

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 0877

STATE OF LOUISIANA

VERSUS

DARREN M. LAURENT

Judgment Rendered: March 25, 2011.

\* \* \* \* \*

On Appeal from the  
22nd Judicial District Court,  
in and for the Parish of St. Tammany  
State of Louisiana  
District Court No. 457762

The Honorable William J. Crain, Judge Presiding

\* \* \* \* \*

Antoine Z. Laurent  
Slidell, La.

Counsel for Defendant/Appellant,  
Darren M. Laurent

Darren M. Laurent  
Angie, La.

Defendant/Appellant  
Appearing Pro Se

Walter P. Reed  
District Attorney  
Covington, La.  
Kathryn W. Landry  
Baton Rouge, La.

Counsel for Appellee,  
State of Louisiana

\* \* \* \* \*

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

*JRW Welch Jr. concurs without reasons.*

## **CARTER, C.J.**

The defendant, Darren M. Laurent, was charged by bill of information with obscenity, a violation of La. Rev. Stat. Ann. § 14:106. He entered a plea of not guilty and, at the conclusion of a bench trial, was found guilty as charged. The state filed a multiple offender bill of information seeking to have the defendant adjudicated a habitual offender and sentenced under La. Rev. Stat. Ann. § 15:529.1. Following a hearing, the defendant was adjudicated a fourth-felony habitual offender.<sup>1</sup> He was sentenced to imprisonment at hard labor for twenty years.<sup>2</sup> The defendant appealed, asserting the following assignments of error by counseled and pro se briefs:

### Counseled

1. The trial court committed reversible error in finding that the defendant was guilty beyond a reasonable doubt.
2. The trial court committed reversible error by finding the defendant guilty of felony obscenity, contrary to the law and evidence.
3. The trial court committed reversible error in finding the defendant guilty of felony obscenity and the subsequent sentence was excessive.<sup>3</sup>

---

<sup>1</sup> The defendant was previously convicted of possession of cocaine, forgery, and felony theft.

<sup>2</sup> In the "Statement of the Case" section of his counseled brief, the defendant claims he was originally sentenced to imprisonment at hard labor for three years on the obscenity conviction. However, the record does not support this claim. At the time of the habitual offender sentencing, the trial court specifically noted that the defendant was never sentenced on the underlying conviction. The defendant also cites the trial court's failure to impose a sentence on the underlying conviction, as error, in his third counseled assignment of error.

<sup>3</sup> Although the defendant asserts that his sentence is excessive, the only sentencing argument provided in his brief relates to the trial court's failure to impose a sentence on the underlying obscenity conviction. The defendant provides no substantive argument regarding the excessiveness of the sentence. Accordingly, this issue is considered abandoned. *See* Uniform Rules-Louisiana Courts of Appeal, Rule 2-12.4

Pro Se

1. The district court erred under the Federal and State Constitution by holding a bench trial without first ascertaining whether the defendant knowingly and intelligently waived that right.

Upon review, we recognized that the crucial procedural issue raised in the defendant's pro se brief needed to be addressed before we could reach the merits of the counseled assignments of error. We remanded the case for a determination of whether the defendant knowingly and intelligently waived his constitutional right to a jury trial. *State v. Laurent*, 10-0877 (La. App. 1 Cir. 12/22/10) (unpublished). The appeal record has been supplemented with evidence of the defendant's July 31, 2009, jury trial waiver. We now consider the defendant's counseled assignments of error. Finding no merit in the assigned errors, we affirm the defendant's conviction, habitual offender adjudication, and sentence.

**FACTS**

During the afternoon of November 1, 2008, nine-year-old A.S. was outside with his mother, E.S., while she was mowing the grass. As he played outside, A.S. observed "Ms. Kay," an elderly neighbor, walking her dog. Shortly after A.S. went over to pet the dog, the defendant approached and started talking to the elderly lady, and eventually began walking her home. According to A.S., the defendant was wearing only a "trench coat or a robe[,] and his genitals were exposed. A.S. immediately reported to E.S. what he had observed.

