NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0297

STATE OF LOUISIANA

VERSUS

MICHAEL RAVY

Judgment Rendered: November 1, 2013

Appealed from the
Twentieth Judicial District Court
In and for the Parish of West Feliciana, State of Louisiana
Trial Court Number 11-WFLN-267

Honorable William G. Carmichael, Judge Presiding

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Samuel C. D'Aquilla **Stewart B. Hughes** **St. Francisville, LA**	**Counsel for Appellee,** **State of Louisiana**
Frank Sloan **Mandeville, LA**	**Counsel for Defendant/Appellant,** **Michael Ravy**
And	
Michael Ravy **St. Gabriel, LA**	**In Proper Person**

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BEFORE: WHIPPLE, C.J., WELCH AND CRAIN, JJ.

WHIPPLE, C.J.

The defendant, Michael Ravy, was charged by bill of information with distribution of Xanax (Alprazolam), a violation of LSA-R.S. 40:969A. He pled not guilty and, following a jury trial, was found guilty as charged. He was sentenced to five years at hard labor, to be served consecutively to any other sentences he was currently serving or would have to serve.[1] He filed a motion for new trial, which was denied. The defendant now appeals, asserting one counseled and two pro se assignments of error. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

On July 21, 2009, Officer Mary Ratcliff of the Baker Police Department was working in an undercover capacity with Sergeant Marty Freeman of the West Feliciana Parish Sheriff's Office when a deal was made to purchase Xanax tablets from the defendant. Officer Ratcliff rode with a confidential informant to the Weyanoke Post Office in West Feliciana Parish where the two met the defendant. The defendant approached the vehicle and handed Officer Ratcliff, who was seated in the passenger side, the tablets in exchange for money. Sergeant Freeman monitored the transaction from nearby through an audio listening device. After being submitted to the Louisiana State Police Crime Laboratory for analysis, the tablets were confirmed as Alprazolam. In an interview following his arrest, the defendant admitted that he sold the Xanax tablets to Officer Ratcliff.

[1] The defendant was on parole when he committed the instant offense.

PRO SE ASSIGNMENT OF ERROR NUMBER 1

In the defendant's first pro se assignment of error, he argues that the State failed to prove beyond a reasonable doubt his identity as the perpetrator of the instant offense. He maintains that there were no surveillance videos or photographs taken to prove that he distributed Xanax tablets to Officer Ratcliff, nor was there a recording of the transaction that Sergeant Freeman heard through his audio listening device.

The standard of review for the sufficiency of 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 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 LSA-C.Cr.P. art. 821. 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 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 denies that he was the person who sold Xanax to Officer Ratcliff, raising an issue of identity. However, in an interview with Sergeant Freeman after his arrest, the defendant admitted that he was involved in the July 21, 2009 transaction. He claimed that he got the drugs from someone else and simply delivered them to Officer Ratcliff. Viewed in the light most favorable to the prosecution, this statement would clearly demonstrate the defendant's guilt beyond a reasonable doubt.

In addition to the defendant's confession, the State introduced testimony from Officer Ratcliff that she was positive that the defendant was the man who sold the Xanax to her. The State also introduced into evidence the Xanax tablets that Officer Ratcliff purchased, along with a scientific analysis report stating that the substance was Alprazolam. The defendant did not testify at trial.

The defendant complains that no surveillance videos, photographs, or recordings were introduced to prove that he distributed Xanax tablets to Officer Ratcliff. While the State is required to prove beyond a reasonable doubt the defendant's identity as the perpetrator, the State is not required to do so by video recording or photograph to establish that the defendant was 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, 822 So. 2d at 163. The defendant admitted that he participated in the transaction, and Officer Ratcliff unequivocally identified the defendant as the person from whom she purchased the Xanax tablets. Thus, where the State presented other evidence to support its case, the failure to present video or photographic proof of the transaction did not, by itself, create reasonable doubt.

Based on the physical evidence, eyewitness testimony, and the defendant's own confession, the jury's verdict reflected the reasonable conclusion that the defendant distributed the Xanax tablets to Officer Ratcliff. This court will not reassess 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.

After a thorough review of the record, we find that the evidence negates any reasonable probability of misidentification and supports the jury's verdict. 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 suggested by the defense at trial, that the defendant was the person who sold the Xanax tablets to Officer Ratcliff on July 21, 2009. See State v. Calloway, 2007-2306 (La. 1/21/09) 1 So. 3d 417, 418 (per curiam).

This assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NUMBER 2

In his second pro se assignment of error, the defendant argues that the State's failure to disclose the name of the confidential informant to him in this case deprived him of his constitutional right to confront his accusers.

As a general rule, the State is not required to divulge to the accused the name of a confidential informant. However, an exception is made when the

informant was a participant in an illegal drug transaction. State v. Buffington, 452 So. 2d 1313 (La. App. 1st Cir. 1984).

