficult to comprehend due to conflicts between the registration

¹ The defendant notes that Monday, May 28, 2015, was a holiday, Memorial Day, and thus excludes that day in counting the business days from his release to his appearance.

requirements presented in the WPSO documentation provided to him and the statute.

In response to the defendant's appeal, the State contends that the defendant was not arrested for failing to pay registration fees, but was instead prosecuted and convicted based on the failure to provide proof of residence, a three-day statutory requirement.² The State also notes that Titles 32 and 40 of the Revised Statutes contain a statutory requirement that sex offenders obtain a state identification card, and points out that the defendant's lack of an understanding of the requirements is not a factor in determining the sufficiency of the evidence.

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 (La. 1979); see La. C.Cr. P. art. 821(B); *State v. Ordodi*, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660. 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. See *State v. Patorno*, 2001-2585 (La. App. 1st 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 which raises a reasonable

² The State concedes that Corporal Whaley exercised her discretion in extending the three-day period to June 8, 2015.

doubt. *State v. Moten*, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

In order to prove the defendant guilty of failure to register and notify as a sex offender or child predator, second offense, the State must prove (1) that the defendant was convicted of a “sex offense” as defined in La. R.S. 15:541, (2) that he resided in Louisiana for the period during which he was required to register, (3) that he was previously convicted of the crime of failure to register as a sex offender (first offense), and (4) that he failed to register within the requisite time allotted for registration. See La. R.S. 15:542; *State v. Mouton*, 2016-673 (La. App. 5th Cir. 4/26/17), 219 So.3d 1244, 1255, writ denied, 2017-1149 (La. 5/18/18), 242 So.3d 572. We note that the defendant does not contest that he was required to register as a sex offender based on a conviction for a sex offense, and he does not contest his prior conviction of failure to register and notify as a sex offender or child predator.

Pertinent to the instant appeal, a person convicted of indecent behavior with juveniles is statutorily required to register as a sex offender for a period of fifteen years from the date of the initial registration in Louisiana. La. R.S. 15:542(A)(1)(a); La. R.S. 15:541(24)(a); La. R.S. 15:544(A). Pursuant to La. R.S. 15:542(C)(1)(e), the offender shall register and provide to the appropriate law enforcement agencies two forms of proof of residence for each residential address provided, including but not limited to a driver’s license, bill for utility service, and bill for telephone service. If those forms of proof of residence are not available, the offender may provide an affidavit of an adult resident living at the same address. Pursuant to Subsection (C)(2), unless an earlier time period is specified, offenders, once released, are required to appear in person and provide the required information within three business days of establishing residence in Louisiana to register with the appropriate law enforcement agencies. Pursuant to La. R.S. 15:541(22), residence is defined as a dwelling where an offender regularly resides,

regardless of the number of days or nights spent there. For those offenders who lack a fixed abode or dwelling, “residence” shall include the area or place where the offender habitually lives, including but not limited to a rural area with no address or a shelter.

The crime of failure to register is not a specific intent crime and consists of an act of omission. *State v. Williams*, 47,242 (La. App. 2d Cir. 7/18/12), 103 So.3d 412, 413-14. In general intent crimes, the criminal intent necessary to sustain a conviction is established by the very doing of the proscribed acts. *State v. Williams*, 2003-3514 (La. 12/13/04), 893 So.2d 7, 16; *State v. Holmes*, 388 So.2d 722, 727 (La. 1980). General criminal intent exists “when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.” La. R.S. 14:10(2); see La. R.S. 15:542.1.2.

