

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2012 KA 0020**

**STATE OF LOUISIANA**

**VERSUS**

**FLOYD T. EASLON, III**

*Judgment Rendered:* SEP 24 2012

\*\*\*\*\*

**Appealed from the  
22nd Judicial District Court  
In and for the Parish of St. Tammany  
State of Louisiana  
Case No. 498382**

**The Honorable Allison H. Penzato, Judge Presiding**

\*\*\*\*\*

**Walter P. Reed  
District Attorney  
Covington, Louisiana**

**Counsel for Appellee  
State of Louisiana**

**Kathryn W. Landry  
Special Appeals Counsel  
Baton Rouge, Louisiana**

**Prentice L. White  
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellant  
Floyd T. Easlon, III**

\*\*\*\*\*

**BEFORE: CARTER, C.J., GUIDRY, AND GAIDRY, JJ.**

**GAIDRY, J.**

The defendant, Floyd T. Easlon, III, was charged by bill of information with one count of distribution of a Schedule IV controlled dangerous substance, to-wit: alprazolam, a violation of La. R.S. 40:969(A)(1). The defendant pled not guilty and, following a jury trial, was found guilty as charged. After denying the defendant's motions for a new trial and for post-verdict judgment of acquittal, the trial court sentenced the defendant to seven (7) years at hard labor. The defendant moved for reconsideration of sentence, which was denied. The defendant now appeals, arguing two assignments of error. We affirm the conviction and sentence.

**FACTS**

Sergeant Brandy Toups, a communications supervisor in the 911 division of the St. Tammany Parish Sheriff's Office (STPSO), was working as an undercover narcotics agent on April 22, 2010. At trial, Sgt. Toups testified that on that day the narcotics office set up an operation for her to work in an undercover capacity to purchase prescription medication from a subject named "Tommy." Her supervisor was Detective Bill Johnson, the STPSO narcotics detective who was the case officer on the matter. Det. Johnson testified at trial that he had received information from a confidential informant that a person named Tommy was selling prescription medication in the Slidell area. The confidential informant said he could introduce an undercover officer to Tommy to attempt to purchase narcotics from him. Det. Johnson arranged for Sgt. Toups to call Tommy while he monitored the call, which was recorded. In that phone call, Sgt. Toups and Tommy arranged to meet later that day at the Grand Theater in Slidell for her to purchase eight Xanax tablets (alprazolam). No price was discussed over the phone, and Sgt. Toups admitted that the word "Xanax" was never

mentioned, though she explained that the term "bars" was used instead to refer to the Xanax tablets.

After the phone call, Det. Johnson equipped Sgt. Toups with a KEL monitoring device which would record her conversation with Tommy and thereby allow other police officers to monitor the transaction for her safety, as well as record it for evidentiary purposes. When Sgt. Toups drove to meet Tommy at the Grand Theater, four other officers went to that location as well, including Det. Johnson. Det. Johnson parked in the theater parking lot about twenty yards away from Sgt. Toups's vehicle in order to observe the transaction from afar.

Sgt. Toups testified that when she arrived at the theater, Tommy walked over to her vehicle and, as it was daytime, she was able to get a good look at him. Tommy had the Xanax tablets for Sgt. Toups, and she asked him how much he wanted for them. Tommy told her forty dollars, which Sgt. Toups paid to him with money provided by Det. Johnson. Sgt. Toups and Tommy talked about purchasing drugs again at a later date and then she left. At the trial, Sgt. Toups identified "Tommy" as the defendant.

From his vantage point in the parking lot, Det. Johnson was the closest officer to Sgt. Toups's vehicle. Det. Johnson testified that he saw someone approach Sgt. Toups's vehicle and go to the driver's-side window, and that he could "somewhat" identify the person as a white male with a medium complexion with dark-colored hair and facial hair. Det. Johnson did not see the actual hand-to-hand transaction. Det. Johnson also testified that although the STPSO has cameras, he did not even attempt to photograph the man as he stood by Sgt. Toups's vehicle. Once the transaction was complete, Det. Johnson observed the man walk to and briefly enter a maroon-colored truck before returning into the theater. Det. Johnson

recorded the truck's license plate number, which came back as registered to a Floyd Easlon, who the detective identified in court as the defendant.

