STATE OF LOUISIANA	*	**NO. 2001-KA-0216**
VERSUS	*	**COURT OF APPEAL**
JERRY HAMLIN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 413-063, SECTION "B"
Honorable Patrick G. Quinlan, Judge
* * * * * *
JUDGE

JOAN BERNARD ARMSTRONG
* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Joan Bernard Armstrong and Judge Terri F. Love)

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AFFIRMED.

STATEMENT OF THE CASE

The defendant, Jerry Hamlin, was charged by bill of information on February 28, 2000, with one count of possession of cocaine, a violation of La. R.S. 40:967(C)(2). On March 10, 2000, he entered a plea of not guilty and on March 31, 2000, the trial court found probable cause and denied the motion to suppress the evidence. On April 11, 2000, the defendant proceeded to trial by jury and was found guilty as charged. On April 25, 2000, the State filed a multiple bill of information, charging the defendant as a fourth felony offender, to which he pled not guilty. On July 13, 2000, the court adjudicated him a fourth offender, denied the motion to quash the multiple bill and sentenced Hamlin to twenty years, with credit for time served, sentence to run concurrently with any other sentence. The defense filed a motion to reconsider the sentence, which was denied and a motion for appeal, which was granted.

STATEMENT OF THE FACTS

On January 5, 2000, at approximately 10:00 p.m., Officers Mark

Stitch and Ken Bowen were on patrol in the second district when they observed the defendant standing on General Ogden Street, drinking from an open container. As the officers approached in their patrol car, they observed the defendant from eight to ten feet away discard an object from his left hand. The officers exited their vehicle and Officer Bowen retrieved the object, which was a crack pipe. The officers issued the defendant a municipal violation for the open container and arrested him for possession of drug paraphernalia and possession of cocaine.

Officer Harry O'Neal testified by stipulation as an expert in the analysis and identification of controlled substances that the residue in the metal pipe seized in this case tested positive for cocaine.

ERRORS PATENT

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

ASSIGNMENT OF ERROR NUMBER 1 AND PRO SE ASSIGNMENT OF ERROR NUMBER 1

In his first assignment of error, and in his pro se brief, the defendant argues that the evidence is insufficient to support the conviction.

In 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, 61 L.Ed.2d 560 (1979); State v. Cummings, 95-1377 (La. 2/28/96), 668 So.2d 1132, 1134.

Additionally, when circumstantial evidence forms the basis of the conviction, that evidence must exclude every reasonable hypothesis of innocence. State v. Captville, 448 So.2d 676, 678 (La. 1984); State v. Williams, 95-0579 (La. App. 4 Cir. 4/10/96), 672 So.2d 1150, 1159. The elements must be proven so that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. La. R.S. 15:438 is not a separate test from Jackson v. Virginia, but rather is an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt; all evidence, direct and circumstantial, must meet the Jackson reasonable doubt standard. State v. Wright, 445 So.2d 1198, 1201 (La. 1984).

To support a conviction for possession of cocaine, the State must establish that the defendant was in possession of the drug and that he knowingly or intentionally possessed it. State v. Shields, 98-2283 (La. App. 4 Cir. 9/15/99), 743 So.2d 282, 283. Guilty knowledge is an essential element of the crime of possession of cocaine. State v. Williams, 98-0806, (La. App. 4 Cir. 3/24/99), 732 So.2d 105. The elements of knowledge and

intent need not be proven as facts, but may be inferred from the circumstances. State v. Porter, 98-2280, (La. App. 4 Cir. 5/12/99), 740 So.2d 160, 162. A trace amount of cocaine in a crack pipe can be sufficient to support a conviction for possession. See Shields, supra; Porter, supra In crack pipe cases, "the peculiar nature of the pipe, commonly known as a 'straight shooter' and used exclusively for smoking crack cocaine, is also indicative of guilty knowledge." State v. McKnight, 99- 0997, (La. App. 4 Cir. 5/10/99), 737 So.2d 218, 219; Williams, 732 So.2d at 109. In addition, recent drug use is a factor evidencing guilty knowledge, as is flight or furtive behavior. See State v. Postell, 98-0503, (La. App. 4 Cir. 4/22/99), 735 So.2d 782.