E.S. contacted the Slidell Police Department and reported the matter. In response, Officer Kevin Rea was dispatched to investigate the obscenity complaint. When he arrived at the location, Officer Rea initially made

contact with E.S., and she advised him of the information she had received from A.S. She also explained that she personally had observed the defendant's exposed genitals as he stood across the street. E.S. advised that the defendant had gone inside a nearby residence and directed Officer Rea to that residence. From where he stood on the street, Officer Rea could hear the defendant yelling obscenities and profane language inside the residence.

Officer Rea approached the residence and made contact with the defendant, who was now clad in only a pair of blue jeans. Officer Rea escorted the defendant outside the residence to speak with him. According to Officer Rea, the defendant was very uncooperative and continued to use profanity. Officer Rea observed a strong odor of alcohol emitting from the defendant's breath. The defendant was incoherent, his balance was unstable, and his speech was slurred. According to Officer Rea, the defendant explained that he had been outside wearing only a trench coat because his clothing had gotten wet and was being dried inside the residence. Officer Rea arrested the defendant.

#### **SUFFICIENCY OF THE EVIDENCE**

In his first two counseled assignments of error, the defendant challenges the sufficiency of the evidence in support of the obscenity conviction. Specifically, he asserts that the testimony provided by E.S. and A.S. should not have been deemed credible. First, the defendant claims E.S.'s testimony should have been discredited because it was inconsistent. He notes as a discrepancy that at one point in her testimony E.S. claimed the defendant was wearing a trench coat, yet she later indicated he was naked. The defendant further questions how E.S. could have possibly observed "all

that she said she saw” when her testimony established that she was mowing the grass when her son reported his observations to her.

The defendant argues A.S.’s testimony is insufficient to support the obscenity conviction because the child never stated that the defendant “intentionally opened his coat[,] or that he opened his coat at all.” To further attack the child’s credibility, the defendant repeatedly notes that E.S. testified that she does not “believe everything that comes out of [A.S.’s] mouth.”

Finally, the defendant notes that his own trial testimony established that he was, in fact, wearing undergarments beneath the trench coat. Thus, the defendant asserts he could not have intentionally exposed his genitals to arouse the prurient interest of anyone. He argues that the evidence presented by the state supports only a conviction of “disturbing the peace by being intoxicated.”

A conviction based on insufficient evidence cannot stand, as it violates Due Process. *See* U.S. Const. amend. XIV; La. Const. Ann. art. I, § 2. In reviewing a claim challenging the sufficiency of the evidence, this court must consider “whether, after 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 (1979). *See also* La. Code Crim. Proc. Ann. art. 821(B); *State v. Mussall*, 523 So. 2d 1305, 1308-09 (La. 1988).

Louisiana Revised Statutes Annotated section 14:106 provides in pertinent part:

A. The crime of obscenity is the intentional:

(1) Exposure of the genitals . . . in any public place or place open to the public view... with the intent of arousing sexual desire or which appeals to prurient interest or is patently offensive.

The elements of the crime required the state to prove: (a) the defendant exposed his genitals in public, and (b) the exposure was done either with: (1) the intent of arousing sexual desire or (2) it appealed to the prurient interest or (3) it was patently offensive. *State v. Gradick*, 29,231 (La. App. 2 Cir. 1/22/97); 687 So. 2d 1071, 1073.

At the trial in this case, E.S. testified that she was outside mowing the grass when A.S. approached to report his observations. E.S. stated that, in an attempt to verify the information related by the child, she yelled out to the defendant. When the defendant turned around, she personally observed that he was not wearing any undergarments under the coat.

Later, when E.S. was questioned regarding whether the defendant's appearance was offensive to her, the following exchange occurred:

[Prosecutor]: Now, this day that you saw him, his appearance, was that offensive to you?

[E.S.]: Him being naked?

[Prosecutor]: Yes.

[E.S.]: Yes.

[Defense Counsel]: Object, Your Honor.

[The Court]: Overruled.

[E.S.]: Naked, except for a trench coat, yeah, absolutely.

On cross-examination, E.S. was questioned regarding whether she actually observed the defendant's genitals. E.S. explained that because her son was only nine-years-old she did not automatically "believe everything

that comes out of his mouth.” Thus, she first personally assessed the situation to confirm the accuracy of the information before involving the police. E.S. was unequivocal in her claim that she personally observed the defendant’s exposed genitals and, therefore, did not base the police complaint solely on information provided by the child. E.S. admitted that the defendant did not intentionally flash his genitals at anyone. Instead, as he moved around, the unbuttoned coat opened to expose his genitals.

