

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2000-KA-1756**
VERSUS * **COURT OF APPEAL**
SHERRELL W. HEAD * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 411-353, SECTION "J"
Honorable Leon Cannizzaro, Judge
* * * * *
Judge David S. Gorbaty
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(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge David S. Gorbaty)

Karen G. Arena
LOUISIANA APPELLATE PROJECT
PMB 181
9605 Jefferson Hwy., Suite I
River Ridge, LA 70123

COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

On December 15, 1999, the defendant, Sherrell W. Head, was charged by bill of information with possession of cocaine, a violation of La. Rev. Stat. 40:967(C). At his arraignment on January 6, 2000, he pleaded not guilty. After a trial on January 20, 2000, a six-member jury found him guilty of attempted possession of cocaine. The State then filed a multiple bill of information, and on May 24, 2000, Head was sentenced to serve thirty months at hard labor as a second felony offender under La. Rev. Stat. 15:529.1, with a recommendation to the About Face Program. The defendant's motion to reconsider the sentence was denied. Defendant subsequently filed this appeal.

FACTS

Officer Mark McCraney testified at trial that he was on proactive patrol in the St. Thomas Housing Project when he first saw the defendant, who was driving toward him. As the cars passed each other, the officer noticed that a right taillight in the defendant's car was burned out, but he did not stop him at that time because he could not turn around. About ten minutes later, Officer McCraney again saw the same car, and at that time the cars were heading in the same direction. The officer followed the defendant for several blocks, and the defendant seemed to be trying to evade the police

car by turning frequently.

When the defendant was stopped, he did not have a driver's license, although he had his vehicle registration and proof of insurance. Head stated that he had never had a driver's license, and he was arrested. Officer McCraney asked Head, who was standing next to his car, to put his hands on his car while he was searched incident to his arrest. As he put his hands on his car, a small object wrapped in currency fell from Head's right hand through the open back window to the car floorboard. After handcuffing Head, the officer retrieved a metal tube that was wrapped in \$45.00 in U.S. currency.

Officer Harry O'Neal, an expert in the identification and analysis of controlled dangerous substances, testified that he received the metal tube taken from the defendant, and he conducted an analysis of the residue in the tube. The tube was burned at each end and a piece of copper mesh wire served as a filter at one end. The officer administered two tests; both indicated that cocaine was present in the tube.

ERRORS PATENT

A review for errors patent on the face of the record reveals none.

ASSIGNMENT OF ERROR NUMBER ONE

In his sole assignment of error, the defendant argues that there is insufficient evidence to support his conviction.

When assessing the sufficiency of evidence to support a conviction, the appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979); State v. Jacobs, 504 So. 2d 817 (La. 1987).

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. State v. Gaines, 96-1850, p. 6 (La. App. 4 Cir. 1/29/97), 688 So. 2d 679, 683, writ denied, 97-0570 (La. 9/5/97), 700 So. 2d 503. The elements must be proved such that every reasonable hypothesis of innocence is excluded. La. Rev. Stat. 15:438. All evidence, direct and circumstantial, must meet the Jackson reasonable doubt standard. State v. Jacobs, 504 So. 2d at 820. If a rational trier of fact reasonably rejects the defendant's hypothesis of innocence, that hypothesis fails; unless another hypothesis creates reasonable doubt, the defendant is

guilty. State v. Captville, 448 So. 2d 676, 680 (La. 1984).

To support a conviction for possession of a controlled dangerous substance, the state must prove that the defendant was in possession of the illegal drug and that he knowingly or intentionally possessed the drug. La. Rev. Stat. 40:967; State v. Taylor, 96-1843 (La. App. 4th Cir. 1997), 701 So. 2d 766, 771, writ denied, 98-2233 (La. 1/8/99), 734 So. 2d 1224. Guilty knowledge is an essential element of the crime of possession of a controlled dangerous substance. State v. Goiner, 410 So. 2d 1085 (La. 1982).

Although a conviction for possession of a controlled dangerous substance can stand on the possession of the slightest amount of the drug, the amount of the substance will have some bearing on the defendant's guilty knowledge. Taylor, 701 So. 2d at 771; State v. Spates, 588 So. 2d 398, 401 (La. App. 2 Cir. 1991). In addition, the possession of drug paraphernalia, such as a metal pipe or "straight shooter," is, by its peculiar nature, indicative of guilty knowledge. Gaines, 96-1850 (La. App. 4 Cir. 1/29/97), 688 So. 2d 679, 683, writ denied, 97-0570 (La. 9/5/97), 700 So. 2d 503; Spates, 588 So. 2d at 402. The State need not prove that the defendant was in actual physical possession of the cocaine; constructive possession is sufficient to support a conviction. To prove attempted possession of a controlled dangerous substance, the State must show that the defendant had

the specific intent to possess cocaine and that he committed an act tending directly toward the accomplishment of his intent to possess cocaine. La. R.S. 14:27; State v. Chambers, 563 So.2d 579 (La. App. 4 Cir. 1990).

In State v. Jones, 94-1261, p. 12 (La. App. 3 Cir. 5/17/95), 657 So. 2d 262, 270, the Third Circuit held that physical possession of an object with no utility other than the ingestion of crack cocaine is sufficient to support a conviction for possession of cocaine.

The case at bar is similar to State v. Williams, 98-0806 (La. App. 4 Cir. 3/24/99), 732 So. 2d 105, writ denied, 99-1184 (La. 10/1/99), 748 So. 2d 433, where the defendant was found to be guilty of possession of cocaine on the basis of his dropping a metal tube while being arrested for trespassing. Testimony at trial established that the pipe was tested and found to contain crack cocaine. In Williams, there was testimony as to a visible residue in the pipe the defendant dropped, whereas no such testimony was given in the instant case. However, in the instant case, Officer McCraney, a fifteen-year veteran of the police force, testified that he recognized the metal tube to be a crack pipe, and Officer O'Neal described the pipe as a metal tube burned on each end and with a filter in one end. In his brief, Head contends that there is no evidence that he knew what the pipe was or how to use it. However, the jury obviously rejected any innocent explanation of the

pipe's purpose, choosing instead to rely on the State's contention that the pipe was used for smoking crack cocaine. We find no error in this conclusion.

Thus, the State produced sufficient evidence to sustain Head's conviction for attempted possession of cocaine. This assignment of error is without merit.

CONCLUSION

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

AFFIRMED