STATE OF LOUISIANA	*	**NO. 2001-KA-0220**
VERSUS	*	**COURT OF APPEAL**
ANGELA MAYEAUX	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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CONSOLIDATED WITH:	**CONSOLIDATED WITH:**
STATE OF LOUISIANA	**NO. 2001-KA-0221**
VERSUS	
ANGELA MAYEAUX	

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 414-013, SECTION "J"
Honorable Leon Cannizzaro, Judge
* * * * * *
Judge Steven R. Plotkin
* * * * * *

(Court composed of Judge Steven R. Plotkin, Judge Dennis R. Bagneris, Sr., Judge Michael E. Kirby)

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AFFIRMED

The issues in this appeal are was there sufficient evidence to support defendant's conviction of attempted possession of cocaine and was the sentence excessive.

PROCEDURAL HISTORY

Angela Mayeaux was charged by bill of information with one count of possession of cocaine. She was charged with a second bill of information with possession of cocaine. She was arraigned and pled not guilty. The cases were consolidated for trial. The six member jury found the defendant guilty of attempted possession on both counts. The trial court sentenced the defendant to thirty months on each count to run concurrently, suspended, active probation for five years. Mayeaux filed a motion to reconsider the sentence which was denied.

STATEMENT OF THE FACTS

Officer Catherine Beckett testified that on May 3, 2000, at 12:30 a.m.,

she and her partner were driving in the 3300 block of Lowerline Street when they observed a Toyota make a left hand turn without the use of a signal. Also, the license plate was not illuminated; and the driver was not wearing a seat belt. The officers stopped the car. The defendant was driving and said she did not have a driver's license. She gave the officers two aliases before telling them her real name. Another woman, Kelly Walsh, was in the passenger seat. She had an outstanding warrant against her and was arrested. The officers learned, after running a computer check, that the defendant did not have a driver's license. She was placed under arrest for not having a license and for giving an alias. A search incident to arrest revealed a crack pipe containing residue. The residue tested positive for cocaine.

Officer Dwayne Scheuermann testified that on February 25, 2000, he was on detail at Dominican High School. He stopped a car, being driven by a man named Monjuko, for failing to use a turning signal and for not wearing a seat belt. The defendant was the front seat passenger in the car. A woman named Kelly was in the back seat. The car contained an open container. When the defendant reached down to the floorboard the officer ordered all three people out of the car and conducted pat down searches. Both women were found to be carrying knives. The defendant gave the same alias she had given in the above described incident. The defendant was

extremely nervous. The officer called for a transport. When the transport arrived, the defendant was again searched, and a crack pipe containing residue was found in her right sock.

ERRORS PATENT

A review of the record shows no errors patent.

ASSIGNMENT OF ERROR ONE

The defendant argues that residue of cocaine is not sufficient evidence to support a conviction for attempted possession of cocaine.

The standard of review for the sufficiency of the evidence is whether, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found that the State proved the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Jacobs, 504 So.2d 817 (La. 1987).

To support a conviction for possession of cocaine, the State must prove that the defendant was in possession of the illegal drug and that he knowingly possessed it. State v. Lavigne, 95-0204 (La. App. 4 Cir. 5/22/96), 675 So. 2d 771; State v. Chambers, 563 So. 2d 579 (La. App. 4 Cir. 1990). To prove attempt, the State must show that the defendant committed an act tending directly toward the accomplishment of his intent to

possess cocaine. Chambers, 563 So. 2d at 580.

The elements of knowledge and intent are states of mind and need not be proven as facts, but rather may be inferred from the circumstances. The fact finder may draw reasonable inferences to support these contentions based upon the evidence presented at trial. State v. Reaux, 539 So. 2d 105 (La. App. 4 Cir. 1989).

In State v. Jones, 94-1261 (La. App. 3 Cir. 5/17/95), 657 So.2d 262, the court concluded that the defendant's actions and possession of an object which only use was to smoke cocaine provided sufficient evidence to show that the defendant knowingly possessed cocaine. This Court, in State v. Gaines, 96-1850 (La. App. 4 Cir. 1/29/97), 688 So.2d 679, held that defendant's possession of a glass pipe which contained cocaine residue was sufficient to prove defendant's possession of cocaine. 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, p. 4 (La. App. 4 Cir. 5/10/99), 737 So.2d 218, 219.

In Lavigne, the defendant was found to be in possession of a crack pipe that had a residue in it. The residue was found to be cocaine. The defendant alleged that he found the pipe on the street and did not know it

contained cocaine as he could not see the residue. The defendant stated that he intended to throw the pipe away once he got home. In affirming the defendant's conviction, this Court noted that the defendant's guilty knowledge could be inferred from the defendant's dominion and control over the pipe and the residue of cocaine found in the pipe. State v. Lavigne, 675 So.2d at 779. In the instant case, residue was visible in a crack pipe in both instances. The evidence was sufficient to support convictions for possession of cocaine and was therefore sufficient to support the convictions for attempted possession of cocaine.

ASSIGNMENT OF ERROR TWO

The defendant claims that the trial court erred in failing to adequately consider and state for the record the sentencing factors of La. C.Cr.P. art. 894.1, and in imposing an unconstitutionally excessive sentence.

La. Const. art. I, § 20 explicitly prohibits excessive sentences. State v. Baxley, 94-2982, p. 4, (La. 5/22/95), 656 So. 2d 973, 977. Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. State v. Brady, 97-1095, p. 17 (La. App. 4 Cir. 2/3/99), 727 So. 2d 1264, 1272, rehearing granted on other grounds, (La. App. 4 Cir. 3/16/99); State v. Francis, 96-2389, p. 6 (La. App. 4 Cir. 4/15/98), 715 So.2d 457, 461, writ

denied, 98-2360 (La. 2/5/99), 737 So. 2d 741. However, the penalties provided by the legislature reflect the degree to which the criminal conduct is an affront to society. Baxley, 94-2984 at p. 10, 656 So.2d at 979, citing State v. Ryans, 513 So. 2d 386, 387 (La. App. 4 Cir. 1987). A sentence is constitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, 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, pp. 6-7 (La. 3/4/98), 709 So. 2d 672, 677; State v. Webster, 98-0807, p. 3 (La. App. 4 Cir. 11/10/99), 746 So. 2d 799, 801, reversed on other grounds, State v. Lindsey, 99-3256 (La. 10/17/00), 770 So. 2d 339. A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. Baxley, 94-2984 at p. 9, 656 So.2d at 979; State v. Hills, 98-0507, p. 5 (La. App. 4 Cir. 1/20/99), 727 So. 2d 1215, 1217.

In reviewing a claim that a sentence is excessive, an appellate court generally must determine whether the trial judge has adequately complied with statutory guidelines in La. C.Cr.P. art. 894.1, and whether the sentence is warranted under the facts established by the record. State v. Trepagnier, 97-2427, p. 11 (La. App. 4 Cir. 9/15/99), 744 So. 2d 181, 189; State v.

Robinson, 98-1606, p. 12 (La. App. 4 Cir. 8/11/99), 744 So. 2d 119, 127. If adequate compliance with La. C.Cr.P. art. 894.1 is found, the reviewing court must determine whether the sentence imposed is too severe in light of the particular defendant and the circumstances of the case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. State v. Ross, 98-0283, p. 8 (La. App. 4 Cir. 9/8/99), 743 So. 2d 757, 762; State v. Bonicard, 98-0665, p. 3 (La. App. 4 Cir. 8/4/99), 752 So. 2d 184, 185, writ denied, 99-2632 (La. 3/17/00), 756 So. 2d 324.

However, in State v. Major, 96-1214 (La. App. 4 Cir. 3/4/98), 708 So. 2d 813, writ denied, 98-2171 (La. 1/15/99), 735 So. 2d 647, this court stated:

> The articulation of the factual basis for a sentence is the goal of Art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, resentencing is unnecessary even when there has not been full compliance with Art. 894.1. State v. Lanclos, 419 So.2d 475 (La.1982). The reviewing court shall not set aside a sentence for excessiveness if the record supports the sentence imposed. La.C.Cr.P. art. 881.4(D).

96-1214 at p. 10, 708 So. 2d at 819.

In State v. Monette, 99-1870 (La. App. 4 Cir. 3/22/00), 758 So. 2d 362, the defendant, a first-felony offender convicted of attempted possession of cocaine, received the maximum sentence, thirty months at hard labor. As in the instant case, the sentence was suspended and

the defendant was placed on probation with special conditions intended to break her drug habit. In reviewing the defendant's excessive sentence claim this Court held that the trial court sentenced the defendant to the maximum sentence in order to persuade her to comply with the terms of her probation and dissuade her from a life of cocaine addiction. The circumstances in the instant case are virtually identical to those in Monette. The trial court informed defendant that it expected her to participate in weekly drug testing, attend counseling, maintain contact with her probation officer, and maintain employment. The trial court further ordered the defendant to desist from dancing in bar rooms. The trial court in the instant case tailored the sentence to promote defendant's best interests, with an end toward allowing her to avoid any prison time.

CONCLUSION

For the foregoing reasons, we find that the evidence was sufficient to support Mayeaux's conviction for attempted possession of cocaine. The trial court did not err in sentencing the defendant to thirty months on each count concurrent, suspended, and active probation for five years. This sentence was not unconstitutionally excessive. Therefore, the defendant's conviction and sentence are affirmed.

AFFIRMED