A.S. testified that, when he walked up to pet the neighbor’s dog on the afternoon in question, the defendant came outside and started talking to the elderly neighbor. According to A.S., the defendant was dressed in a “trench coat or a robe” and was not wearing underwear. A.S. explained that there were two fastened buttons in the chest area of the coat. However, when the defendant walked, his coat would open up to expose his genitals. A.S. testified that he saw “everything that was under his trench coat.” A.S. identified the defendant in open court as the man he saw outside in the neighborhood wearing only a coat.

J.S., A.S.’s father, testified that on the afternoon in question, as he drove toward his home, he observed the defendant playing with a dog. The defendant appeared to be wearing a robe or a trench coat, and his genitals were exposed. J.S. explained that his wife then called the police, and the defendant became “very agitated.” At some point, the defendant went into a nearby residence, and when he resurfaced, he was wearing only a pair of jeans. J.S. testified that he found it offensive that his son had observed the defendant’s exposed genitals.

The defendant testified on his own behalf. He denied ever having his genitals exposed on the afternoon in question. The defendant explained that his clothing had gotten wet while visiting his friend's residence so he removed his wet clothes and placed them in the dryer. However, the defendant maintained that he was not completely nude under the coat because he still had on underpants.

Considering the foregoing, it is clear that the trial court was presented with conflicting testimony regarding the facts and circumstances surrounding this incident. The S. family all testified that the defendant was wearing only a coat, which was at least partially opened, exposing the defendant's genitals. Furthermore, it is clear from their testimony that the defendant's exposure was offensive. However, the defendant claimed he was wearing black underwear under the coat, and thus, his genitals could not possibly have been exposed. Faced with conflicting information, the trial court was forced to make credibility determinations. The guilty verdict indicates that the court, after hearing the testimony and evaluating the credibility of the witnesses, accepted as true the testimony of the state's witnesses and rejected the version of the incident provided by the defendant's own testimony. The court apparently believed that the defendant was not wearing underwear under the coat and that his genitals were exposed.

It is well established that, 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. Thomas*, 05-2210 (La. App. 1 Cir. 6/9/06); 938 So. 2d

168, 174, *writ denied*, 06-2403 (La. 4/27/07); 955 So. 2d 683. In an obscenity case, a victim's or witness's testimony is sufficient to establish that an obscene public exposure occurred. *See State v. Magee*, 517 So. 2d 464, 466 (La. App. 1st Cir. 1987).

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. *State v. Taylor*, 97-2261 (La. App. 1 Cir. 9/25/98); 721 So. 2d 929, 932. Moreover, when 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. *Taylor*, 721 So. 2d at 932. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. *Id.* An appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. *Id.*

After a thorough review of the record in this case, we find that the evidence presented at trial sufficiently supports the guilty verdict. We are convinced that viewing the evidence in the light most favorable to the state, any rational trier of fact could have concluded that the state proved, beyond a reasonable doubt, all of the essential elements of the crime of obscenity. These assignments of error lack merit.

#### **SENTENCING ERROR**

In his final counseled assignment of error, the defendant contends the trial court erred in failing to sentence him on the original conviction before imposing the habitual offender sentence. Prior to its 2010 amendment, La. Rev. Stat. Ann. § 15:529.1(D)(3) provided:

When the judge finds that he has been convicted of a prior felony or felonies . . . or if he acknowledges or confesses in

open court, after being duly cautioned as to his rights, that he has been so convicted . . . the court shall sentence him to the punishment prescribed in this Section, and shall vacate the previous sentence *if already imposed*, deducting from the new sentence the time actually served under the sentence so vacated. The court shall provide written reasons for its determination. Either party may seek review of an adverse ruling. (Emphasis added.)

Based on the plain language of the statute, it is clear that the trial court is not required to impose a sentence on the underlying offense before imposing an enhanced sentence under the habitual offender law. Furthermore, because any sentence imposed on the instant predicate offense would have been vacated upon the defendant's sentencing as a multiple offender, the failure to impose such a sentence clearly does not constitute error. This assignment of error also lacks merit.

For the foregoing reasons, we affirm the defendant's conviction, habitual offender adjudication, and sentence.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION,  
AND SENTENCE AFFIRMED.**