NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 KA 1013

STATE OF LOUISIANA

VERSUS

WILLIE THORNTON

Judgment Rendered: DEC 21 2018

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge,
State of Louisiana
Docket Number 11-15-0180

Honorable Richard Anderson, Judge Presiding

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Hillar C. Moore, III
Dale R. Lee
Baton Rouge, LA

Counsel for Appellee,
State of Louisiana

Prentice L. White
Baton Rouge, LA

Counsel for Defendant/Appellant,
Willie Thornton

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

Higginbotham, J. concurs.

WHIPPLE, C.J.

On November 4, 2015, defendant, Willie Thornton, was charged by bill of information with simple robbery, a violation of LSA-R.S. 14:65. He pled not guilty. Approximately seven months later, on June 13, 2016, the State amended the bill of information to charge defendant instead with purse snatching, a violation of LSA-R.S. 14:65.1. Defendant again pled not guilty. After a trial by a six-member jury, defendant was found guilty as charged. The trial court imposed a term of twenty years imprisonment at hard labor. Defendant now appeals, contending in his sole assignment of error, that the State's evidence was insufficient to support his conviction. For the following reasons, we affirm defendant's conviction and sentence.

STATEMENT OF FACTS

During the mid-morning of September 8, 2015, Johnell Theriot ("Theriot") was exiting her vehicle in front of the "Ms. Pat's Candles and More" store on Maximillian St. in Baton Rouge. As she stepped away from her car, she had a wallet containing over $600 in cash in her hand. A man passing on the street "jerked" the wallet out of her hand and walked away. She later described the man as wearing gray shorts and a white T-shirt. Theriot went to the front door of the candle store and pounded on the door to be let inside. The owner of "Ms. Pat's Candles and More," Barbara Brown ("Ms. Pat/Barbara"), was seated inside and saw the incident take place. After Barbara opened the door, she and Theriot left together in Barbara's vehicle in an attempt to find the perpetrator. They found the suspect, defendant herein, at a nearby gas station, after Barbara received a call from her son, Edwin Brown ("Edwin"), indicating the perpetrator had gotten into a car at the gas station.

Upon arriving at the gas station, Theriot pleaded with defendant to return her money and offered defendant $100.00 to keep for himself if he returned the rest of

Theriot's money. Thereafter, defendant refused, exited the vehicle, and began walking away on foot. Theriot then called 911 from her phone. During the call, Barbara got on the phone and described the perpetrator as a tall, stocky, African-American male, with gold teeth, wearing a white T-shirt, bluish-gray shorts, and gray shoes. Theriot and Barbara returned to the candle shop and met with responding Baton Rouge Police Department ("BRPD") officers, who had been dispatched as a result of the 911 call. While with the police at the store, Theriot saw defendant a few blocks away and pointed him out to the police. After defendant was arrested, Theriot and Barbara confirmed their prior identifications of defendant as the perpetrator.

Theriot testified that Barbara's son, Edwin, returned her wallet, though it was unclear from Theriot's testimony where Edwin found it. BRPD Officer Donnie Hallmark testified at trial that Theriot "just picked [the wallet] back up," because it was still near the candle store. Theriot provided an in-court identification of defendant as the man who took her wallet. Theriot's 911 call was played for the jury, as was a responding officer's dash cam video. In the dash camera video, defendant, who was a stocky tall African-American male, is seen wearing dark colored shorts and a white T-shirt. Officer Hallmark testified that during the investigation, Theriot told officers she had $620.00 in her wallet when defendant took it from her, and she provided the exact breakdown of bills comprising it. Theriot testified that once the police recovered the money, it was returned to her.

Theriot conceded that she had gone by the East Baton Rouge Parish District Attorney's Office a few months before trial to file a "drop charges request form," and that she had then been accompanied by defendant's nephew. Theriot also testified that she had been pressured by "Ms. Pat" to change her story after the fact, but that she only wanted to drop the charges because she wished for the case to be

over and because she had recovered her money, not because defendant had not stolen her wallet. Theriot testified that defendant's nephew had given her and "Ms. Pat" money in advance of trial. The day before trial, Theriot told the prosecutor her wallet had not been taken directly from her, but instead must have been on the seat of her car. However, at trial, she explained that she said that because she was scared of "Ms. Pat," (Barbara) and that the original version of her story she told police was the accurate one.

Edwin testified that he picked the empty wallet up off the ground outside the candle store after someone told him it had been dropped there, and he returned it to Theriot, who was already inside the store. Barbara testified she saw Theriot sitting in her car when Barbara opened the store. After Theriot went in, and spoke with her for a time, Barbara saw Edwin enter the store and return the wallet to Theriot. According to Barbara, Theriot was surprised to find it contained no money. Barbara described how they then drove to the gas station, and Theriot confronted defendant. Barbara conceded while testifying that she identified defendant as the person who had Theriot's money and that she had accepted money from a family member of defendant. Notwithstanding her clear and thrice-repeated statements in the 911 call played for the jury, Barbara claimed to not remember telling the operator that defendant was the one who "snatched the wallet out of [Theriot's] hand."

