

STATE OF LOUISIANA

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NO. 2001-KA-0139

VERSUS

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COURT OF APPEAL

JAMES L. SMITH, A/K/A
CHARLIE MANSON

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 415-797, SECTION "J"
Honorable Leon Cannizzaro, Judge

Judge Steven R. Plotkin

(Court composed of Judge Steven R. Plotkin, Judge Michael E. Kirby, and
Judge Max N. Tobias, Jr.)

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AFFIRMED

James L. Smith, also known as Charlie Mason, was charged by bill of information on July 24, 2000, with possession of cocaine, a violation of La. R.S. 40:967(C). Following trial, on August 10, 2000, a six-member jury found defendant guilty as charged. He was sentenced on October 10, 2000 to serve three years at hard labor. Defendant's motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

At trial, Detective William McDade testified that he was on patrol in a marked police car about 2:30 a.m. on July 5, 2000, when he observed defendant and another man standing by the porch outside of an apartment at 399 Basin Street in the Iberville Housing Development. The two men were facing each other and appeared to be exchanging an object. When the officer stopped the car, defendant placed the object on the steps and walked off. The second man, who had just sat down on the porch, stood up and walked in the opposite direction. The officer and his partner, Detective Shawn McAfee, exited the police car and stopped the two men. The men told the officers that their names were Charlie Mason and Edwin Jury.

Defendant stated that he was homeless and staying at a shelter on Magazine Street. Neither man was a resident of the Iberville Development; thus both were arrested for trespassing on HANO property. Detective McDade walked over to the steps where he had seen defendant leave something and found two white objects and a glass tube. After being advised of his Miranda rights, Mr. Cox, a/k/a Mr. Jury, stated that he had just purchased the cocaine from defendant and that the glass pipe belonged to defendant. Defendant was in possession of forty-three dollars when he was arrested.

The parties stipulated that the two pieces of rock and the glass tube were tested, that the rocks proved to be cocaine and that the glass tube proved to contain cocaine.

Edwin Cox, III, testified for the defense that he had known defendant only since they had been in jail. Cox was with a man named Doug Dillard the night he purchased cocaine from an unknown man. Cox stated that defendant was not the man who sold him cocaine and on the night of his arrest. The officers let Doug Dillard leave. Cox said that the drugs belonged to him, and although he was not sure, he thought the pipe belonged to Dillard. Cox tried to tell the police that night that defendant was not involved, but because he had been drinking heavily, he could not make his point. Cox did not remember defendant being arrested.

ERRORS PATENT

A review of the record reveals no errors patent.

ASSIGNMENT OF ERROR

In a single assignment of error, defendant argues that the evidence was insufficient to support his conviction.

This Court set out the standard for reviewing convictions for sufficiency of the evidence in State v. Ragas, 98-0011 (La. App. 4 Cir. 7/28/99), 744 So. 2d 99, as follows:

In evaluating whether evidence is constitutionally sufficient to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Green, 588 So. 2d 757 (La. App. 4 Cir.1991). However, the reviewing court may not disregard this duty simply because the record contains evidence that tends to support each fact necessary to constitute the crime. State v. Mussall, 523 So.2d 1305 (La. 1988). The reviewing court must consider the record as a whole since that is what a rational trier of fact would do. If rational triers of fact could disagree as to the interpretation of the evidence, the rational trier's view of all the evidence most favorable to the prosecution must be adopted. The fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process of law. Mussall; Green; supra. "[A] reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence." State v. Smith, 600 So.2d 1319 (La.1992) at 1324.

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. Shapiro, 431 So.2d 372 (La.1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. This is not a separate test from Jackson v. Virginia, *supra*, but rather an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt. State v. Wright, 445 So.2d 1198 (La.1984). All evidence, direct and circumstantial, must meet the Jackson reasonable doubt standard. State v. Jacobs, 504 So.2d 817 (La.1987).

Id. at pp. 13-14, 744 So. 2d at 106-107, quoting State v. Egana, 97-0318, pp. 5-6 (La. App. 4 Cir. 12/3/97), 703 So. 2d 223, 227-228.

The State must prove that a defendant knowingly possessed narcotics in order to convict him of possession of narcotics. State v. Lewis, 98-2575, p. 3 (La. App. 4 Cir. 3/1/00), 755 So. 2d 1025, 1027; State v. Ricard, 98-2278, p. 7 (La. App. 4 Cir. 1/19/00), 751 So. 2d 393, 397, writ denied, 2000-0855 (La. 12/8/00), 775 So. 2d 1078. The State need not prove that a defendant was in actual possession of the narcotics found; constructive possession, the exercise of dominion and control over the drugs, is sufficient to support conviction. State v. Booth, 98-2065, p. 5 (La. App. 4 Cir. 10/20/99), 745 So. 2d 737, 742. “A person may be deemed to be in joint possession of a drug which is in the physical possession of a companion if he willfully and knowingly shares with the other the right to control it.” Id.

at p. 5, 745 So. 2d at 741-42. Neither the presence of a defendant in an area where drugs have been found nor the fact that he knows the person in actual possession is sufficient to prove constructive possession. State v. Bell, 566 So. 2d 959 (La. 1990); State v. Hoofkin, 601 So. 2d 320, 322 (La. App. 4 Cir. 1991), writ granted on other grounds, 596 So. 2d 536 (La. 1992).

Factors to be considered in determining whether a defendant exercised dominion and control over drugs are: 1) the defendant's knowledge that illegal drugs were present in the area; 2) the defendant's relationship with the person in actual possession; 3) the defendant's access to the area where the drugs were found; 4) evidence of recent drug use; 5) the defendant's proximity to the drugs; and 6) evidence that the area was being frequented by drug users. State v. Walker, 99-1957, p. 3 (La. App. 4 Cir. 5/17/00), 764 So. 2d 1130,1133; State v. Mitchell, 97-2774, pp. 11-12 (La. App. 4 Cir. 2/3/99), 731 So. 2d 319, 328.

Here, defendant maintains that there was no evidence of constructive possession in that Cox testified that the cocaine was his and that he did not know Smith. Furthermore, the officer did not see Smith with the rocks. Defendant also argues that there is no evidence of joint possession because of Cox's testimony that he did not buy cocaine from Smith.

Looking at the factors relevant to dominion and control, we find that

Smith meets four of the five factors: he was in an area known for drugs, he knew illegal drugs were present in the area, he was standing in close proximity to the drugs and he had access to the drugs.

Furthermore, Officer McDade saw Smith and Cox in a hand-to-hand exchange and then saw Smith put something down on the steps where two rocks of cocaine were picked up seconds later. The officer also testified that at the time of the arrest, Cox said that he purchased the drug from Smith and that the glass tube belonged to Smith.

Although Cox recanted his accusatory statements about Smith at trial, when he testified he acknowledged that he was very drunk that night and that he remembered little of what happened until he woke up in jail and found himself in the cell with Smith. Hence, it appears Officer McDade's recollection of the events of July 5, 2000 are more reliable than Cox's memories, and the jury, after hearing the two versions of the facts, simply rejected Cox's testimony as incredible.

Under the jurisprudence, the State produced sufficient evidence to sustain Smith's conviction for possession of cocaine. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime sufficient to exclude every reasonable hypothesis of

innocence.

The assignment of error is without merit.

CONCLUSION

Accordingly, defendant's conviction and sentence are affirmed.

AFFIRMED