Once Sgt. Toups had the tablets, she put them in the center console of her vehicle and did not count them immediately. Upon meeting with Det. Johnson at a pre-arranged location after the transaction, it was discovered that Sgt. Toups received seven tablets, instead of eight, though Det. Johnson explained that it is not unusual to be "shorted" in a drug transaction. Sgt. Toups turned the seven tablets over to Det. Johnson, who packaged and submitted them to the STPSO Crime Laboratory, which confirmed that the tablets were alprazolam. Det. Johnson also showed Sgt. Toups an affidavit of identification that he had created, which had only one person's photo on it – the defendant's. The affidavit was prepared in order for Sgt. Toups to identify the person who sold her illegal drugs. Sgt. Toups was not shown any other photographs. Det. Johnson recalled that he showed the affidavit to Sgt. Toups probably within two hours of the transaction, and Sgt. Toups thought that it was within one hour. Sgt. Toups identified the person in the photograph as the person who had just sold her Xanax, and testified at trial that she had "no doubt" in her mind that it was the same person. She said that in the past she had been shown affidavits of information where the person pictured was not the person she had dealt with, but that in this case, she was absolutely sure that it was the same person. Det. Johnson also testified that Sgt. Toups did not display any hesitancy in confirming that the man in the photograph was the same man who sold her Xanax at the theater, that Det. Johnson did not tell her who the man was, and that she would not have been punished if she had not identified the man as the defendant.

## ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, the defendant argues that the State failed to prove beyond a reasonable doubt his identity as the perpetrator of the instant offense. The defendant maintains that, generally, in a drug transaction orchestrated by law enforcement, not only does the undercover agent wear a KEL device, but several officers monitor the agent with recording devices in order to capture the event by visual and auditory means. The defendant argues that, in this case, while such officers were on hand to protect their colleague and help identify the person selling the drugs, no pictures or video were taken. In addition, instead of allowing Sgt. Toups to identify the seller on her own, Det. Johnson told her the person's identity. The defendant contends that from that point forward, Sgt. Toups committed herself to identifying the defendant as the person who sold alprazolam to her, and that she was especially motivated to do so in order to be respected by her colleagues in the narcotics department.

The standard of review for the sufficiency of 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 conclude that the State proved the essential elements of the crime and the defendant's identity 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; *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* standard of review incorporated in Article 821 is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. *State v. Davis*, 2000-2685 (La. App. 1st Cir. 11/9/01), 818 So.2d 76, 79.

Where the key issue is the defendant's identity as the perpetrator of the crime, rather than whether or not the crime was committed, the State is required to negate any reasonable probability of misidentification. *State v. Johnson*, 99-2114 (La. App. 1st Cir. 12/18/00), 800 So.2d 886, 888, writ denied, 2001-0197 (La. 12/7/01), 802 So.2d 641. Positive identification by only one witness may be sufficient to support a conviction. *State v. Davis*, 2001-3033 (La. App. 1st Cir. 6/21/02), 822 So.2d 161, 163. Moreover, it is the factfinder who weighs the respective credibilities of the witnesses, and this Court generally will not second-guess those determinations. *State v. Hughes*, 2005-0992 (La. 11/29/06), 943 So.2d 1047, 1051.