ASSIGNMENT OF ERROR: INSUFFICIENT EVIDENCE

In his sole assignment of error, defendant contends the State presented evidence insufficient to support his conviction. Specifically, defendant claims Theriot and Barbara changed their stories between the incident and trial and were unreliable. Defendant further argues that because there was no other physical evidence, the State failed to carry its burden of proof at trial. In response, the State argues defendant is merely challenging the credibility of Theriot, instead of

actually arguing there was insufficient evidence presented. As such, the State posits, defendant raises no claim this court can review on appeal.

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, 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, 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, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So. 2d 141, 144.

Purse snatching is the theft of anything of value contained within a purse or wallet at the time of the theft, from the person of another or which is in the immediate control of another, by use of force, intimidation, or by snatching, but not armed with a dangerous weapon. LSA-R.S. 14:65.1(A).

Here, the State presented testimony from Theriot where she described her wallet being taken by a man she and Barbara described in detail in a 911 call played for the jury. Moreover, law enforcement responded quickly and detained the man that the victim and Barbara pointed out as the man who took Theriot's wallet. Both Theriot and Barbara identified defendant as the perpetrator after his detention. A BRPD dash camera captured this identification of defendant, and also captured the initial police encounter with a man matching the description, given by

both Theriot and Barbara, near the location they expected to find him. Also, defendant was found with a large amount of cash in his pocket, exceeding the amount alleged to have been taken from Theriot.

However, defendant presented testimony from Barbara and Edwin suggesting Theriot dropped or left her wallet outside and that defendant only opportunistically picked it up and took out the money. When confronted with the fact that she had clearly told the 911 operator three times that she had witnessed defendant "snatch the money" from Theriot, Barbara was unable to provide an explanation for this discrepancy in her testimony.

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 purse snatching. 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. State v. Taylor, 97-2261 (La. App. 1st Cir. 9/25/98), 721 So. 2d 929, 932. We note that the jury found defendant guilty of purse snatching despite the availability of responsive verdicts of several different grades of theft. Evidently, the jury found defendant's suggestion that he did not seize the wallet from Theriot to be lacking in credibility. The jury also heard Barbara's conflicting stories, and learned of Theriot's prior intention to drop the charges against defendant, but found them unpersuasive in its determination of defendant's guilt. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See State v. 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; Mussall, 523 So. 2d at 1310

(the trier of fact makes credibility determinations and may, within the bounds of rationality, accept or reject the testimony of any witness; thus, a reviewing court may impinge on the "fact finder's discretion . . . only to the extent necessary to guarantee the fundamental protection of due process of law."). This assignment of error is without merit.

PATENT ERROR

This court has conducted an independent review of the entire record in this matter, including a review for error under LSA-C.Cr.P. art. 920(2). Our review has revealed the existence of two patent sentencing errors in this case.

As an initial mater, defendant filed a pro-se motion for new trial on December 3, 2017, and was sentenced on March 7, 2018. The trial court denied the motion for new trial immediately after sentencing. Louisiana Code of Criminal Procedure article 853(A) mandates, in relevant part, that a "motion for a new trial must be filed and disposed of before sentence." See also LSA-C.Cr.P. art. 873. Herein, the trial court erred by sentencing defendant before ruling on the motion for new trial. However, defendant did not request a ruling and indicated his readiness for sentencing. State v. Kisack, 2016-0797 (La. 10/18/17), 236 So. 3d 1201, 1205 (per curiam), cert. denied, Kisack v. Louisiana, ___ U.S. ___, 138 S. Ct. 1175, 200 L. Ed. 2d 322 (2018) ("implicit waiver . . . runs afoul of the plain language of Art. 873 that requires that the waiver be expressly made.").

Nevertheless, in State v. Augustine, 555 So. 2d 1331, 1333-34 (La. 1990), the Louisiana Supreme Court indicated that a failure to observe the twenty-four hour delay provided in Article 873 will be considered harmless error where a defendant could not show that he suffered prejudice from the violation. See State v. White, 404 So. 2d 1202, 1204-05 (La. 1981). In Augustine, the Supreme Court concluded that prejudice would not be found if a defendant had not challenged the sentence imposed and the violation of the twenty-four hour delay was merely noted

on patent error review. Augustine, 555 So. 2d at 1334. In the instant case, defendant has not assigned error to the trial court's failure to rule on the motion prior to sentencing, nor has he contested the sentence imposed. Under these circumstances, this patent sentencing error is harmless. Accordingly, any error in the trial court's failure to rule on the motion for new trial prior to sentencing and observe the twenty-four hour delay is harmless beyond a reasonable doubt and does not require a remand for resentencing. See State v. Magee, 2017-1217 (La. App. 1st Cir. 2/27/18), 243 So. 3d 151, 165.

CONCLUSION

For the above and foregoing reasons, we affirm defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED.