

Judgment rendered September 26, 2012
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 47,419-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

SHERMAN TERRELL TIPPIT

Appellant

* * * * *

Appealed from the
Fourth Judicial District Court for the
Parish of Ouachita, Louisiana
Trial Court No. 10-F-0913

Honorable Daniel J. Ellender, Judge

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Before CARAWAY, MOORE and SEXTON (*Pro Tempore*), JJ.

NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3, Uniform Rules, Courts of Appeal.

CARAWAY, J.

This criminal appeal arises from the Fourth Judicial District Court, Parish of Ouachita, the Honorable Daniel J. Ellender presiding. The defendant, Sherman Terrell Tippit, was convicted by a jury of possession of contraband in a penal institution. He was sentenced to 3½ years in prison at hard labor, the sentence to be served consecutively to any sentence he was serving. The defendant now appeals. The defendant's conviction and sentence are affirmed.

Facts

Defendant, Sherman Tippit, was incarcerated at the Ouachita Correctional Center ("OCC") in Monroe, Louisiana, in April of 2010. On April 11, 2010, he was found alone in a locked room where inmates meet with counsel. After a search of his person, he was found to be in possession of five unopened packs of tobacco and a small bag of marijuana. In May of 2010, he was charged by bill of information with introduction of contraband into a penal institution, a violation of La. R.S. 14:402(E). An amended bill of information was filed on September 13, 2011, and the charge was changed to possession of contraband at a municipal or parish prison or jail, which was also a violation of La. R.S. 14:402(E).

Following trial, a unanimous jury of six persons found the defendant guilty as charged of possession of contraband in a penal institution. On November 16, 2011, the trial judge sentenced the defendant to serve 3½ years at hard labor, to be served consecutively to any other sentence he was serving. He filed a motion to reconsider sentence that was denied. This

appeal followed. The defendant has challenged the sufficiency of the evidence at trial.

Discussion

Tippit's sole assignment of error challenges the sufficiency of the evidence. The standard for review in cases that raise sufficiency of the evidence is found in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The *Jackson* standard, now legislatively embodied in La. C.Cr.P. art. 821, does not provide the appellate court with a vehicle to substitute its own appreciation of the evidence for that of the fact finder. *State v. Pigford*, 05-0477 (La. 2/22/06), 922 So.2d 517; *State v. Dotie*, 43,819 (La. App. 2d Cir. 1/14/09), 1 So.3d 833, *writ denied*, 09-0310 (La. 11/06/09), 21 So.3d 297. The appellate court does not assess the credibility of witnesses or re-weigh evidence. *State v. Smith*, 94-3116 (La. 10/16/95), 661 So.2d 442. A reviewing court accords great deference to a jury's decision to accept or reject the testimony of a witness in whole or in part. *State v. Eason*, 43,788 (La. App. 2d Cir. 2/25/09), 3 So.3d 685, *writ denied*, 09-0725 (La. 12/11/09), 23 So.3d 913; *State v. Hill*, 42,025 (La. App. 2d Cir. 5/9/07), 956 So.2d 758, *writ denied*, 07-1209 (La. 12/14/07), 970 So.2d 529.

The trier of fact is charged to make a credibility determination and may, within the bounds of rationality, accept or reject the testimony of any witness; the reviewing court may impinge on that discretion only to the extent necessary to guarantee the fundamental due process of law. *State v. Casey*, 99-0023 (La. 1/26/00), 775 So.2d 1022, *cert. denied*, 531 U.S. 840,

121 S.Ct. 104, 148 L.Ed.2d 62 (2000). In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. *State v. Gullette*, 43,032 (La. App. 2d Cir. 2/13/08), 975 So.2d 753; *State v. Burd*, 40,480 (La. App. 2d Cir. 1/27/06), 921 So.2d 219, writ denied, 06-1083 (La. 11/9/06), 941 So.2d 35.

An appellate court reviewing the sufficiency of the evidence must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that defendant was guilty of every essential element of the crime. *State v. Jacobs*, 504 So.2d 817 (La. 1987); *State v. Adkins*, 39,724 (La. App. 2d Cir. 6/29/05), 907 So.2d 232, writ denied, 06-2514 (La. 5/4/07), 956 So.2d 607; *State v. Lott*, 535 So.2d 963 (La. App. 2d Cir. 9/21/88).

The *Jackson* standard is applicable in cases involving both direct and circumstantial evidence. When the conviction is based on circumstantial evidence, such evidence must exclude any reasonable hypothesis of innocence. La. R.S. 15:438. *State v. Cummings*, 95-1377 (La. 2/28/96), 668 So.2d 1132. The appellate court reviews the evidence in the light most favorable to the prosecution and determines whether an alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. *State v. Calloway*, 07-2306

(La. 1/21/09), 1 So.3d 417. Ultimately, all evidence, both direct and circumstantial, must be sufficient under *Jackson* to prove guilt beyond a reasonable doubt to a rational jury. *State v. Rosiere*, 488 So.2d 965, 968 (La. 1986).

When circumstantial evidence is used to prove execution of the offense, assuming every fact to be proved that the evidence tends to prove, every reasonable hypothesis of innocence must be excluded to convict. This evidentiary rule restrains the factfinder in the first instance, and the reviewer on appeal, to accept as proven all that the evidence tends to prove and then to convict only if every reasonable hypothesis of innocence is excluded. *State v. Young*, 618 So.2d 1149 (La. App. 2d Cir. 1993). Whether circumstantial evidence excludes every reasonable hypothesis of innocence presents a question of law. All evidence, both direct and circumstantial, must be sufficient under *Jackson v. Virginia* to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt.

La. R.S. 14:402(E) states in pertinent part as follows:

It shall be unlawful to possess or to introduce or attempt to introduce into or upon the premises of any municipal or parish prison or jail or to take or send or attempt to take or send therefrom, or to give or to attempt to give to an inmate of any municipal or parish prison or jail, any of the following articles which are hereby declared to be contraband for the purpose of this Section, to wit:

* * *

(5) Any narcotic or hypnotic or excitive drug or any drugs of whatever kind or nature, including ... any other controlled dangerous substance as defined in R.S. 40:961, et seq.

In order to understand the facts in this case, it is necessary to depict the environment in which the events occurred. In the OCC, the visiting room has a glass partition that separates the inmates from the visitors. At the end of this common visitation room, there is a fully enclosed and separated booth. The guards refer to this booth as the IDB room because the booth creates a private setting for inmates to converse with their attorneys from the indigent defender board. The IDB room also contains a small "mail slot" so that attorneys can pass documents to their clients.

On April 11, 2010, while supervising the inmates in the common visitation room, Deputy Walker testified that he became suspicious of a black male visitor who was pacing the room. The deputy testified that he saw the man pull something from his shirt and push it through the mail slot into the IDB room. The deputy called for assistance, went to the inmate side of the visitation room, and saw inmate Roderick Butler standing on a partition and moving a ceiling tile over the IDB room. As a result, Deputy Walker removed Butler from the room. Butler told Deputy Walker that another inmate was in the ceiling of the IDB room and that the inmate had received some contraband.

Deputies Hudson and Roberson found Tippit in the IDB room, crouching in the corner. Defendant was removed from the room and strip searched. Deputy Walker radioed the front gate to see who had signed to visit Tippit. Deputy Walker determined that a man named Albert Johnson had registered to see Tippit. Johnson fit the description of the man the officer saw in the visiting room putting something in the mail slot. By the

time Deputy Walker returned, Deputy Hudson was holding the contraband discovered during the search and Tippit was outside of “master control.” At this time, Deputy Walker read him his *Miranda* rights and Tippit admitted he had gotten into the IDB room by coming through the ceiling and dropping down. Tippit stated that the contraband came from three black females and only contained cigarettes. Deputies Hudson and Walker then opened the small white bag which contained loose pieces of tobacco and what appeared to be a small cellophane bag of marijuana.

Butler shared a cell block with the defendant and testified that he was sitting next to Tippit on the inmate side of the IDB room. Butler testified that Tippit jumped up and went through the ceiling and dropped down into the visitor’s side of the IDB room. Tippit was having trouble getting back into the inmate side and asked Butler to help him move a ceiling tile so he could get down. As Butler was standing on the partition trying to help, Deputy Walker came into the room. Upon removal, Butler told the deputy he was not trying to escape, but that there was someone in the ceiling.

Butler also testified that other inmates had asked him to pick up a package containing cigarettes and marijuana. After Butler declined, Tippit agreed to pick up the package. Butler testified that he was sure that defendant knew the package contained cigarettes and marijuana because Butler testified that he was present when Tippit was informed of the package’s contents.

Deputy Roberson conducted the search of Tippit and found five unopened packs of cigarettes and a white bag in his pant leg by his calf.

Deputy Roberson handed the items to Deputy Hudson who escorted the defendant and the items to an area known as “master control.” Thereafter, he and Deputy Walker opened the white bag and discovered what they believed was marijuana. The North Louisiana Crime Lab confirmed that the substance was marijuana.

In this case, the evidence presented at trial was sufficient for a jury to conclude that the defendant was guilty beyond a reasonable doubt of the crime of possession of contraband in a penal institution. Butler’s testimony established that he had been told by other inmates, in Tippit’s presence, that visitors were bringing tobacco and marijuana to the jail. After Butler refused to deal with the contraband, Tippit agreed to help. Butler testified that Tippit was sitting next to him in the visiting room, and that Tippit went through the ceiling into the IDB room. Additionally, the visitor who Deputy Walker saw stuffing something into the mail slot had signed in to see Tippit. Tippit was found alone in the locked room by Deputies Hudson and Roberson with the marijuana.

All of these facts prove the state’s case beyond a reasonable doubt that Tippit possessed contraband, marijuana, on the premises of a municipal or parish prison or jail. Therefore, this assignment of error is without merit.

Decree

For the foregoing reasons, the defendant’s conviction and sentence are affirmed.

AFFIRMED.