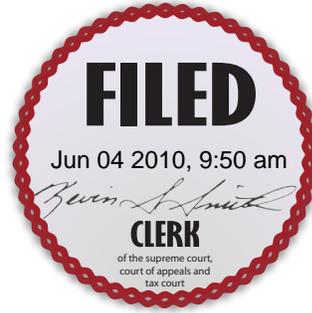


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOSE CRUZ, JR.,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 71A05-1002-CR-116

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland W. Chamblee, Judge
Cause No. 71D08-0810-FA-00040

JUNE 4, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

A jury convicted Jose Cruz, Jr. on three counts of dealing cocaine, all Class A felonies. Ind. Code § 35-48-4-1. His appeal challenges the sufficiency of the evidence to sustain each of the three convictions.

The evidence supporting the state's case disclosed that Officer Shay Bailey of the South Bend Police Department's narcotics unit was investigating Cruz. On March 4, 2008, Officer Bailey telephoned Cruz and arranged to purchase some crack cocaine. Bailey had procured a photograph of Cruz from the Bureau of Motor Vehicles to become acquainted with his appearance. He showed this photo to the other officers who would be doing surveillance of meeting.

Later that day, Officer Bailey met a man he identified as Cruz in the 500 block of Kosciusko Street. Officer Moring also identified Cruz as the man that arrived for the meeting. Bailey entered Cruz's car and sat next to him while exchanging \$250 for 4.22 grams of cocaine.

On March 11, Bailey telephoned the number he had previously used to arrange another buy. He recognized Cruz's voice on the telephone. He met with Cruz in an alley near the 300 block of Durham Street and purchased 4.04 grams of cocaine for \$250.

On March 19, Bailey again telephoned Cruz at the same number as before and arranged a meeting. He met Cruz in front of a bakery on Walnut Street and purchased

3.14 grams of cocaine for \$250. At trial, Officer Bailey identified Cruz as the man from whom he made all three purchases.

The defense called Mirta Corcho to testify. She stated that she was married to Cruz. She testified that March 4 was the day after her birthday and that Cruz had been with her the entire day.

Cruz argues that since the police testified that the cocaine purchase was made from the same person on all three occasions, and since his wife testified that Cruz was with her all day on March 4, then it could not have been him on either of the two other occasions.

It is a basic tenet of our system of jurisprudence that an accused in a criminal case has a right to be tried by a jury and, accordingly, it is the function of the jury to determine the facts in the case. For this reason, numerous appellate decisions have noted that appellate courts will not reweigh the evidence or redetermine issues of credibility because to do so would infringe on the constitutional role of the jury. *See, e.g. Haviland v. State*, 677 N.E.2d 509, 516 (Ind. 1997). We are constrained to merely determine whether the evidence and the reasonable inferences to be drawn therefrom favoring the verdict constitute substantial evidence of probative value from which a reasonable trier of fact could conclude guilt beyond a reasonable doubt. *Case v. State*, 458 N.E.2d 223, 226 (Ind. 1984). *See, also, McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005).

Officer Bailey testified that the defendant, Cruz, was the person who sold him drugs on each of the three occasions. On each of those occasions Bailey was in close

proximity to Cruz and had ample opportunity to observe him. In addition, Officer Moring also identified Cruz as the person who made the first sale to Bailey.

It was the jury's responsibility to determine the credibility of the officers and of Ms. Corcho. There was substantial evidence of probative value supporting its determination.

This evidence was sufficient to sustain the verdict.

Affirmed.

ROBB, J., and BARNES, J., concur.