NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 0001

STATE OF LOUISIANA

VERSUS

CURTIS HAYNES

Judgment Rendered: June 11, 2010

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa, Louisiana
Trial Court Number 603,374

Honorable Wayne R. Chutz, Judge

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BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WELCH, J.

The defendant, Curtis Haynes, was charged by grand jury indictment with one count of distribution of cocaine, a violation of La. R.S. 40:967(A)(1). The defendant pled not guilty. Following a trial by jury, the defendant was found guilty of the responsive verdict of possession of cocaine, a violation of La. R.S. 40:967(C). The trial court subsequently sentenced the defendant to a term of five years at hard labor and ordered him to pay a fine of $5,000.00.

The defendant appeals, arguing the evidence is insufficient to support the verdict of possession of cocaine. We affirm the defendant's conviction and sentence.

FACTS

In the fall of 2005, agents with the Drug Enforcement Agency (DEA) obtained information from a confidential informant (CI) that the defendant was interested in distributing cocaine in Tangipahoa Parish. After taking steps to corroborate the information provided by the CI, Agent Chad Scott instructed the CI to contact the defendant. Several telephone conversations between the CI and the defendant were monitored and recorded by DEA agents. Based on these conversations, the agents were aware the CI had arranged to purchase half a kilogram of cocaine from the defendant for the price of $11,000.00.

Agent Scott set up a buy-bust operation that would occur when the defendant delivered the cocaine to the CI. Agent Scott explained that during a buy-bust operation, the target of the investigation is arrested immediately after transferring the contraband. Because the agents planned to arrest the defendant immediately after the transfer of cocaine to the CI, and the difficulty in obtaining the significant amount of cash necessary for the transaction, the CI was not given any cash for the transaction.

The buy-bust operation was set for November 7, 2005, in the parking lot of a

Winn Dixie grocery store in Ponchatoula. Agents Scott and Martin waited in an unmarked unit with tinted windows and observed the defendant's vehicle drive into the parking lot and park close to them. The CI, whose vehicle and person had been searched prior to being sent to the meeting point, arrived shortly thereafter. The CI also had been equipped with audio-monitoring equipment. The defendant was waiting outside of his vehicle near the trunk when the CI pulled up next to him. Both men got into the defendant's vehicle and Agents Martin and Scott observed the defendant reach into the rear of his vehicle and hand the CI a package. The CI exited the vehicle and gave the code word for the arrest to begin as he got into his vehicle and drove away. The defendant was arrested by the agents on the scene, while another agent followed the CI and obtained the package the CI received from the defendant. The contents of the package were later tested and weighed at a DEA laboratory, and the results indicated the package contained a total of 509.2 grams of cocaine.

At trial, the defendant testified that he met the CI in 2005 and they remained in contact because the CI led the defendant to believe he could help him obtain work though FEMA during the clean-up of New Orleans. The defendant explained he was in the construction business and had heavy trucks that could be used by FEMA. The defendant claimed he never discussed a transaction involving cocaine with the CI and claimed the CI asked him to pick up a package in Houston since the defendant was attending a football game days prior to his arrest. The defendant testified the CI provided him with contact information from someone in Houston and that the defendant met that person at a shopping mall to pick up the package. The defendant stated he never questioned what was in the package and did not know who the person he met was.

On rebuttal, the State called Charles Legard as a witness. Legard testified that he was the CI involved in the present case. According to Legard, his

involvement with the DEA began in late 2003 after he was arrested for drug trafficking. In exchange for leniency regarding his own sentence, Legard agreed to cooperate with Agent Scott. Legard testified he had assisted the DEA in approximately thirty-nine cases involving drug activity.