The informant in the instant matter made phone contact with the defendant and was also present during the transaction as the driver of the vehicle. However, contrary to the defendant's assertion that the tablets were passed through the informant, Officer Ratcliff testified that the defendant handed the tablets to her, and she gave him the money. Therefore, the informant did not play a crucial role in the actual transaction between Officer Ratcliff and the defendant leading to the defendant's arrest. See State v. Clark, 2005-61 (La. App. 5th Cir. 6/28/05), 909 So. 2d 1007, 1015-16, writ denied, 2005-2119 (La. 3/17/06), 925 So. 2d 538. See also State v. Diliberto, 362 So. 2d 566, 567-68 (La. 1978); State v. Jackson, 94-1500 (La. App. 4th Cir. 4/26/95), 654 So. 2d 819, 823, writ denied, 95-1281 (La. 10/13/95), 661 So. 2d 495. Accordingly, because the informant's contact with the defendant did not constitute a drug transaction, the participant exception is inapplicable, and the State was not required to divulge the name of the informant.

This assignment of error is without merit.

COUNSELED ASSIGNMENT OF ERROR

In his sole counseled assignment of error, the defendant claims that his counsel was ineffective in failing to object to the prosecutor's comments during opening and closing statements.

A claim of ineffective assistance of counsel is more properly raised by an application for postconviction relief in the district court, where a full evidentiary hearing may be conducted. However, where the record discloses sufficient evidence to decide the issue of ineffective assistance of counsel when raised by assignment of error on appeal, it may be addressed in the interest of judicial

economy. State v. Carter, 96-0337 (La. App. 1st Cir. 11/8/96), 684 So. 2d 432, 438.

A defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Louisiana Constitution. In assessing a claim of ineffectiveness, a two-pronged test is employed. The defendant must show that: (1) his attorney's performance was deficient, and (2) the deficient performance prejudiced him. The error is prejudicial if it was so serious as to deprive the defendant of a fair trial, or "a trial whose result is reliable." Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). In order to show prejudice, the defendant must demonstrate that, but for counsel's unprofessional conduct, the result of the proceeding would have been different. Strickland, 466 U.S. at 694, 104 S. Ct. at 2068; State v. Felder, 2000-2887 (La. App. 1st Cir. 9/28/01), 809 So. 2d 360, 370, writ denied, 2001-3027 (La. 10/25/02), 827 So. 2d 1173. Further, it is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate showing on one of the components. State v. Serigny, 610 So. 2d 857, 860 (La. App. 1st Cir. 1992), writ denied, 614 So. 2d 1263 (La. 1993).

In her opening statement, the prosecutor stated that "drugs are very devastating to a community" and that "[s]ociety suffers when a drug crime has been committed." She argued about the consequences of drug use and stated that "[t]here is no real end to the destruction that illegal drugs brings [sic] about." She went on to say that "the destruction starts with the sale of one little pill. In this case, ten pills of Xanax." The defendant contends that the prosecutor "used her opening statement to turn the trial into a plebiscite on the devastation that illegal drug usage causes to the people of the community."

The prosecutor argued in her closing statement that Xanax is "highly sought after by addicts" and that "people like" the defendant "enable addicts." She concluded by arguing that it was "time to put a stop to the start. Stop the destruction, the devastation, and the far-reaching consequences. That man right there, guilty of distribution of Schedule IV, Xanax." Based on these statements, the defendant claims that the prosecutor "went outside the record . . . to excite passion and prejudice in the minds of the jurors."

Louisiana Code of Criminal Procedure article 766 confines the scope of the opening statement by the State to the explanation of the nature of the charge and evidence by which the State expects to prove the charge. Louisiana Code of Criminal Procedure article 774 confines the scope of the closing argument to "evidence admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case." It is improper for a prosecutor to turn closing argument into a plebiscite on crime by making overt references to community sentiment. See State v. Johnson, 2000-0680 (La. App. 1st Cir. 12/22/00), 775 So. 2d 670, 680, writ denied, 2002-1368 (La. 5/30/03), 845 So. 2d 1066. However, an appellate court will not reverse a conviction if not "thoroughly convinced" that the argument influenced the jury and contributed to the verdict. State v. Patton, 2010-1841 (La. App. 1st Cir. 6/10/11), 68 So. 3d 1209, 1221-22.

We have reviewed the record and are not "thoroughly convinced" that the prosecutor's arguments influenced the jury and contributed to the verdict. The defendant was convicted based on physical and testimonial evidence and his admission that he sold the Xanax tablets to Officer Ratcliff. Even assuming that the remarks were objectionable and, thus, that defense counsel should have objected to the remarks, the defendant was not prejudiced by the alleged deficient

performance. See State v. Robinson, 471 So. 2d 1035, 1038-39 (La. App. 1st Cir.), writ denied, 476 So. 2d 350 (La. 1985). The defendant has failed to make the required showing of sufficient prejudice, and, as such, his claim of ineffective assistance of counsel is without merit.

Accordingly, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.