NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0509

STATE OF LOUISIANA

VERSUS

JACOB M. CRAWFORD

Judgment Rendered: September 10, 2010

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 421223, DIVISION "G"

THE HONORABLE WILLIAM J. CRAIN, JUDGE

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BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

The defendant, Jacob M. Crawford, was charged by bill of information with one count of possession of cocaine, a violation of La. R.S. 40:967(C), and pled not guilty. Following a jury trial, he was found guilty as charged. Thereafter, the State filed a habitual offender bill of information against the defendant, alleging he was a second-felony habitual offender.[1] The defendant agreed to the allegations of the habitual offender bill, was adjudged a second-felony habitual offender, and was sentenced to eight years at hard labor to run concurrently with any other sentence he was serving. He untimely moved for a new trial and for a post-verdict judgment of acquittal, and the motions were denied. See La. Code Crim. P. arts. 821(A) & 853. He now appeals, contending that there was insufficient evidence to support the conviction, that the trial court erred in denying the motion for new trial, and that the trial court erred in accepting his stipulation to the habitual offender bill. For the following reasons, we affirm the conviction, vacate the habitual offender adjudication and sentence, and remand for further proceedings.

FACTS

On October 11, 2006, St. Tammany Parish Sheriff's Office Aggressive Criminal Enforcement (ACE) Agents Ben Godwin and Michael Ferrell investigated a complaint of narcotics use and prostitution at a FEMA trailer located at 129-A Canal Street in Slidell. Agent Ferrell knocked on the door and a white female, later identified as Diane Christine Barnlund, opened the door, but then slammed the door closed and ran into the trailer. Agent Ferrell continued to knock, and the defendant stated, "Come in." Agent Ferrell asked where Barnlund had gone, and the defendant indicated she was in the bathroom. Agent Ferrell knocked on the bathroom door, and Barnlund exited the bathroom and was escorted out of

[1] The predicate offense was set forth as the defendant's May 4, 1999 guilty plea, under Twenty-second Judicial District Court docket #300781, to possession of cocaine in a drug-free zone, a violation of La. R.S. 40:967(C) and La. R.S. 40:981.3, on February 19, 1999.

the trailer. Agent Ferrell explained that he was investigating complaints of illegal activity at the trailer. Agent Godwin noticed a crack pipe, containing cocaine residue, on the back of the stove, located to the defendant's left. Thereafter, the defendant consented to a search of the trailer and was also escorted out. Agent Godwin discovered a "$20 rock" of crack cocaine under the table where the defendant had been seated and in the area where the defendant had placed his feet. According to Agent Godwin, the defendant and Barnlund were the only people present in the defendant's trailer when the ACE team arrived.

Barnlund indicated she ran into the trailer because there was an outstanding warrant for her arrest. She was wanted in Georgia, but had no criminal history of narcotics violations. Her address was listed in St. Augustine, Florida.

The defense presented testimony at trial from Maurice Otis. He claimed he was present in the defendant's trailer along with two women and the defendant when the ACE team arrived. He claimed that "Diane" had "something like wrapped up in a napkin on the front of the table." He also claimed he had been with the defendant prior to the arrival of the ACE team and that he never saw the defendant with the crack pipe or the cocaine. He conceded he had been incarcerated with the defendant prior to trial. He also conceded he had approximately nine felony convictions, including convictions for possession of cocaine, possession with intent to distribute cocaine, and distribution of cocaine.

SUFFICIENCY OF THE EVIDENCE

In assignment of error number 1, the defendant argues there was insufficient evidence to prove he was in constructive possession of the items recovered from his house trailer because the items could have belonged to Barnlund and because he cooperated with the police. In assignment of error number 2, he argues the trial court erred in denying the motion for new trial because there was insufficient evidence to support the conviction.

The standard of review for 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 the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove," in order to convict, every reasonable hypothesis of innocence is excluded. **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 (quoting La. R.S. 15:438).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. **Wright**, 98-0601 at p. 3, 730 So.2d at 487.

As applicable here, it is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance as classified in Schedule II. La. R.S. 40:967(C). Cocaine is a controlled dangerous substance as classified in Schedule II. See La. R.S. 40:964, Schedule II (A)(4). The State is not required to show actual possession of drugs by a defendant in order to convict. Constructive possession is sufficient. A person is considered to be in constructive possession of a controlled dangerous substance if it is subject to his dominion and control, regardless of whether or not it is in his physical possession. Also, a person may be in joint possession of a drug if he willfully and knowingly shares with another the right to control the drug. However, the mere presence in the area where narcotics are discovered or mere

association with the person who does control the drug or the area where it is located is insufficient to support a finding of constructive possession. **State v. Smith**, 2003-0917, pp. 5-6 (La. App. 1st Cir. 12/31/03), 868 So.2d 794, 799.

A determination of whether or not there is "possession" sufficient to convict depends on the peculiar facts of each case. Factors to be considered in determining whether a defendant exercised dominion and control sufficient to constitute possession include his knowledge that drugs were in the area, his relationship with the person found to be in actual possession, his access to the area where the drugs were found, evidence of recent drug use, and his physical proximity to the drugs. **Smith**, 2003-0917 at p. 6, 868 So.2d at 799.

After a thorough review of the record, we are convinced that a rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of possession of cocaine, and the defendant's identity as the perpetrator of that offense. The verdict rendered against the defendant indicates the jury accepted the testimony offered against the defendant and rejected the testimony offered in his favor. 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. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. **State v. Lofton**, 96-1429, p. 5 (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 jury rejected the defendant's theory that the cocaine found at his feet in his house trailer belonged to Barnlund. 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). No such hypothesis exists in the instant case. Further, 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, p. 14 (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 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). Accordingly, we find no merit in these assignments of error.

RIGHT TO REMAIN SILENT

In assignment of error number 3, the defendant argues the trial court erred in failing to advise him of his right to remain silent at the habitual offender hearing. This assignment of error has merit.

After a habitual offender bill of information is filed, the court in which the instant conviction was had shall cause the defendant to be brought before it, shall inform him of the allegations contained in the information, shall inform him of his right to be tried as to the truth thereof according to law, and shall require the defendant to say whether the allegations are true. La. R.S. 15:529.1(D)(1)(a). The statute further implicitly provides that the court should advise the defendant of his right to remain silent. **State v. Griffin**, 525 So.2d 705, 706 (La. App. 1st Cir. 1988).

In the instant case, the trial court failed to advise the defendant of his right to remain silent. A trial court's failure to properly advise a defendant of his rights under the habitual offender law requires that the habitual offender adjudication and

sentence be vacated. See **State v. Fox**, 98-1547, p. 4 (La. App. 1st Cir. 6/25/99), 740 So.2d 758, 760-761. Accordingly, the defendant's habitual offender adjudication and sentence are hereby vacated, and this matter is remanded for further proceedings in accordance with the views expressed herein.[2]

CONVICTION AFFIRMED; HABITUAL OFFENDER ADJUDICATION AND SENTENCE VACATED; REMANDED FOR FURTHER PROCEEDINGS.

[2] The defendant is not protected by principles of double jeopardy from a re-hearing on the allegations of the habitual offender bill. See **State v. Dorthey**, 623 So.2d 1276, 1279 (La. 1993).