The defendant does not contest that the offense was committed. Rather, he denies that he was the person who sold alprazolam to Sgt. Toups, raising an issue of identity. The State's case largely came down to the testimony of a single witness, Sgt. Toups, who identified the defendant as the man she purchased seven Xanax tablets from on April 22, 2010. Sgt. Toups stated that there was no doubt in her mind regarding this identification, both immediately after the transaction and at the trial. The transaction occurred in the daylight, and the man who sold the Xanax tablets to her was standing at the driver's-side window of her vehicle, where she was able to get a good look at him. Det. Johnson also testified that, while he did not observe the hand-to-hand transaction, he did observe the man from afar, and that he later tracked the license-plate number of the truck that the man got into as belonging to the defendant.

In addition to this testimony, the State introduced into evidence the seven Xanax tablets Sgt. Toups purchased, along with the STPSO Crime Laboratory Scientific Analysis Report stating that the substance was alprazolam. The State introduced and played aloud the audio recording of

the telephone call between Sgt. Toups and a man identified as Tommy setting up the drug transaction, as well as the audio recording of the transaction itself, captured by the KEL device. The defendant did not testify at trial or introduce any other evidence.

At trial and on appeal, the defendant attacks Sgt. Toups's credibility, alleging that she had been persuaded to tailor her testimony to what her supervisor, Det. Johnson, told her. Specifically on appeal, the defendant contends that Sgt. Toups "obviously wanted to advance her career otherwise she would have remained in the communications department of the sheriff's office." The defendant did not raise this specific point in the trial court, though presumably a juror could have contemplated this potential motive. In response to insinuations about her credibility raised by defense counsel, Sgt. Toups testified that she had been shown affidavits of information on past occasions where the person in the photograph was not the same person she purchased drugs from, but that on the occasion involving the defendant, she was absolutely sure that the person in the photograph was the same person who sold drugs to her. In addition, Sgt. Toups testified that if she had had doubts about whether the person in the photograph was the same person who sold her drugs, she would not have identified him as such. Further, Sgt. Toups testified that she did not get paid by the number of arrests that were made. Det. Johnson also testified that Sgt. Toups would not have been punished if she had not identified the defendant as the person in the photograph on the affidavit.

Besides attacking the credibility of the State's main witness, the defendant argues that the lack of photo or video evidence of the transaction raises reasonable doubt. In support of his position, the defendant relies upon *State v. Slocum*, 2001-0207 (La. App. 5th Cir. 6/27/01), 791 So.2d 143,

which involved facts similar to the instant case but, in that matter, the police used video recording of the drug transaction to help prove the identity of the defendant, and instead of a single photograph shown to the undercover officer, a six-photo lineup was used. However, while additional evidence could be helpful to the jury, we note that the State is not required to prove by video recording or photograph that the defendant was the perpetrator, but is only required to prove beyond a reasonable doubt the defendant's identity as the perpetrator. In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. See Davis, 818 So.2d at 80. At trial, Sgt. Toups unequivocally identified the defendant as the person from whom she purchased alprazolam. Where the State presented other evidence to support its case, the lack of video or photographic proof did not by itself create reasonable doubt, but was simply another factor for the jury to weigh in its deliberation.

The defendant also argues that the identification procedure was overly suggestive because Det. Johnson showed Sgt. Toups only one picture, the defendant's, essentially instructing her as to the seller's identity. At the outset, we note that the defendant never filed a motion to suppress the identification and is not arguing on appeal that the identification should not have been admitted into evidence. He only appears to argue that the suggestive nature of the identification procedure created reasonable doubt regarding his identity as the perpetrator and that the jury should have recognized this. The record shows that the defendant argued this suggestive identification issue before the jury. During cross-examination of Sgt. Toups, defense counsel pointed out that she only viewed one picture, and in his closing arguments he specifically argued that the identification procedure



should raise reasonable doubt. "Juries are not so susceptible that they cannot measure intelligently the weight of identification testimony that has some questionable feature." *Manson v. Brathwaite*, 432 U.S. 98, 116, 97 S.Ct. 2243, 2254, 53 L.Ed.2d 140 (1977). In this case, the jury was informed of the method of identification to which they could attach whatever weight they deemed appropriate. Since the defendant's counsel urged the defense of misidentification to the jury, the question of reliability was fully considered. See *State v. Chevalier*, 616 So.2d 834 (La. App. 3rd Cir. 1993).

