

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 0325

STATE OF LOUISIANA

VERSUS

RODNEY A. HINGLE

Judgment Rendered: SEP 14 2011

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On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket No. 489283

Honorable Martin E. Coady, Judge Presiding

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

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McCLENDON, J.

The defendant, Rodney A. Hingle, was charged by bill of information with simple burglary of an inhabited dwelling (count 1), a violation of LSA-R.S. 14:62.2, and possession of a legend drug without a prescription (Tramadol) (count 2), a violation of LSA-R.S. 40:1238.1. The defendant pled not guilty and, following a jury trial, was found guilty as charged on both counts. The defendant filed a motion for postverdict judgment of acquittal, which was denied. For the simple burglary of an inhabited dwelling conviction (count 1), the defendant was sentenced to ten years at hard labor, one year of the sentence to be served without benefit of parole, probation, or suspension of sentence. For the possession of a legend drug without a prescription (Tramadol) conviction (count 2), the defendant was sentenced to five years at hard labor. The sentences were ordered to run concurrently. The State subsequently filed a multiple offender bill of information. The defendant waived his right to a habitual offender hearing and, upon admitting to the allegations in the multiple offender bill, he was adjudicated a fourth-felony habitual offender on each conviction.¹ Both of his sentences were vacated, and, on each conviction, he was resentenced to thirty years at hard labor without benefit of probation or suspension of sentence in accordance with the provisions of LSA-R.S. 15:529.1. The sentences were ordered to run concurrently. The defendant now appeals, designating one assignment of error. For the following reasons, we affirm the convictions, habitual offender adjudications, and sentences.

FACTS

On April 11, 2010, at about 9:30 a.m. in Lacombe, the defendant used a screwdriver to gain entry through one of the doors of the mobile home of Cleveland Lewis, Sr., while Cleveland was at church. Once inside the residence, the defendant took Cleveland's money, including bills and rolls of coins, and his

¹ Prior to stipulating or admitting to the allegations in the multiple offender bill of information, the defendant waived the reading of the bill and the trial court advised the defendant that a multiple offender bill of information had been filed, of his right to be tried to the truth thereof, and of his right to remain silent. See LSA-R.S. 15:529.1D(1)(a); **State v. Mickey**, 604 So.2d 675, 678 (La.App. 1 Cir. 1992), writ denied, 610 So.2d 795 (La. 1993).

prescription pill bottle containing Tramadol. A neighbor observed the defendant breaking into Cleveland's home and called the police. By the time the defendant was leaving the mobile home, Deputy Victoria Dombrowski, with the St. Tammany Parish Sheriff's Office, had arrived and stopped the defendant. She found on the defendant's person a screwdriver, and Cleveland's Tramadol and money. The police returned Cleveland's money and medication to him.

The defendant did not testify at trial.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the evidence was insufficient to support the conviction for possession of a legend drug without a prescription. Specifically, the defendant contends that no chemical analysis was performed on the Tramadol, that there was no testimony by Cleveland that other pills may have been in the prescription bottle, and that there was no testimony by a pharmacist that the generic drug was a proper substitution for the original prescription. The defendant does not contest the conviction for simple burglary of an inhabited dwelling.

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, 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 LSA-C.Cr.P. art. 821(B); **State v. Ordodi**, 06-0207 (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 fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 01-2585 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

At trial, the parties stipulated that there had been no chemical analysis of the pills found on the defendant. While the defendant concedes there is case law that supports the proposition that scientific evidence is not necessary to prove the identity of a substance, the defendant nevertheless asserts that upon viewing all of the evidence, no rational trier of fact could have found him guilty beyond a reasonable doubt. In support of this assertion, the defendant states there "was no testimony by Mr. Lewis that he had not mixed his medications and placed other pills in the prescription bottle, nor was there any testimony by a pharmacist that the generic drug was a proper substitution for the original prescription issued by a doctor." We do not see how such testimony would have affected or enhanced the State's quantum of proof. With the testimonial and documentary evidence that was submitted at trial, the State met its burden of proving the pills were Tramadol.

Deputy Dombrowski testified at trial that the defendant, upon being stopped, read his **Miranda** rights, and questioned, told her that he broke into the mobile home looking for crack cocaine. When he found none, he took Cleveland's medication and money. The defendant claimed he knew Cleveland, but Cleveland testified that he did not know the defendant and had never seen him before. The defendant was patted down and found to be in possession of an orange prescription bottle of pills. A white prescription label was affixed to the pill bottle providing the name of the doctor prescribing the pills, the dosage, and the possible side effects from taking the pills. The label also indicated "TRAMADOL 50MG TABLETS" and had the name "CLEVELAND LEWIS" at the top of the label, with Cleveland's home address underneath the name. Four photographs of the Tramadol pill bottle were taken, along with the defendant's driver's license next to the bottle. At trial, Deputy Dombrowski identified the pill bottle in the photos as the pill bottle that the defendant had in his possession. Deputy Dombrowski further testified that she carried in her unit at all times a reference manual titled *Drug Identification Bible For Law Enforcement*. During the processing of the crime scene, a crime lab technician took pictures of the

pills outside of the pill bottle. Deputy Dombrowski identified the photos of one of these tablets, which contained the etching "AN627." The deputy stated she looked up the "AN627" imprint in her "Drug Bible," which indicated that the drug was 50 milligrams of "Tramadol, Hydrochloride." The reference page further described the appearance of the pill as a white round tablet, its use as an analgesic, and its brand name or equivalent as Ultram. A copy of this reference page was submitted into evidence. Deputy Dombrowski also testified that she returned the Tramadol pills to Cleveland because he was elderly and that medication was one he could not do without.

