

**STATE OF LOUISIANA**

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**NO. 2018-KA-0169**

**VERSUS**

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**COURT OF APPEAL**

**CLARENCE GABRIEL**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**BELSOME, J., DISSENTS WITH REASON.**

I respectfully dissent from the majority opinion. In particular, I do not find that the evidence was sufficient to establish that the Defendant was guilty beyond a reasonable doubt of possessing a firearm while being a convicted felon.

The well settled standard of review for a sufficiency of the evidence claim is whether any rational trier of fact, after viewing the evidence in the light most favorable to the prosecution, could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Williams*, 11-0414, p. 15 (La. App. 4 Cir. 2/29/12), 85 So.3d 759, 769. On appeal, a reviewing court must consider the record as a whole as that is what a rational trier of fact would do. *State v. Santinac*, 99-0782, p. 6 (La. App. 4 Cir. 6/14/00), 765 So.2d 1133, 1137. While rational decisions to convict must be upheld, irrational decisions to convict should be reversed. *State v. Mussall*, 523 So.2d 1305, 1310 (La. 1988). “If the court finds that no rational trier of fact viewing all of the evidence from a rational pro-prosecution standpoint could have found guilt beyond a reasonable doubt, the conviction cannot stand constitutionally.” *Id.* at 1311.

Where a conviction was based on circumstantial evidence, the evidence “must exclude every reasonable hypothesis of innocence.” La. R.S. 15:438. This

test is not separate from the *Jackson* standard; rather, it simply requires that “all evidence, both direct and circumstantial, must be sufficient to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt.” *State v. Ortiz*, 96-1609, p. 12 (La. 10/21/97), 701 So.2d 922, 930. A reviewing court is not to determine whether a potential hypothesis suggested by the defendant could present an exculpatory explanation of the events. *State v. Davis*, 637 So.2d 1012, 1020 (La. 1994). Instead, the reviewing court determines whether the defendant's hypothesis is “sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt under *Jackson*.” *Id.*; *State v. Calloway*, 07-2306, p. 10 (La. 1/21/09), 1 So.3d 417, 422.

This is a constructive possession case, thus the evidence presented was circumstantial and of a speculative nature. Unless that evidence excluded every reasonably hypothesis of innocence, Defendant’s conviction cannot stand. *See State v. Gould*, 395 So.2d 647, 656 (La. 1980). While the State was able to demonstrate that the firearm was located on his bed, near some of his personal items, it was not able to rebut the fact that the firearm was registered to his wife, Gaynell Gabriel, who testified that she removed the firearm from her person while taking a nap with her sick granddaughter on the Defendant’s bed.

Given the foregoing, a rational juror, viewing the evidence in the light most favorable to the prosecution, could only have speculated as to who possessed the firearm. Accordingly, since the evidence cannot exclude every reasonable hypothesis of innocence, the Defendant’s conviction cannot stand. Accordingly, I dissent from the majority and would reverse the Defendant’s conviction.