

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2001-KA-0266**
VERSUS * **COURT OF APPEAL**
MATTHEW THOMAS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 416-833, SECTION "J"
Honorable Leon Cannizzaro, Judge
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Judge Patricia Rivet Murray
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(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer,
Judge Patricia Rivet Murray)

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AFFIRMED

Defendant, Matthew Thomas, appeals his conviction of possession of cocaine. For the reasons that follow, we affirm.

On September 21, 2000, Thomas was charged with possession of cocaine in violation of La. R.S. 40:967(C). He pled not guilty. He was tried on October 23, 2000, and a six-member jury found him guilty as charged. The State filed a multiple bill, and after being advised of his rights, Thomas pled guilty to being a second offender. He was sentenced under La. R.S. 15:529.1 to serve four years at hard labor, and was also sentenced under La. R.S. 15:574.5, the About Face Program in Orleans Parish Prison. The defendant's motion for an appeal was granted.

At trial Officer Mark Hedgeman testified that on August 24, 2000, he and his partner were on proactive patrol on Governor Nichols and North Johnson Streets when they noticed the defendant staggering down the street. The officers decided to investigate and approached Thomas, who reeked of alcohol, and had bloodshot eyes and slurred speech. He was arrested for public intoxication and also for blocking a public passageway. During a search incident to arrest, the officer found a glass tube on the right side of

Thomas's waistband. A white wiry mesh filter blocked one end of the tube, which was coated with a white powdery residue. Officer Hedgeman recognized the glass tube as a crack cocaine pipe and charged Thomas with possession of cocaine and drug paraphernalia.

Criminologist William Giblin, an expert in the field of analysis and identification of controlled dangerous substances, testified that on August 24, 2000, one of his colleagues, Officer Harry O'Neal, examined the residue found in the glass pipe taken from the defendant. O'Neal reported that the glass tube had burned ends, a wire mesh filter, and a visible white residue. The officer performed a crystal test and a gas chromatograph mass spectrometer test. On both tests the pipe proved positive for cocaine. Mr. Giblin stated at trial that the white residue could still be seen in the tube.

In his sole assignment of error, the defendant argues that the evidence is insufficient to support his conviction because the State offered only the glass tube as proof of possession of cocaine.

La. R.S. 40:967(C) 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.

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, p. 3 (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, p. 6 (La. App. 4 Cir. 3/24/99), 732 So. 2d 105, 109, writ denied, 99-1184 (La. 10/1/99), 748 So. 2d 433. The elements of knowledge and intent need not be proven as facts, but may be inferred from the circumstances. State v. Porter, 98-2280, p. 3 (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. Id. However, the amount of the substance seized will have some bearing on the defendant's guilty knowledge. State v. Postell, 98-0503, p. 5 (La. App. 4 Cir. 4/22/99), 735 So. 2d 782, 785, writ granted, 99-1482 (La. 11/12/99), 748 So. 2d 1172. 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; Williams, supra, at p. 7, 732 So. 2d at 109.

In State v. Shields, supra, 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. As in the instant

case, the officer testified that he observed a white residue in the pipe which when tested proved to be crack cocaine. Similarly, in State v. Porter, supra, 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, and both arresting officers testified that the pipe contained a visible white residue that proved to be crack cocaine. In both cases the only evidence offered was the tube with visible residue.

State v. Postell, supra, in which this court reversed the defendant's conviction for possession of cocaine, is clearly distinguishable from the instant case based on its facts. In Postell, the arresting officer retrieved a crack pipe from the sidewalk where the defendant was standing. Moreover, the officer said he could not detect the presence of cocaine in the tube at the time of the arrest, and the testing expert testified that the residue found in the crack pipe was not visible to the naked eye. Therefore, this court found no evidence of corroborating factors to support the circumstantial evidence presented by the State. By contrast, in the case at bar, the pipe was found on the defendant's person, and it contained a visible white residue which the officer recognized as cocaine.

The facts of the instant case closely resemble those of State v. Taylor, 96-1843 (La. App. 4th Cir. 10/29/97), 701 So. 2d 766, writ denied, 98- 2233

(La.1/8/99), 734 So. 2d 1224, wherein the defendant was convicted of attempted possession of cocaine on the basis of some residue in the crack pipe found in the defendant's pocket. This court then reasoned that guilty knowledge could be inferred and the evidence, though a small residue, was still sufficient to sustain a conviction.

Considering the record herein and viewing all of the evidence in the light most favorable to the prosecution, we conclude that any rational trier of fact could have found that the defendant knowingly and intentionally possessed a pipe containing crack cocaine residue, and therefore that all the essential elements of the offense were proven beyond a reasonable doubt.

Accordingly, we affirm the defendant's conviction and sentence.

AFFIRMED