NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1435

STATE OF LOUISIANA

VERSUS

TELLY T. WILLIAMS

Judgment Rendered: March 23, 2012

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On Appeal from the 22nd Judicial District Court
In and For the Parish of St. Tammany
Trial Court No. 500,109

The Honorable Allison H. Penzato, Judge Presiding

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

HUGHES, J.

The defendant, Telly T. Williams, was charged by bill of information with illegal possession of stolen things with a value of over $500, a violation of LSA-R.S. 14:69 (count 1); and simple escape, a violation of LSA-R.S. 14:110 (count 2). He pled not guilty and, following a jury trial, was found guilty as charged on both counts. The defendant filed motions for post-verdict judgment of acquittal and new trial, which were denied. The State subsequently filed a multiple-offender bill of information and, following a hearing on the matter, the defendant was adjudicated a third-felony habitual offender. For the illegal possession of stolen things with a value of over $500 conviction, the trial court imposed an enhanced sentence of six years imprisonment at hard labor without benefit of probation or suspension of sentence. For the simple escape conviction, the defendant was sentenced to one year imprisonment at hard labor. The sentences were ordered to run consecutively. The defendant now appeals, designating three counseled assignments of error and one pro se assignment of error. We affirm the convictions, habitual-offender adjudication, and sentences.

FACTS

In 2010 in St. Tammany Parish, the defendant was in the "8 to 4 Program" (hereinafter the "Program"), a work release program for individuals sentenced to parish jail time. On October 5, 2010, Corporal Alicia Craige, with the St. Tammany Parish Sheriff's Office, informed the defendant that he had failed a drug test and told him to report to her office the following day at 7:00 a.m. The next day, October 6, the defendant failed to report to Corporal Craige's office. At about 11:00 a.m. that same day, two St. Tammany Parish Sheriff's Office deputies found the defendant near his home in Slidell riding a stolen off-road motorcycle on Javery Road. When stopped, the defendant told the deputies he was supposed to be at the Program. One of the deputies contacted Corporal Craige, who confirmed

that the defendant was in the Program. The defendant was arrested for simple escape. According to the defendant, he did not know the motorcycle was stolen, but was working on the carburetor after a white male in a white truck had dropped off the motorcycle to him the night before. The motorcycle had been "hot-wired" to start since the ignition on it had been compromised.

COUNSELED ASSIGNMENTS OF ERROR NOS. 1, 2 and 3

In these three related counseled assignments of error, the defendant argues that the evidence was insufficient to support the simple escape conviction; the trial court erred in denying the motion for post-verdict judgment of acquittal; and the trial court erred in denying the motion for new trial.[1]

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 or not, 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 also 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 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 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.

Louisiana Revised Statutes 14:110 provides, in pertinent part:

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[1] The defendant does not challenge his conviction for illegal possession of stolen things with a value of over $500.

A. Simple escape shall mean any of the following:

(1) 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.

(2) The failure of a criminal serving a sentence and participating in a work release program authorized by law to report or return from his planned employment or other activity under the program at the appointed time.

Corporal Craige testified at trial that she helped the defendant sign up for the Program. The defendant was given an informational packet, released from jail, and sent to Corporal Craige. The packet contained a page entitled "St. Tammany Parish 8-4 Work Release Program Responsibility Form" and two pages of rules for the Program participants to follow. Corporal Craige went over this paperwork with the defendant, and he signed it, indicating he was explained his responsibilities and understood the rules.

On October 5, Corporal Craige informed the defendant, in person at his jobsite, that he had failed his drug screen, having tested positive for cocaine and marijuana. She could not bring the defendant to jail at that time because she had a family emergency. She told the defendant to report to her the following morning (October 6) at 7:00 a.m., or she would issue a warrant. On October 6, Corporal Craige waited in her office for three hours for the defendant. Corporal Craige left her office at 10:00 a.m. after the defendant had not shown up. Corporal Craige testified at trial that on any given day the defendant had to report to her for 7:00 a.m. She also testified that when she told the defendant to meet her in her office on the morning of October 6, the defendant knew he was in trouble and that he was going back to jail. The defendant testified at trial that Corporal Craige told him to report to her office at 9:00 a.m. He stated that his mother drove him to Corporal

Craige's office and they waited in the van outside until about 11:00 a.m. At one point, the defendant went to Corporal Craige's office and knocked on her door, but she was not there.

In his brief, the defendant notes that the second paragraph of the 8-4 Work Release Program Responsibility Form that he signed provided the following:

> I understand that if I should fail to show up for work without good reason and fail to contact the 8-4 office or jail for 2 consecutive days, I will be placed back into the St[.] Tammany Parish Jail and/or a warrant for R.S. 14:110 simple escape will be issued. (R. p. 208; State's Exhibit 2; Defendant's brief, p.3).

The defendant notes that he did not, in fact, go two consecutive days without reporting to the Program. Therefore, the defendant asserts, he is not guilty of simple escape because a violation of the terms of the agreement would have required his failure to report for two consecutive days before a warrant would issue for the charge of simple escape.

The defendant's argument is misplaced. The failure to report to the Program for two consecutive days is only one of the many sufficient, but not necessary, conditions that would result in an inmate being either removed from the Program or being charged with simple escape. In the Program packet provided to the defendant, the caption of the two pages of rules is the following: "Rules for St. Tammany Parish Sheriff's Office Work Release Program Per LRS 15:708." Louisiana Revised Statutes 15:708 is entitled "Labor by prisoners permitted; workday release program; indemnification."[2] Under this program, a prisoner sentenced to a parish prison may choose, if selected, to perform, among other things, manual labor on public property, such as roads, levees, or buildings. Under LSA-R.S. 15:708(D)(3), "[f]ailure to report to or return from the scheduled

[2] There is also a work release program pursuant to LSA-R.S. 15:711, which is entitled "Work release program."

workday program shall be considered an escape under the provisions of R.S. 14:110."

On October 6, 2010 Corporal Craige personally directed the defendant to report to her office for violating the rules of the Program. The defendant deliberately refused to report to Corporal Craige, who was responsible for the defendant's participation in the Program. Further, on the same day of October 6, the defendant failed to report to his job at the Slidell Animal Shelter. Accordingly, under LSA-R.S. 15:708(D)(3), the defendant failed to report to the program, which constituted simple escape. See LSA-R.S. 14:110(A)(2).

The jury heard the testimony and viewed the evidence presented to it at trial and found the defendant guilty. It is clear from the finding of guilt that the jury believed Corporal Craige's version of events over the defendant's version that he waited outside of Corporal Craige's office, but she never showed up. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. 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. 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. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1st Cir. 1985).

After a thorough review of the record, we find that the evidence supports the jury's 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 simple escape. See **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). These counseled assignments of error are without merit.

PRO SE ASSIGNMENT OF ERROR

In his pro se assignment of error, the defendant argues that he is entitled to a correction of an illegal sentence. The defendant asserts that he has only one conviction in 1994 "making [him] uneligible [sic] for a multi bill." He further states that in 2001, he was arrested for possession of a firearm, but not convicted of the charge. He further claims he was not **Boykinized** at the "alleged hearing."

At sentencing in the instant matter, the defendant admitted to the allegations in the habitual-offender bill of information and was adjudicated a third-felony habitual offender. As such, the State was not required to submit, and did not submit, any documentation into the record to prove the defendant's status as a habitual offender. There is no evidence, therefore, in the appellate record for this court to review regarding the defendant's illegal sentence claim. The pro se assignment of error is without merit.

CONVICTIONS, HABITUAL-OFFENDER ADJUDICATION, AND SENTENCES AFFIRMED.