NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1237

STATE OF LOUISIANA

VERSUS

EDWARD JEANFREAU

Judgment Rendered: February 10, 2012

Appealed from the
Twenty-Second Judicial District Court
in and for the Parish of St. Tammany, State of Louisiana
Trial Court Number 500290

Honorable Allison H. Penzato, Judge Presiding

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BEFORE: WHIPPLE, KUHN AND GUIDRY, JJ.

WHIPPLE, J.

Defendant, Edward Jeanfreau, was charged by bill of information with simple escape (Count 1), a violation of LSA-R.S. 14:110, and resisting a police officer with force or violence (Count 2), a violation of LSA-R.S. 14:108.2. Defendant pled not guilty to both counts. After a trial by jury, defendant was found guilty as charged on Count 1 and guilty of the responsive offense of attempted resisting a police officer with force or violence on Count 2. For Count 1, the trial court imposed a sentence of five years imprisonment at hard labor, with four years suspended, and five years probation with special conditions upon defendant's release. For Count 2, the trial court imposed a sentence of one year imprisonment at hard labor.[1] These sentences were ordered to run consecutively. Defendant now appeals, alleging one assignment of error. For the following reasons, we affirm the defendant's convictions and sentences.

FACTS

On the evening of November 30, 2010, Officers Thomas Wood and Kenneth Kustenmacher of the St. Tammany Parish Sheriff's Office conducted a traffic stop of a vehicle in which defendant was a passenger. The vehicle was being driven by Barbara Ehlert, a relative of Officer Wood and the girlfriend of defendant.

At trial, Officer Wood testified that he was aware of the relationship between Ehlert and defendant and also that he was aware that defendant had an outstanding warrant for his arrest. Officer Wood stated that he approached the driver's side of Ehlert's vehicle and confirmed that defendant was a passenger inside the vehicle. Officer Wood said that he opened the driver's side door of the

[1]We note that the minutes of defendant's sentencing indicate that defendant was sentenced to one year at hard labor for Count 1 and to five years at hard labor, with four years suspended, and five years probation with special conditions for Count 2. However, the transcript of defendant's sentencing indicates the opposite is true. Whenever there is a conflict between the transcript and the minutes, the transcript prevails. State v. Lynch, 441 So. 2d 732, 734 (La. 1983).

vehicle and informed defendant that he would be arrested pursuant to the outstanding warrant. Officer Wood testified that, upon hearing that he would be arrested, defendant exited the passenger's side of the vehicle and leapt over a ditch, landing in a briar patch. Officer Wood stated that he ran around the front of the vehicle to assist Officer Kustenmacher, who had pursued defendant and rolled back down into the ditch with him, in attempting to handcuff defendant while he kicked and resisted. Officer Wood testified that he did not observe Officer Kustenmacher beating or striking defendant in any way, nor did he personally beat or strike defendant. The officers eventually were able to handcuff defendant, to assist him in exiting the ditch, and to bring him near their patrol car to conduct a pat down. Officer Wood stated that when he was clearing out the back of the patrol car for defendant to sit, he observed defendant begin to run away from the scene. However, Officer Kustenmacher again secured defendant without beating or striking him, and defendant was placed in the back seat of the patrol car. Officer Wood testified that after defendant had been secured in his patrol vehicle, he approached Ehlert to retrieve her license and registration. After an unknown amount of time, Officer Wood noticed that defendant had exited the back of his patrol car without permission, and defendant was unable to be located that night.

Officer Kustenmacher testified at trial that he approached the passenger's side of Ehlert's vehicle as Officer Wood approached the driver's side. Officer Kustenmacher observed defendant open the passenger's side door, look around, and jump over the nearby ditch into the briar patch. Officer Kustenmacher testified that he jumped after defendant, and both men rolled backwards into the ditch. Officer Kustenmacher stated that he attempted to gain control of the defendant by locking his shoulder, but defendant resisted despite Officer Kustenmacher's demands to stop. As Officer Kustenmacher struggled to gain control of defendant's arms, he felt defendant kick him on the inside of his thigh,

near his groin. After Officer Wood assisted Officer Kustenmacher in handcuffing defendant, the officers brought defendant near the fender of their patrol vehicle while Officer Wood cleared out the back seat. Officer Kustenmacher testified that defendant, while handcuffed behind his back, hit Officer Kustenmacher with his left side and started to run away. Officer Kustenmacher quickly caught defendant, brought him to the ground, and told him to stop resisting. Defendant was then placed in the back of the patrol vehicle. Officer Kustenmacher then went to look for defendant's cell phone, which had fallen into the briar patch. After finding the defendant's cell phone, Officer Kustenmacher returned the phone and other personal items belonging to the defendant, to Ehlert. Officer Kustenmacher then went to the patrol car where Officer Wood was sitting, and he noticed that defendant was no longer in the back of the vehicle.

Detective Thomas Schlesinger of the St. Tammany Parish Sheriff's Office testified at trial that he participated in the arrest of defendant on December 4, 2010. Detective Schlesinger had received information about defendant's whereabouts from an informant. Detective Schlesinger testified that when defendant was arrested, he was surrounded by six narcotics detectives, including himself, at least two of whom had tasers in their hands. Defendant was informed of his Miranda[2] rights, and he subsequently informed Detective Schlesinger that he had cut off his handcuffs from the November 30, 2010 incident and thrown them into a pond. Defendant chose to testify at trial. He stated that the vehicle in which he was riding had pulled up only an inch or two from the ditch line, as opposed to two feet, which was the distance testified to by Officer Wood. Defendant testified that to exit the vehicle, he had to attempt to leap over the ditch. Defendant stated that he landed face down and that the officers got on top of him and began to hit him with their hands and a flashlight. Defendant testified that after he was handcuffed,

[2]Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

the officers told him that if they had to go to the hospital, it would be worse for defendant. Defendant stated that he inferred this statement to mean that he was going to get beaten again. Defendant testified that he was placed in the back of the patrol vehicle, but the door was left open, so he ran in order not to get beaten up any further. On cross-examination, defendant stated that the officers never told him anything about a warrant prior to his decision to exit the vehicle. He testified that he only exited the vehicle to find out the reason that the vehicle had been pulled over. Defendant testified that he knew he was under arrest when he was placed in the back seat of the patrol car. Defendant testified that everything Officers Wood and Kustenmacher testified to at trial was a lie.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant challenges the sufficiency of the evidence to support his convictions for simple escape and attempted resisting a police officer with force or violence. Defendant argues that his convictions should be reversed because his life was endangered by Officers Wood and Kustenmacher.

In reviewing the sufficiency of the evidence to support a conviction, a Louisiana appellate court is controlled by the standard enunciated by the United States Supreme Court in Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). That Jackson standard of review, incorporated in Article 821, is whether the evidence, when viewed in the light most favorable to the prosecution, was sufficient to convince any rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt. 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 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 in order to convict, 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.

As the trier of fact, a jury is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. State v. Richardson, 459 So. 2d 31, 38 (La. App. 1st Cir. 1984). 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 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. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. State v. Captville, 448 So. 2d 676, 680 (La. 1984).

Louisiana Revised Statute article 14:108.2(A), in pertinent part, defines resisting a police officer with force or violence as:

> Resisting a police officer with force or violence is any of the following when the offender has reasonable grounds to believe the victim is a police officer who is arresting, detaining, seizing property, serving process, or is otherwise acting in the performance of his official duty:
>
> (1) Using threatening force or violence by one sought to be arrested or detained before the arresting officer can restrain him and after notice is given that he is under arrest or detention.
>
> (2) Using threatening force or violence toward or any resistance or opposition using force or violence to the arresting officer after the arrested party is actually placed under arrest and before he is incarcerated in jail.

Louisiana Revised Statute article 14:110(A)(1) defines simple escape as:

> The intentional departure, under circumstances wherein human life is not endangered, of a person imprisoned, committed, or detained from a place where such person is legally confined, from a designated area of a place where such person is legally confined, or from the lawful custody of any law enforcement officer or officer of the Department of Public Safety and Corrections.

