

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 2135

STATE OF LOUISIANA

VERSUS

LYDEL JAMES SMITH

Judgment Rendered: May 4, 2007

On Appeal from the Thirty-Second Judicial District Court
In and For the Parish of Terrebonne
State of Louisiana
Docket No. 452,850

Honorable John R. Walker, Judge Presiding

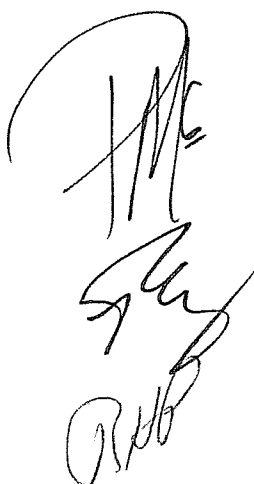
Ellen Daigle Doskey
Barry P. Vice
Assistant District Attorneys
Houma, LA

Counsel for Appellee
State of Louisiana

Prentice L. White
Louisiana Appellate Project
Baton Rouge, LA

Counsel for Defendant/Appellant
Lydel James Smith

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.



McCLENDON, J.

Defendant, Lydel James Smith, was charged by bill of information with one count of simple escape, a violation of LSA-R.S. 14:110(A)(1). Defendant pled not guilty and was tried before a jury. The jury determined defendant was guilty as charged. The trial court sentenced defendant to serve a term of four years at hard labor, with the sentence to be served consecutive to defendant's sentence for simple burglary.¹

After reviewing defendant's assignment of error and the record, we affirm his conviction and sentence.

FACTS

On March 18, 2005, Sean Reilly, a Terrebonne Parish Correctional Officer, reported for work at the Ashland Jail in Houma, Louisiana at approximately 5:30 a.m. Reilly was directed to report to Chabert General Medical Center Room 4429 to sit with defendant until a shift change or defendant's release from the hospital. According to Reilly, when he arrived, he spoke with the deputy he was relieving for several minutes before the deputy departed. At the time, defendant was shackled to the hospital bed with a leg iron and was dressed in orange prison pants.

Reilly spoke to defendant for several minutes, and then a doctor came into the room. The doctor explained to defendant that he would be discharged later that day. After the doctor left, defendant asked Reilly if he could use the bathroom. Reilly unshackled the leg iron and placed it on defendant's other leg. Reilly admitted at trial that he did not "double-lock" the leg irons. Double locking a leg iron prevents the lock from being picked.

¹ Defendant's appeal of his simple burglary conviction is addressed in **State v. Smith**, 2006-2081 (La.App. 1 Cir. 5/4/07) (unpublished) released this same date.

Defendant went into the bathroom and closed the door.² Sometime later, one of the nurses told Reilly that she had seen defendant going down the hallway. After discovering the bathroom door in defendant's room was locked, Reilly summoned a nurse to open the door. When the bathroom door was opened, defendant was not in it. A pair of leg irons was on the floor and one of the ceiling panels was ajar. Reilly checked several adjacent rooms and found an orange pair of prison pants in the bathroom of Room 4433. This bathroom also had broken ceiling tiles.

Reilly went downstairs to find hospital security but was unsuccessful. He then informed his supervisor of what had occurred and was instructed to secure the two hospital rooms and wait for more police. Reilly specifically denied that he allowed defendant to leave the room, or that he threatened or cursed at defendant or challenged defendant to a fight.

Deputy Dallas Bookenberger, a K-9 handler for the Terrebonne Parish Sheriff's Office, arrived at the hospital to participate in the search for defendant. His K-9, Rambo, trained in tracking operations, accompanied him. When Deputy Bookenberger arrived at the scene, Lieutenant Herbert Fitch directed him to the area where defendant was seen. Rambo began tracking defendant in the general direction of a subdivision on Nixon Drive, which was located across Industrial Boulevard from the hospital. Rambo tracked along the right side of a cul-de-sac and entered the backyard of a residence located at 2220 Nixon Drive. Lieutenant Fitch noticed a rollaway trash can next to the residence and opened the lid. Inside the trash can, he found defendant, who was completely naked. Defendant was taken back into custody.

² Reilly admitted that he initially made some misstatements to the police, including telling them that defendant had left a six to eight-inch crack in the bathroom door when he was using it. Reilly stated he was concerned about his job at the time. At the time of trial, Reilly was no longer employed by the Sheriff's Office.

At trial, the state also introduced pictures of ceiling tiles in the bathroom of Room 4433, the room across the hall from defendant's room, that were broken.

Defendant testified at trial. Defendant claimed that as soon as Reilly arrived that morning, Reilly exhibited an "attitude" towards him. After a verbal argument, defendant claimed Reilly removed his shackles and told him that he could leave if he could "whip" him. Defendant claimed Reilly threatened him and in order to avoid a fight, he left the room. Defendant denied that he escaped, but claimed he was given the opportunity to put himself in physical harm or leave, and he chose to leave. Defendant further denied that he was wearing orange prison pants at any time that morning.

SUFFICIENCY OF THE EVIDENCE

In defendant's sole assignment of error, he argues that the evidence is insufficient to support his conviction. Defendant specifically asserts that the state's primary witness, Reilly, in order to protect himself, repeatedly lied to the investigating officers about how defendant supposedly escaped from the hospital.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the state proved the essential elements of the crime. See LSA-C.Cr.P. art. 821. The standard of review of **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), 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, in order to convict, the fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. **State v. Nevers**, 621

So.2d 1108, 1116 (La.App. 1 Cir.), writ denied, 617 So.2d 906 (La. 1993). Ultimately, all evidence, both direct and circumstantial, must be sufficient under **Jackson** to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt. **State v. Shanks**, 97-1885, pp. 3-4 (La.App. 1 Cir. 6/29/98), 715 So.2d 157, 159.

When a case involves circumstantial evidence, and the jury 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 which raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984).

This standard of review, in particular the requirement that the evidence be viewed in the light most favorable to the prosecution, obliges the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. **State v. Mussall**, 523 So.2d 1305, 1308-11 (La. 1988). Thus, the reviewing court is not permitted to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. See **State v. Burge**, 515 So.2d 494, 505 (La.App. 1 Cir. 1987), writ denied, 532 So.2d 112 (La. 1988). This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. See **State v. Houston**, 98-2658, p. 5 (La.App. 1 Cir. 9/24/99), 754 So.2d 256, 259.

Simple escape is defined, in pertinent part, in LSA-R.S. 14:110(A)(1) 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.

Viewing the evidence in the light most favorable to the state, we find the evidence supports defendant's conviction for simple escape. The state presented evidence that shortly after being informed that he would be discharged from the hospital, defendant sought permission to use the bathroom, thereby separating himself from his guard. Once inside the bathroom, which he was able to lock, defendant took advantage of Reilly's failure to double-lock the leg irons, crawled through the ceiling tiles and descended into another bathroom. Defendant then shed his orange prison pants and fled the hospital. Despite his testimony that Reilly had threatened him, at no time did defendant report this fear to anyone at the hospital. Rather than reporting this alleged threat to anyone else, defendant fled and hid in a trash can in a nearby subdivision until captured.

The evidence sufficiently supports the defendant's conviction for simple escape. This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.