"Because a determination of the *weight* of the evidence is a question of *fact*, this court has no appellate *jurisdiction* to review it in appeals of criminal cases." *State v. Gordon*, 2001-0236 (La. App. 1st Cir. 2/15/02), 809 So.2d 549, 552, writ denied, 2004-2438 (La. 6/24/05), 904 So.2d 733. On appeal, this Court will not assess the credibility of witnesses or reweigh the evidence to overturn a jury's determination of guilt. See *State v. Hendon*, 94-0516 (La. App. 1st Cir. 4/7/95), 654 So.2d 447, 450. The reviewing court cannot substitute its idea of what the verdict should be for that of the jury. Further, the appellate court is constitutionally precluded from acting as a 'thirteenth juror' in assessing what weight to give evidence in criminal cases; that determination rests solely on the sound discretion of the trier of fact. *State v. Mitchell*, 99-3342 (La. 10/17/00), 772 So.2d 78, 83.

In finding the defendant guilty, the jury had before it evidence that Sgt. Toups was working as a communications supervisor, but had been recruited to work undercover on narcotics investigations. The jury was also told that Sgt. Toups was not paid by the number of arrests she made, nor would she be punished for not identifying the defendant as the man who sold her drugs. They could draw whatever credibility conclusions they wanted from this information, including that Sgt. Toups was so motivated to please

her supervisors that she might intentionally misidentify the defendant. The jury was also aware that no photographs or video recording of the transaction were taken, but they were able to weigh the absence of photographic proof against the eyewitness testimony given by Sgt. Toups. In addition, the jury was informed of the method in which the defendant's photograph was presented to Sgt. Toups, and they could decide whether or not her identification was independent or overly influenced. As the trier of fact, the jury was free to accept or reject, in whole or in part, the testimony of any witness. The guilty verdict returned by the jury indicates that it accepted the State's evidence and rejected the defendant's theory of misidentification. See *State v. Andrews*, 94-0842 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 453. 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. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the jury and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. See *State v. Calloway*, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

After a careful review of the record, we are convinced 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 that the defendant was the person who sold alprazolam to Sgt. Toups on April 22, 2010. Accordingly, the evidence being sufficient to support the jury's verdict, the trial court correctly denied the defendant's motion for post-verdict judgment of acquittal.

This assignment of error is without merit.

## ASSIGNMENT OF ERROR NUMBER TWO

In assignment of error number two, the defendant contends that the trial court erred in imposing a constitutionally excessive sentence, given that the he was a first-felony offender and had no history of committing illegal drug offenses. Specifically, he argues that his sentence was extremely harsh in comparison to his criminal record and the other mitigating factors that the district court could have considered.

As an initial matter, we note that the defendant did not make an oral motion to reconsider sentence and the subsequent written motion alleged only that the sentence was constitutionally excessive, that the interests of justice require a less severe sentence, and "all reasons orally argued before the court at the time of sentencing and the ruling in *State v. Dorthey*, 623 So.2d 1276 (La. 1993)." Under La. Code Crim. P. art. 881.1(E), a defendant must file a motion to reconsider sentence setting forth the "specific ground" upon which the motion is based in order to raise an objection to the sentence on appeal. If the defendant does not allege any specific ground for his claim of excessiveness or present any argument or evidence not previously considered by the court at original sentencing, he is relegated on appeal to a review of his bare claim of excessiveness. *State v. Mims*, 619 So.2d 1059, 1060 (La. 1993) (per curiam). In the instant case, besides the written motion, the defendant only made a statement to the court prior to the imposition of the sentence, urging leniency. Accordingly, since the defendant's motion to reconsider sentence does not allege any specific ground for his claim of excessiveness, our review is limited on appeal to a bare claim of constitutional excessiveness.