"Lawful custody," within the meaning of simple escape, applies not only to persons who have been placed in a jail facility, but also to those persons who have been arrested but not yet confined. See State v. Bullock, 576 So. 2d 453, 455-56 (La. 1991).

With respect to Count 1, simple escape, the state presented evidence sufficient to show that defendant was arrested and in the lawful custody of the police at the time he intentionally departed custodial detention of him under circumstances where his life was not endangered. With respect to Count 2, resisting a police officer with force or violence, the state presented evidence sufficient to support a finding that defendant used force or violence directed at Officer Kustenmacher both prior to and after his arrest, when defendant had reasonable grounds to believe he was being arrested. Having proved all the elements of the greater offense of resisting a police officer with force or violence, the evidence was clearly sufficient to prove defendant's guilt of the lesser included offense of attempted resisting a police officer with force or violence. See State v. Schrader, 518 So. 2d 1024, 1034 (La. 1988), cert. denied 498 U.S. 903, 111 S. Ct. 265, 112 L. Ed. 2d 221 (1990). The Louisiana Supreme Court has indicated that such a result both recognizes the legitimacy of a "compromise" verdict and comports with the responsive verdict scheme of LSA-C.Cr.P. art. 814. State v. Schrader, 518 So. 2d at 1034.

At trial, defendant testified that he escaped from the officers' custody because of his belief that he would be beaten "again" in the event the officers had

to go to the hospital. This claim appears to be an attempt to argue the defense of justification under LSA-R.S. 14:18(6), which provides that the defense of justification can be claimed "[w]hen any crime, except murder, is committed through the compulsion of threats by another of . . . great bodily harm, and the offender reasonably believes the person making the threats is present and would immediately carry out the threats if the crime were not committed…." Since justification defenses are not based on the nonexistence of any essential element of the offense, but rather on circumstances which make the accused's conduct excusable on policy grounds, such defenses should be treated as affirmative defenses which the accused must establish by a preponderance of the evidence. State v. Cheatwood, 458 So. 2d 907, 910 (La. 1984); State v. Schell, 492 So. 2d 169, 171 (La. App. 1st Cir.), writ denied, 496 So. 2d 1042 (La. 1986). One of the conditions for the application of the justification defense is that the defendant report to the proper authorities when he attains a position of safety from the immediate threat. Schell, 492 So. 2d at 171. In reviewing a conviction in which a defendant offers evidence tending to establish the affirmative defense of justification, an appellate court must determine whether a rational trier of fact could have concluded by a preponderance of the evidence, viewed in the light most favorable to the prosecution, that defendant's escape from lawful custody did not result from necessity. Schell, 492 So. 2d at 171.

In the instant case, the only evidence that defendant offered in support of a defense of justification was his own testimony that he believed he would be subject to physical violence if Officers Wood and Kustenmacher had to go to the hospital for any injuries they may have suffered. However, defendant failed to offer an explanation as to why he failed to turn himself into law enforcement officers once he was able to escape the alleged immediate threat posed by Officers Wood and Kustenmacher. Additionally, the testimonies of Officers Wood and Kustenmacher

directly contradict defendant's claims that he had been beaten during his arrest and that he would be subject to future physical violence in the event either officer required a hospital visit.

The evidence in the present case, viewed in the light most favorable to the prosecution, clearly preponderates in favor of the conclusion that defendant was not justified in escaping from his lawful confinement in the back of the officers' patrol car. The jury obviously rejected the defendant's hypothesis of innocence based upon the contention that his life was endangered by Officers Wood and Kustenmacher. We find such rejection reasonable. A reviewing court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the factfinder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. State v. Calloway, 2007-2306 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam).

After a thorough review of the record, we are convinced that, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that defendant was guilty of the offenses. We further find that defendant failed to carry his burden in proving the affirmative defense of justification.

This assignment of error is without merit.

Accordingly, for the foregoing reasons, the defendant's convictions and sentences are hereby affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.