Corporal Whaley testified that her normal procedure was to retrieve records from the Offender Watch system (a state management system of sex offenders), and to provide instructions on state requirements upon release. She specifically listed the requirement to obtain a state ID, to provide a residence affidavit, and to pay fees within twenty-one days. At the meeting on May 28, 2015, Corporal Whaley retrieved the defendant’s records showing his prior conviction of indecent behavior with juveniles, and provided him with the document listing the required information, fees and corresponding deadlines. Corporal Whaley testified that the release document provided by the defendant when he appeared listed an invalid address, 116 20th Street, Franklinton, Louisiana, 70438. She did not recall the defendant providing any other address. Corporal Whaley noted that due to the fact that she would be on vacation the following week, she gave the defendant several extra days, up to June 8, 2015, to obtain a state ID, to register with the police department, and to provide adequate proof of residence. He was further given

extra days to return with money orders for the fees listed in the document, up until June 18, 2015.

After May 28, 2015, the day of the meeting, Corporal Whaley did not see or hear from the defendant. As for the address listed on the arrest warrant, Corporal Whaley testified that it may have been the last address on file for the defendant. She confirmed that the defendant never provided proof of residence for the address in the warrant or any other address. The defendant did not testify at trial.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. *State v. Cloutre*, 2012-0407 (La. App. 1st Cir. 11/14/12), 110 So.3d 1094, 1100; *State v. Taylor*, 97-2261 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. The appellate court does not assess the credibility of witnesses or reweigh evidence. *State v. Smith*, 94-3116 (La. 10/16/95), 661 So.2d 442, 443; *Taylor*, 721 So.2d at 932. In the absence of internal contradiction or irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. *Cloutre*, 110 So.3d at 1100.

As noted, the defendant does not contest the prior convictions of indecent behavior with juveniles and failure to register as a sex offender or child predator. On appeal, the defendant asserts that the State failed to prove that he understood the statutory requirements of the statute. However, the defendant did not present this hypothesis of innocence below. Moreover, we note that the defendant's criminal experience includes a prior conviction for the same conduct as involved herein. Further, the defendant has not specified any portion of the statute of which he lacked an understanding. Additionally, the State is not required to present evidence to prove that the defendant understood the statute. Corporal Whaley provided the defendant with a clear and concise list of requirements and specified

deadlines. There is no indication that the defendant even attempted to provide proof of residence or any excuse for his failure to do so. Considering Corporal Whaley's testimony and the documentation presented by the State, the record shows that the defendant was given extra time, outside of the three-day statutory deadline, and nevertheless failed to timely provide proof of residence.

The State established that the defendant did not register as a sex offender either within the three business days allotted by La. R.S. 15:542(C)(2) or at any time prior to his arrest, twenty-nine days after his release. In reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See *Ordodi*, 946 So.2d at 662. Based on our careful review, we are convinced that any rational trier of fact, viewing the evidence presented at trial in the light most favorable to the State, could find the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of failure to register and notify as a sex offender or child predator, second offense. The sole assignment of error is without merit.

SENTENCING ERROR

Under La. C.Cr.P. art. 920(2), this court routinely conducts a review for error discoverable by mere inspection of the pleadings and proceedings and without inspection of the evidence. After a careful review of the record, we found the following sentencing error.

Upon second or subsequent conviction for failure to register and notify as a sex offender or child predator, La. R.S. 15:542.1.4(A)(2) mandates imposition of a fine of \$3,000.00. In this case, the trial court did not impose a fine. Accordingly, the defendant's sentence is illegally lenient. However, since the sentencing error is not inherently prejudicial to the defendant, and neither the State nor the defendant has raised this sentencing issue on appeal, we decline to correct this error. See

State v. Price, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277; see also *State v. Harrison*, 2017-1566 (La. App. 1st Cir. 5/1/18), 2018 WL 2041414, *7-8 (unpublished); *State v. Zeno*, 2015-0763 (La. App. 1st Cir. 11/9/15), 2015 WL 6951581, *6 (unpublished), writ denied, 2015-2233 (La. 12/16/16), 212 So.3d 1175.

DECREE

For these reasons, we affirm the conviction and sentence of defendant-appellant, William Washington.

CONVICTION AND SENTENCE AFFIRMED.