Article I, Section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within

statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. *State v. Sepulvado*, 367 So.2d 762, 767 (La. 1979). Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in the light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. *State v. Hurst*, 99-2868 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

Louisiana Code of Criminal Procedure article 894.1 sets forth items which must be considered by the trial court before imposing sentence. While the trial court need not recite the entire checklist of Article 894.1, the record must reflect that it adequately considered the guidelines. *State v. Williams*, 521 So.2d 629, 633 (La. App. 1st Cir. 1988). In light of the criteria expressed by Article 894.1, a review for individual excessiveness must consider the circumstances of the crime and the trial court's stated reasons and factual basis for its sentencing decision. *State v. Watkins*, 532 So.2d 1182, 1186 (La. 1988). However, the goal of Article 894.1 is the articulation of the factual basis for a sentence, not rigid or mechanical compliance with its provisions. See *State v. Lanclos*, 419 So.2d 475, 478 (La. 1982). Even when a trial court assigns no reasons, the sentence will be set aside on appeal and remanded for resentencing only if the record is either inadequate or clearly indicates that the sentence is excessive. See La. Code

Crim. P. art. 881.4(D); *State v. Harris*, 601 So.2d 775, 779 (La. App. 1st Cir. 1992).

For the crime of distribution of alprazolam, the defendant was exposed to a term of imprisonment at hard labor for not more than ten years and may have, in addition, been sentenced to pay a fine of not more than fifteen thousand dollars. La. R.S. 40:969(B)(2). Thus, the trial court's sentence of seven years imprisonment at hard labor, with no fine, falls within the statutory guidelines.

At the sentencing hearing, the trial court considered the factors of Article 894.1 and found that there was an undue risk that during any period of a suspended sentence or probation the defendant would commit another crime, and that the defendant was in need of correctional treatment most effectively provided by his commitment to an institution. The trial court recalled that the defendant sold illegal drugs to an undercover officer. The defendant was invited to make a statement before sentence was passed, at which point he said that he had no criminal record and that "the events that led up to my crime had a lot to do with my brain aneurism and my brain surgery." The defendant said he was thirty-one years old, had five daughters, and that his family was "seriously hurting without me, and I just ask for leniency." In addition, the defendant apologized for failing to appear at an earlier hearing, explaining that he had twins who had been born three months premature and were on life support. A presentence investigation report was not ordered. However, we note that the defendant waived sentencing delays and allowed the trial court to impose punishment immediately after denial of the motions for new trial and post-verdict judgment of acquittal.

After the defendant made his statement, the trial judge said she took what he said into consideration, but that "I still cannot ignore the fact that you sold prescription drugs in this parish, and that that's a problem. It's a problem for you, and it's a problem for our community, that's the bigger problem." She continued: "I've already indicated the factors that I have considered. I consider this to be a very serious crime, prescription medication and the abuse of prescription medication is a very serious problem throughout this country, and it is events like this that promote and aid that problem." The trial court then imposed a sentence of seven years at hard labor with credit for time served, observing that a lesser sentence would deprecate the seriousness of the offense.

Given the trial court's wide discretion in the imposition of sentences and the fact that the defendant's sentence is well within the statutory limits, we cannot say that the trial court abused its discretion in sentencing him to seven years at hard labor. We find that the trial court's reasons for the sentence adequately demonstrate compliance with Article 894.1. We note that there was evidence in the record that the defendant was willing and prepared to sell more illegal prescription medication to the undercover officer. We also note that the trial judge explicitly stated that she considered the statement by the defendant, which raised several mitigating factors. Based on the facts adduced at trial and at the sentencing hearing, we find that the trial court did not abuse its discretion in sentencing the defendant to seven years at hard labor.

This assignment of error is without merit.

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

**CONVICTION AND SENTENCE AFFIRMED.**