NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 1124

STATE OF LOUISIANA

VERSUS

CHRIS SMITH

Judgment Rendered: February 11, 2011

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On Appeal from the
17th Judicial District Court,
In and for the Parish of Lafourche,
State of Louisiana
Trial Court No. 439,805

Honorable, Jerome J. Barbera, III, Judge Presiding

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BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J

The defendant, Chris Smith, was charged by bill of information with distribution of cocaine, in violation of LSA-R.S. 40:967A(1). He pled not guilty and elected trial by jury. After a jury trial, the defendant was found guilty as charged. The trial court denied the defendant's motions for post verdict judgment of acquittal and for a new trial. The defendant received a sentence of eight years at hard labor, with the first two years without benefit of probation, parole, or suspension of sentence. Subsequently, the defendant was granted an out-of-time appeal. Herein he alleges, as his only assignment of error, that the evidence was insufficient to support the instant conviction. We affirm the conviction and sentence.

FACTS

On the afternoon of May 25, 2006, the defendant sold crack cocaine to a confidential informant (C.I.). The transaction occurred outside a house located at 909 Lagarde Street in Thibodaux, Louisiana. Although the C.I. was not present at the instant trial, the facts of the offense were established through the trial testimony of the two Thibodaux police officers who were conducting surveillance.

Thibodaux Police Narcotics Detective T.J. Crochet testified that he had been a police officer for nearly fifteen years, including the last seven and one-half years at the Thibodaux Police Department. He had been working in narcotics for about five years. In May 2006, a C.I. contacted Det. Crochet and stated he could purchase crack cocaine from a subject selling drugs in the 900 block of Lagarde Street. When Det. Crochet met with the C.I., the C.I. related his information and gave the name of Chris Smith. Det. Crochet specifically testified that the C.I.'s information corroborated phone calls that he and his partner, Sergeant Rodrigue, had received from concerned citizens about illegal drug activity in the 900 block of Lagarde Street. He stated that 909 Lagarde had been mentioned as a "hot spot" for such activity. Det. Crochet was

familiar with the defendant, so they decided to arrange a controlled buy of crack cocaine from the defendant. Because Det. Crochet's partner, Sgt. Rodrigue, was unavailable, Det. Vernell Coleman accompanied them on the controlled buy. On May 25, at approximately 2:30 p.m., the officers let the C.I., who was wearing an audio-transmitting device, out of the car a short distance away, and then followed him as he walked to 909 Lagarde. They parked down the street close enough to maintain visual surveillance on the C.I. Det. Crochet estimated the distance at approximately twenty-five yards. The detectives observed as the defendant walked out of 909 Lagarde and met a subject identified as Rodney Guidroz. The C.I. approached the two men, and asked to purchase crack cocaine and marijuana. The C.I. purchased $30 worth of crack cocaine from the defendant, followed shortly thereafter by a $10 purchase of marijuana from Guidroz. After the C.I. returned, he gave two rocks of crack cocaine and a small bag of marijuana to Det. Crochet. Det. Crochet indicated that he never lost sight of the C.I. He testified that at the end of this investigation, he was "a hundred percent confident" that the defendant sold crack cocaine to the C.I.

On cross-examination, Det. Crochet admitted that the house at 909 Lagarde Street was vacant when he executed the search warrant shortly after the instant offense. He also testified that he obtained an arrest warrant for the defendant and that the defendant was arrested in Texas.

Vernell Coleman testified that, at the time of the trial, he was employed as a barber. However, he had been employed by the Thibodaux Police Department from 2000 to 2007. At the time of the instant offense, he was a detective in Criminal Investigations. He indicated that he became involved in the instant case as backup when Det. Crochet called him at his desk and asked for help with a drug buy. Coleman gave testimony about the drug transaction which substantially corroborated

Det. Crochet's testimony. Coleman testified that he knew both the defendant and Guidroz prior to the instant offense. When asked if he had any doubt in his mind that he had witnessed the defendant make a deal with the C.I. on Lagarde Street on May 25, 2006, Coleman replied: "No doubt."

The defendant did not testify at the trial. However, his mother, Barbara Ann Baker, presented alibi testimony. Ms. Baker testified that the defendant was living in an apartment in Texas in May 2006. He lived with his girlfriend and children. Ms. Baker testified that she had been to Texas to visit the defendant about six times. He did not own a vehicle, so when he came to visit her in Thibodaux, he rode a bus and she picked him up. She recalled that the defendant returned to Thibodaux to pay a fine that was due by May 18, 2006. Ms. Baker testified that she drove the defendant back to the bus station on May 23, 2006. She saw him get on a bus bound for Leonard, Texas. She stated the defendant was not present in Thibodaux on May 25. She further explained that if he had been in Thibodaux on that date she would have known because he stayed at her house.

On cross-examination, however, Ms. Baker admitted that the defendant's girlfriend had a car and that the girlfriend would sometimes bring the defendant back and forth from Texas. Ms. Baker testified that she did not see the defendant in Thibodaux on May 25, 2006, but she knew that he was in Texas and it was not possible that he had returned.

ASSIGNMENT OF ERROR

In this assignment of error, the defendant contends that the evidence was insufficient to support his conviction. 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, a rational trier of fact could conclude that the State proved the essential elements of the crime and the defendant's identity as the

perpetrator of that crime beyond a reasonable doubt. See LSA-C.Cr.P. art. 821; **State v. Lofton**, 96-1429 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. The **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), 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. **State v. Riley**, 91-2132 (La. App. 1st Cir. 5/20/94), 637 So.2d 758, 762.

In his brief to this Court, the defendant does not contest the fact that a drug transaction occurred. Instead, noting his alibi defense that he was in Texas when the crime occurred, he raises the issue of mistaken identification. Where the key issue is the defendant's identity as the perpetrator, rather than whether or not the crime was committed, the State is required to negate any reasonable probability of misidentification. **State v. Richardson**, 459 So.2d 31, 38 (La. App. 1st Cir. 1984). Positive identification by only one witness may be sufficient to support the defendant's conviction. **State v. Royal**, 527 So.2d 1083, 1086 (La. App. 1st Cir.), writ denied, 533 So.2d 15 (La. 1988). The uncontradicted identification testimony of an undercover narcotics officer is sufficient to support the defendant's conviction of distribution of cocaine. See **State v. Pittman**, 486 So.2d 895, 897 (La. App. 1st Cir. 1986).

In the instant case, although the C.I. did not testify[1] and was never identified, both detectives identified the defendant in court as the person from whom the C.I. purchased cocaine during this particular drug transaction. This direct, uncontroverted evidence identifying the defendant as the perpetrator of this offense was sufficient to

[1] Det. Crochet explained that the identity of the C.I. was not revealed because he was actively assisting the Thibodaux Police Department with other cases.

negate any reasonable probability of misidentification. The instant guilty verdict indicates that the jury accepted the testimony of the State's witnesses and rejected the alibi defense. Even accepting as true the testimony of Ms. Baker that she witnessed her son get on the bus for Texas on May 23, the jury might well have concluded the defendant had returned to Thibodaux by the afternoon of May 25 when the detectives witnessed him sell the cocaine to the C.I. As the trier of fact, the jury was free to accept or reject, in whole or in part, the testimony of any witness. **State v. Richardson,** 459 So.2d at 38. Furthermore, 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 at 38. Moreover, when a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

After a careful review of the record, we believe that a rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have concluded that the State proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant committed the offense of distribution of cocaine. We cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 662. Furthermore, an appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder 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).

This assignment of error is meritless.

CONVICTION AND SENTENCE AFFIRMED.