In the instant case, the defendant argues that because there was only an immeasurable amount of residue in the pipe, the State failed to prove he knowingly possessed cocaine.

In Shields, this court affirmed the defendant's conviction for possession of cocaine where a crack pipe was discovered in the defendant's shirt pocket during a frisk for weapons. The officer testified that he observed a white residue in the pipe. As in the instant case, a criminalist testified that the two tests performed on the residue rinsed from the pipe with solvent were positive for the presence of cocaine. The criminalist also

testified that the amount of cocaine recovered weighed less than one-hundredth of one gram, unlike in the instant case where the criminalist testified that the measuring instruments in the crime lab were not sensitive enough to weigh the cocaine.

In Porter, this court affirmed the defendant's conviction for possession of cocaine where officers seized a crack pipe in the defendant's waistband during a protective pat-down search. Both arresting officers testified that the pipe contained a visible white residue, but their testimony does not reflect whether they believed it was cocaine. A police criminalist testified, as in the instant case, that the residue from the pipe tested positive for the presence of cocaine.

In this case Officer Bowen testified that he and his partner observed the defendant on the sidewalk, drinking from a glass container. As the officers approached to investigate, the defendant furtively abandoned a crack pipe. Officer Bowen retrieved the pipe and noticed that it was burned on both ends and contained a white residue, which the officer believed to be cocaine. The NOPD criminalist testified that the residue was unsusceptible to measurement; however, it did test positive for cocaine.

Based upon Shields and Porter and the facts of this case, the State proved beyond a reasonable doubt that the defendant in this case knowingly

possessed cocaine. This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 2

In his second assignment of error, the defendant argues that his sentence is excessive under State v. Dorthey, 623 So.2d 1276 (La. 1993).

The defendant was charged with and convicted of possession of cocaine, a violation of La. R.S. 40:967(C)(2), which provides that "[i]t is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance as classified in Schedule II ." Cocaine is a Schedule II controlled dangerous substance. La. R.S. 40:964. He received the mandatory minimum sentence of twenty years as a fourth felony offender pursuant to La. R.S. 15:529.

Even though a sentence under the Habitual Offender Law is the minimum provided by that statute, the sentence may still be unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, or is nothing more than the purposeless imposition of pain and suffering and is grossly out of proportion to the severity of the crime. State v. Johnson, 97-1906, (La. 3/4/98), 709 So.2d 672, 677; State v. Dorthey, 623 So.2d 1276, 1280-81 (La. 1993). However, the entire Habitual Offender Law has been held constitutional, and, thus, the minimum sentences it imposes upon habitual offenders are also presumed to

be constitutional. Johnson, 709 So.2d at 675; see also State v. Young, 94-1636, (La. App. 4 Cir. 10/26/95), 663 So.2d 525, 527. There must be substantial evidence to rebut the presumption of constitutionality. State v. Francis, 96-2389 (La. App. 4 Cir. 4/15/98), 715 So.2d 457. A defendant must clearly and convincingly show that the mandatory minimum sentence under the Habitual Offender Law is unconstitutionally excessive. Johnson, 709 So.2d at 678.

In the instant case, the defendant was forty-five years old on the day he was arrested for the instant offense. He was convicted of possession of cocaine. The record indicates that the defendant has a criminal record dating from 1979 which includes convictions for felony theft, simply burglary and burglary of an inhabited dwelling. In addition, although not used in the multiple bill, the defendant has a conviction for possession of a sawed-off shotgun. The defendant did not testify at trial, and did not make any statements prior to sentencing. No one testified on defendant's behalf at trial or at his sentencing.

Under these circumstances, it cannot be said that defendant has presented substantial evidence to show by clear and convincing evidence that his sentence is unconstitutionally excessive as required by Johnson, supra

ASSIGNMENT OF ERROR NUMBER 3;
PRO SE ASSIGNMENT OF ERROR NUMBER 2

In his third assignment of error, and in his pro se brief, the defendant assigns error to his adjudication as a fourth felony offender. He claims the State failed to prove his identity because the bills of information for his three predicate offenses bear no fingerprints. He further complains that the State failed to prove that his prior guilty pleas were made knowingly and voluntarily.

La. R.S. 15:529.1(D)(1)(b) states that the district attorney has the burden of proving beyond a reasonable doubt any issue of fact and that the presumption of regularity of judgment shall be sufficient to meet the original burden of proof. The State must establish the prior felony and that the defendant is the same person convicted of that felony. State v. Neville, 96-0137, (La. App. 4 Cir. 5/21/97), 695 So.2d 534, 538-39. There are various methods available to prove that the defendant is the same person convicted of the prior felony offense, such as testimony from witnesses, expert opinion as to a comparison of the defendant's fingerprints with those of the person previously convicted, photographs contained in a duly authenticated record, or evidence of an identical driver's license number, sex, race, and date of birth. State v. Henry, 96-1280, (La. App. 4 Cir. 3/11/98), 709 So.2d 322, 326.

At the multiple bill hearing in this case, the State introduced the testimony of Officer Terry Bunch, an expert in testing latent fingerprints, who testified that he fingerprinted the defendant the morning of the hearing. (exhibit 1). Officer Bunch produced certified copies of arrest registers documenting the defendant's arrests for burglaries in 1979 (exhibit 2) and 1983 (exhibit 4) and theft in 1995 (exhibit 6). The arrest registers were identical as to the defendant's name, date of birth, social security number, Bureau of Identification number and vital statistics. The officer compared the fingerprints on the arrest registers (exhibits 2, 4, and 6) to exhibit 1 and concluded that the prints on the arrest registers matched those of the defendant. Next, Officer Bunch produced copies of the bills of information for each of the three prior offenses, linking them to the respective arrest registers by arrest number. Although there were no fingerprints on the bills of information, each arrest register listed the same defendant's name, date of offense and victim's name as the bills of information. Thus, the State's evidence proved the defendant's identity.

Where a prior conviction resulted from a guilty plea, the State must show that the defendant was advised of his constitutional rights, and that he knowingly waived those rights prior to the guilty plea, as required by Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969);

State v. Shelton, 621 So.2d 769 (La. 1993). If the defendant denies the allegations of the bill of information, the State has the burden of proving the existence of the prior guilty pleas, and that the defendant was represented by counsel. Shelton, 621 So.2d at 779. Once the State meets this burden, defendant must produce some affirmative evidence of an infringement of his rights or of a procedural irregularity. Thereafter, the State must prove the constitutionality of the plea. Id. at 779.

In proving the constitutionality of the plea, the State must produce either a "perfect" transcript of the Boykin colloquy between the defendant and the trial judge or any combination of (1) a guilty plea form, (2) a minute entry, or (3) an "imperfect" transcript. Shelton, 621 So.2d at 780. If anything less than a "perfect" transcript is presented, the trial court must weigh the evidence submitted by the defendant and the State to determine whether the State met its burden of proof that defendant's prior guilty plea was informed and voluntary. Id.

At the multiple bill hearing in this case the State introduced the waiver of rights-plea of guilty forms for the defendant's three predicate offenses, as well as the minute entries memorializing the guilty pleas. Each guilty plea form is initialed and signed by the defendant and defense counsel in the appropriate places. Corresponding minute and docket master entries attest

that “defendant appeared at the bar, attended by counsel” at the time he entered his plea.

In this case, the State submitted sufficient proof of the existence of the prior guilty pleas and that the defendant was represented by counsel at the time the guilty pleas were taken. Thereafter, the defendant failed to produce affirmative evidence of an infringement of his rights or a procedural irregularity. Based on the evidence, the trial court properly adjudicated the defendant a fourth felony offender. This assignment is without merit.

For the foregoing reasons, we affirm the defendant’s conviction and sentence.

AFFIRMED.