Cleveland testified at trial that he was sixty-nine years old and that he took Tramadol, which was a pain medication he needed all the time. With a prescription from a doctor, Cleveland obtained the Tramadol from a Walgreen's in Mandeville. When Cleveland returned to his home after it had been burglarized, he told the police he was missing money and his Tramadol. Cleveland identified the same photos identified by Deputy Dombrowski of the orange pill bottle that the defendant briefly had in his possession. Cleveland testified that those were photos of his Tramadol. He further testified that the police returned his Tramadol to him.

Captain Harry O'Neal, with the St. Tammany Parish Sheriff's Office, was tendered at trial as an expert in drug analysis and identification. Captain O'Neal testified that he is Commander of the Crime Lab and that he is a drug chemist within the lab. He spent thirty years with the New Orleans Police Department working mostly as a drug analyst, and his entire employment with the St. Tammany Parish Sheriff's Office had been as a drug analyst. Prior to trial, Captain O'Neal generated a single-page copy of a computer reference index of Tramadol. He produced the copy of the index at trial, and it was introduced into evidence. Captain O'Neal explained he used a logo index that they have in their computer that is supplied yearly by "DEA." The index contained a picture of a white pill with the imprint "AN627" on its face. The index indicates the pill is 50mg of Tramadol Hydrochloride. It is described as a legend drug that is a white

round tablet and used as an analgesic. Captain O'Neal indicated that the picture of the pill in the index would be the pill found in Cleveland's prescription bottle.

Captain O'Neal stated that the "AN" on the pill stood for Amneal, the manufacturer of the drug. It was noted on direct examination that the manufacturer listed on Cleveland's pill bottle was Akyma, not Amneal. Captain O'Neal explained that a pharmaceutical compound patent is good for only ten years. After that period, other pharmaceutical manufacturers can apply for and purchase the patent to manufacture the drug. This would then result in the generic form of the drug by a new manufacturer. Captain O'Neal surmised that the new manufacturer Akyma purchased the rights to produce the compound from Amneal. When asked if it concerned him that there was a difference between the manufacturer as specified by "DEA" and what was on Cleveland's label, Captain O'Neal responded, "No. The actual prescription itself for Tramadol 50 milligrams, the tablet shown if I subjected it to some chemical tests, it would show that Tramadol is present which is what we would be looking for." Shortly thereafter when he was asked if he was comfortable in his identification of that particular drug as Tramadol, Captain O'Neal responded, "Yes, sir. This is in fact one of the definitive ways we do identify prescription drugs is through a logo index identification." Captain O'Neal reviewed the photos of the Tramadol tablets taken by the crime lab at the scene and stated that they corresponded to the index printout he produced. He testified that in his opinion, the tablets in the photos were Tramadol.

In support of his position that the pills found on the defendant should have been chemically analyzed, the defendant cites **State v. Carter**, 07-1237 (La. App. 3 Cir. 4/9/08), 981 So.2d 734, writ denied, 08-1083 (La. 1/9/09), 998 So.2d 712. In **Carter**, the court found that a syrupy substance found by the police on the floorboard of the defendant's car could not be used to prosecute the defendant for illegal possession of codeine. The police officer who scraped the substance from the defendant's car testified that he thought it was hydrocodone syrup, a commonly prescribed cough medication. **Carter**, 981

So.2d at 738. In his brief, the defendant states that the syrup was not chemically examined and that the State did not prove the syrup contained codeine. However, the defendant's reliance on **Carter** is misplaced. The **Carter** court found the evidence insufficient to convict the defendant of possession of codeine, not because the syrup had not been chemically tested to show it contained codeine, but because the State did not put on any direct evidence regarding how the syrup came to be on the floorboard, that the defendant knew the syrup was on the floorboard, or that the defendant knew the syrup contained codeine. **Carter**, 981 So.2d at 742-43. It appeared, in fact, that the court assumed the syrup contained codeine. The court noted that Alex King, a forensic chemist with the North Louisiana Crime Lab, testified at trial that the liquid substance removed from the floorboard of the defendant's car contained codeine. **Carter**, 981 So.2d at 738 and 742. This factual finding does not appear to have been disputed. The defendant was also charged with and convicted of possession with intent to distribute hydrocodone. The defendant argued, among other things, that the pills were not subjected to a proper chemical analysis to determine whether they contained hydrocodone. The court affirmed this conviction. Despite no chemical analysis having been performed on the hydrocodone pills, the court noted that King testified that the green pills found by the police contained hydrocodone. The pills were identified via visual inspection and comparison with pictures in a book. Also, a detective testified that he had seen similar pills in the past as part of his job and that the pills at issue were hydrocodone pills. **Carter**, 981 So.2d at 743-44.

In this matter, the jury's guilty verdict of possession of a legend drug indicates that, after considering the credibility of the witnesses and weighing the evidence, it accepted the testimony of Cleveland, Captain O'Neal, and Deputy Dombrowski, regarding the identification of the pills. There was sufficient lay and expert testimony from which the jury could find beyond a reasonable doubt that the defendant was in possession of Tramadol. See **Carter**, 981 So.2d at 745. See also **State v. Harris**, 02-1589 (La. 5/20/03), 846 So.2d 709. In the

absence of internal contradiction or irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. **State v. Higgins**, 03-1980 (La. 4/1/05), 898 So.2d 1219, 1226, cert. denied, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005). 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. 1 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.

After a thorough review of the record, we find that the evidence supports the jury's unanimous verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of possession of a legend drug (Tramadol) without a prescription. See State v. Calloway, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

The assignment of error is without merit.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED