

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 1425

STATE OF LOUISIANA

VERSUS

JERMAINE CHRISTOPHER BROWN

Judgment Rendered: March 23, 2012

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On Appeal from the
21st Judicial District Court,
In and for the Parish of Tangipahoa,
State of Louisiana
Trial Court No. 803778

Honorable M. Douglas Hughes, Judge Presiding

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BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

TMH
APJ
RPD

HIGGINBOTHAM, J.

Defendant, Jermaine Christopher Brown, was charged by bill of information with armed robbery, in violation of La. R.S. 14:64 (Count 1), and aggravated flight from an officer, in violation of La. R.S. 14:108.1(C) (Count 2). After a trial by jury, defendant was found guilty of the responsive offenses of first degree robbery, a violation of La. R.S. 14:64.1, and flight from an officer, a violation of La. R.S. 14:108.1(A). For his first degree robbery conviction, defendant was sentenced to forty years at hard labor, without benefit of parole, probation, or suspension of sentence. For his flight from an officer conviction, defendant was sentenced to six months in the parish jail. These sentences were ordered to run concurrently with each other. Defendant now appeals, arguing as his only assignment of error that there was insufficient evidence to support his convictions. For the reasons below, we affirm defendant's convictions and sentences.

FACTS

Shortly after 4:00 a.m. on the morning of April 26, 2008, a black male wearing a red, hooded jacket and a black-and-white bandana entered a Circle K convenience store on Pine Street in Ponchatoula. According to the store clerk, Melvin Lavigne, the masked individual waved a "Beretta type" pistol at him and advised him to listen and be still so that he would not get hurt. The masked individual approached the cash registers and seized from Mr. Lavigne some bills of different denominations that he had been counting. The perpetrator then entered the manager's office, but he soon returned to the cash registers near Mr. Lavigne, where he retrieved both loose change and some rolls of change. The perpetrator also seized money from Mr. Lavigne's wallet and, immediately before exiting, instructed Mr. Lavigne to give him two packs of Newport cigarettes. Mr. Lavigne observed the perpetrator exit the Circle K and travel on foot in a westerly direction, and he called the police once the perpetrator was out of sight.

Detective Randy Hils of the Ponchatoula Police Department received a dispatch of the robbery within minutes after the incident occurred. Detective Hils was on West Pine Street near the Circle K, so he began to canvass the area in an attempt to locate the suspect. As Detective Hils drove down East Oak Street, one block south of the Circle K, he observed a vehicle traveling at a high rate of speed turn onto West Street, which is a dead end. Detective Hils turned his own vehicle onto West Street and observed an SUV parked on the side of the road, partially obstructing the roadway. As Detective Hils passed the parked SUV, he illuminated it with his alley lights and saw a hand on top of the steering wheel. Detective Hils used a driveway to maneuver his vehicle so that it faced the SUV, and he illuminated the SUV with his spotlight, allowing him to see the face of the vehicle's driver. As Detective Hils exited his vehicle and attempted to approach the SUV, the driver of the SUV drove away and attempted to elude Detective Hils and another police officer, who followed in pursuit. After a vehicle chase that lasted approximately two minutes, the driver of the SUV lost control near the intersection of Bernice and Branch Streets, causing the vehicle to land in a shallow ditch. The driver of the vehicle fled on foot, and he was unable to be located by the officers.

The officers determined that a Kathryn Heath was the registered owner of the SUV from its license plate. After the vehicle was towed and searched, the officers recovered a bundle of cash, a B.B. pistol, a red jacket with an attached hood, two bandanas (both dark with white designs), some rolls of coins with the name "Lois Jackson" written on them, a pack of Newport cigarettes, and some photographs. Additionally, the officers recovered a traffic ticket with defendant's name and information on it. The officers ran defendant's name through a national database and found a picture of him, from which Detective Hils identified defendant as the person he had seen driving the SUV. As a result, defendant was

later arrested and charged with armed robbery and aggravated flight from an officer.

ASSIGNMENT OF ERROR

In his only assignment of error, defendant argues that the evidence presented at trial was insufficient to support his convictions for first degree robbery and flight from an officer. Specifically, defendant argues that the evidence presented at trial failed to prove, beyond a reasonable doubt, his identity as the individual who entered the Circle K, robbed Melvin Lavigne, and fled from Detective Hils in the SUV. Defendant argues that his convictions on these offenses cannot stand because the evidence was insufficient to negate the probability of misidentification.

The standard for appellate review of the sufficiency of evidence is whether, after 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 La. Code Crim. P. art. 821(B); **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988). The **Jackson** standard of review, incorporated in La. Code Crim. P art. 821(B), 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 fact-finder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Hendon**, 94-0516 (La. App. 1st Cir. 4/7/95), 654 So.2d 447, 449. Where the key issue in a case is the defendant's identity as the perpetrator, rather than whether the crime was committed, the state is required to negate any reasonable probability of misidentification in order to meet its burden of proof. **State v. Millien**, 2002-1006 (La. App. 1st Cir. 2/14/03), 845 So.2d 506, 509. However, positive identification by only one witness may be

sufficient to support a defendant's conviction. **State v. Coates**, 2000-1013 (La. App. 1st Cir. 12/22/00), 774 So.2d 1223, 1225.

In the instant case, the defendant does not dispute that the robbery was committed against Mr. Lavigne or that someone fled from Detective Hils. Rather, he challenges only his identification by Detective Hils as the driver of the SUV, and whether the circumstantial evidence presented at trial was sufficient to link him to the Circle K robbery.¹

The record reflects that during defendant's trial, when asked if he could identify the person who robbed him at Circle K, Mr. Lavigne stated that he could not see the individual's face, but that he did observe the perpetrator to be a black male, which are characteristics consistent with defendant's race and sex. Detective Hils testified unequivocally at trial that defendant was the person he had observed in the SUV. Detective Hils stated that defendant was illuminated by the police vehicle's spotlight for approximately fifteen seconds before he drove away and fled the scene. Viewed in the light most favorable to the prosecution, Detective Hils's testimony alone is sufficient to support a finding that defendant was the driver of the SUV.

Next, we must address whether the circumstantial evidence presented at trial was sufficient to support a finding that defendant committed the Circle K robbery. Detective Hils testified at trial that he had participated in an interview of Kathryn Heath, the registered owner of the SUV, wherein she stated that she had gone to bed with defendant on April 25, 2008, and woken up to find that both defendant and her vehicle were missing. Detective Hils also testified that Ms. Heath told him that defendant smokes Newport cigarettes. Mr. Lavigne testified that the perpetrator asked for two packs of Newport cigarettes before leaving the Circle K;

¹ Since defendant has only alleged that the state failed to prove his identity as the perpetrator of the crimes, we need not address the sufficiency of the evidence with respect to the statutory elements of first degree robbery and flight from an officer.

an unopened pack of the same brand of cigarettes was found in the SUV. The physical evidence recovered from the SUV driven by defendant also included a red, hooded jacket and black-and-white bandana consistent with those worn by the perpetrator of the Circle K robbery. Additionally, the wad of cash found in the SUV was consistent with the cash being counted by, and stolen from the wallet of, Mr. Lavigne. Further, the rolls of coins seized from the SUV with the name "Lois Jackson" written on them were consistent with additional rolls of coins found at the Circle K which also had "Lois Jackson" written on them. Finally, the officers found a traffic citation with defendant's information on it, as well as two photographs in which defendant appeared. The only inconsistency between the items recovered from the SUV and Mr. Lavigne's description of the perpetrator regarded the B.B. pistol, which Mr. Lavigne said was not the weapon used in the robbery.

Defendant did not testify at trial. Rather, defendant's trial strategy centered upon attempting to discredit the officers' versions of their subsequent investigations into this matter by calling his own witnesses who testified differently than the officers had regarding the detention and questioning of Kathryn Heath. Most significantly, Ms. Heath testified that defendant had not spent the night before the robbery with her, as Detective Hils had testified she told him, and that she had immediately requested an attorney and did not answer any of the officers' questions.

Considering the above evidence in the light most favorable to the prosecution, we are convinced that a rational trier of fact could have concluded, beyond a reasonable doubt, that the evidence was sufficient to negate any reasonable probability of misidentification and that defendant was the perpetrator. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact-finder's determination of guilt. The trier of fact may accept or

reject, in whole or in part, the testimony of any witness. **State v. Montecino**, 2004-0892 (La. App. 1st Cir. 2/11/05), 906 So.2d 450, 453, writ denied, 2005-0717 (La. 6/3/05), 903 So.2d 456. In this case, the jury clearly found the testimony of the state's witnesses to be more credible than that presented by defendant's witnesses. Defendant's only hypothesis of innocence offered at trial was that he was not the perpetrator, but Detective Hils's testimony established that defendant was the driver of the SUV, and the evidence recovered from the SUV is consistent with the instrumentalities used in, and the fruits of, the Circle K robbery. 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 which raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). In reviewing the evidence, 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, a reviewing 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). We conclude that the jury rationally rejected defendant's hypothesis of innocence.

This assignment of error is without merit.

For the foregoing reasons, defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.