Legard acknowledged that he and the defendant never used the word "cocaine" in their conversations, but instead used coded street terms to negotiate the transaction. As an example of their code, Legard explained that such innocuous terms as "cousin" or "grandmother" indicated that things were safe while discussions involving "weather" were used to describe the situation. For instance, if they spoke of bad weather, it meant nothing was going to happen as far as the transaction. Legard stated that the code for the price of the transaction was referred to as the "speed limit," and in this case the recording reveals the defendant twice referencing the speed limit, which was a code for the price of the transaction being two times fifty-five hundred dollars ($11,000.00) as the price for the half kilogram of cocaine. The tapes also included references made by the defendant to "down the middle" which Legard explained was a code phrase for the amount of cocaine to be sold, which was half a kilogram. Legard denied he ever told the defendant to go to Houston to retrieve a package for him, but described his relationship with the defendant as the defendant being a supplier and Legard only purchasing the supplied drugs.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant contends the evidence is insufficient to support his conviction for possession of cocaine. Specifically, the defendant contends that the recorded conversations do not reflect a drug transaction was being planned. The defendant claims he was unaware the contents of the package were cocaine and that no evidence was presented to show he requested payment when he delivered this package to the CI.

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 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. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); see also La. C.Cr.P. art. 821; **State v. Wright**, 98-0601, p. 2 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157 & 2000-0895 (La. 11/17/00), 773 So.2d 732. The **Jackson** standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that, in order to convict, the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 2002-1492, p. 5 (La. App. 1st Cir. 2/14/03), 845 So.2d 416, 420. 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).

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, pp. 1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

The appellate court will not assess the credibility of witnesses or the relative weight of the evidence to overturn the determination of guilt by the fact finder. **State v. Polkey**, 529 So.2d 474, 476 (La. App. 1st Cir. 1988), writ denied, 536 So.2d 1233 (La. 1989). As the trier of fact, the jury is free to accept or reject, in

whole or in part, the testimony of any witness. Where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of witnesses, the question is one of the weight of the evidence, not its sufficiency. **State v. Young**, 99-1264, p. 10 (La. App. 1st Cir. 3/31/00), 764 So.2d 998, 1006. A determination of the weight to be given evidence is a question of fact for the trier of fact and is not subject to appellate review. **State v. Payne**, 540 So.2d 520, 524 (La. App. 1 Cir.), writ denied, 546 So.2d 169 (La. 1989).

To support a conviction of possession of a controlled dangerous substance, the State must prove that the defendant was in possession of the illegal drug and that he knowingly or intentionally possessed the drug. Guilty knowledge therefore is an essential element of the crime of possession. **State v. Harris**, 94-0696, pp. 3-4 (La. App. 1st Cir. 6/23/95), 657 So.2d 1072, 1074-1075, writ denied, 95-2046 (La. 11/13/95), 662 So.2d 477.

The defendant does not dispute that the package he gave to the CI contained cocaine. What is at issue is the defendant's guilty knowledge. In the present case, the jury was presented with two theories of why the defendant had a half kilo of cocaine that he was delivering to the CI in his vehicle. The State's theory was that the defendant was selling the cocaine to the CI, while the defense theory was that the defendant was merely delivering a package to the CI and was unaware of the contents. The State supported its theory with recordings of conversations between the CI and the defendant, where the CI explained how they never used the word "cocaine" in conversation, but rather used code words to describe the transaction, which was the sale of half a kilo of cocaine for $11,000.00. The State also introduced evidence indicating the package was covered in mustard and wrapped in duct tape. Moreover, the State presented testimony from Agent Scott that this charge was not pursued in federal court because of the ongoing involvement of the

CI in other cases, not due to lack of evidence.

The defense also pointed to the fact that the word "cocaine" was never used in the recorded conversations and that at no time after the defendant turned the package over to the CI did he request payment. However, the State presented testimony that in this type of buy-bust operation, as soon as the CI gained possession of the drugs, the agents would arrest the defendant. As the State showed, once the CI obtained the package, he exited the vehicle and the agents emerged and arrested the defendant. Thus, it was reasonable to conclude under the circumstances that there might not have been enough time for the defendant to ask for the money.

After a thorough review of the record, we find the evidence supports the jury's verdict of guilty of possession of cocaine. The jury verdict indicates that it accepted the testimony of the State's witnesses and rejected the testimony of the defendant. 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 cocaine.

This assignment of error lacks merit.

CONCLUSION

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.