

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA \* NO. 2001-KA-1270  
VERSUS \* COURT OF APPEAL  
WILLIE L. WASHINGTON \* FOURTH CIRCUIT  
\* STATE OF LOUISIANA  
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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 416-831, SECTION "J"  
Honorable Leon Cannizzaro, Judge

\* \* \* \* \*

**Chief Judge William H. Byrnes, III**

\* \* \* \* \*

(Court composed of Chief Judge William H. Byrnes III, Judge Steven R. Plotkin, and Judge Miriam G. Waltzer)

HARRY F. CONNICK  
DISTRICT ATTORNEY  
SCOTT PEBBLES  
ASSISTANT DISTRICT ATTORNEY  
619 South White Street  
New Orleans, LA 70119  
Counsel for the State/Appellee

MARY CONSTANCE HANES

LOUISIANA APPELLATE PROJECT  
P. O. Box 4015  
New Orleans, LA 701784015  
Counsel for the Defendant/Appellant

**AFFIRMED**

On September 21, 2000, Willie L. Washington was charged with possession of cocaine in violation of La. R.S. 40:967(C). On October 17, 2000 a six-member jury found him guilty of attempted possession of cocaine. When he was sentenced to serve thirty months at hard labor on April 24, 2001, Washington's sentence was suspended, and he was placed on five years active, supervised probation with special conditions. His motion to reconsider his sentence was denied, and his appeal followed.

At trial Officer Harry O'Neal, an expert in identification and analysis of controlled dangerous substances, testified that when he tested the metal pipe in evidence in this case using two different tests, he found that it contained a residue of cocaine. He described the pipe as a solid metal tube with one end covered by wire mesh filter, and Officer O'Neal saw no visible substance on the pipe.

Officer Michael Sinegar testified that at about 8:00 p.m. on August 21, 2000, he observed Washington standing in front of a store at 3021 St. Claude Avenue. The officer noticed that Washington had a metal pipe in his

right hand that he placed in his right front pants pocket when he saw the policeman. Officer Sinegar asked for the pipe, and when Washington handed it over, the officer noted it was stainless steel, one end was burnt, and the other end contained a beige colored substance that the officer believed to be crack cocaine. Washington was arrested for possession of drug paraphernalia.

Officer James Winter, Officer Sinegar's partner, testified that when they stopped at the corner store on St. Claude Avenue, he attended to several other individuals but none of them were arrested that night.

On appeal, Washington argues that the evidence was insufficient to prove that he knowingly possessed cocaine.

This court set out the well-settled 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).

98-0011 at pp. 13-14, 744 So.2d at 106-107, quoting *State v. Egana*, 97-0318, p. 5-6 (La. App. 4 Cir. 12/3/97), 703 So.2d 223, 227-28.

Washington was convicted of a violation of La. R.S. 40:979(A), attempted possession of cocaine. La. R.S. 40:979(A) prohibits any attempt to commit an offense made unlawful by the controlled dangerous substance laws. La. R.S. 40:967(C) prohibits possession of a controlled dangerous substance as classified in Schedule II, and cocaine is a Schedule II controlled dangerous substance under La. R.S. 40:964A(4). Attempted possession of controlled dangerous substances is a responsive verdict to the charge of

possession. La. C.Cr.P. art. 814(A)(50).

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 or intentionally possessed it. La. R.S. 40:967(C); *State v. Porter*, 98-2280, p. 3 (La. App. 4 Cir. 5/12/99), 740 So.2d 160. To prove attempt, the state must show that he committed an act tending directly toward the accomplishment of his intent to possess cocaine. *State v. Lavigne*, 95-0204 (La. App. 4 Cir. 5/22/96), 675 So.2d 771, 779. Guilty knowledge is an essential element of the crime of possession of a controlled dangerous substance. *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. Knowledge need not be proved as a fact, but may be inferred from the circumstances. *State v. Porter, supra*, 98-2280, p. 3., 740 So.2d at 162.

A trace amount of cocaine in a crack pipe can be sufficient to support a conviction for possession of cocaine. *State v. Shields*, 98-2283, p. 3 (La. App. 4 Cir. 9/15/99), 743 So. 2d 282, 283; *State v. Porter, supra*. Furthermore, this court has held that "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*, 98-0806 at p. 7, 732 So.2d at 109. The presence of visible cocaine residue in the pipe is often cited as evidence of guilty knowledge in crack pipe cases. *See State v. Guillard*, 98-0504 (La. App. 4 Cir. 4/7/99), 736 So.2d 273; *State v. Drummer*, 99-0858 (La. App. 4 Cir. 12/22/99), 750 So.2d 360, *writ denied*, 2000-0514 (La. 1/26/01), 781 So.2d 1257; *State v. Lewis*, 98-2575, p. 4, (La. App. 4 Cir. 3/1/00), 755 So.2d 1025, 1028.

In this case Washington argues that Officer O’Neal indicated there was no residue in the metal pipe he was carrying and there was no testimony as to furtive behavior on his part. Washington is correct that Officer O’Neal said that when he began testing, “there was no visible substance” to test, and so he washed the pipe with methanol and performed the tests which revealed a cocaine residue. Officer O’Neal’s testimony is in conflict with Officer Sinegar’s story. Officer Sinegar testified that he saw “a beige colored residue” in the pipe that he believed to be crack cocaine. Washington maintains that the jury should have placed more weight in the testimony of Officer O’Neal, the expert witness. However, it is the jury’s function to make credibility determinations, and this court will not second-guess its decision. *State v. Washington*, 99-1111 (La. App. 4 Cir. 3/21/01), 788 So.2d 477. Furthermore, possession of a pipe—used only for smoking cocaine—has been held to indicate guilty knowledge. *State v. McKnight, supra*, 99-

0997, p. 4, 737 So.2d at 219.

Washington also complains that there was no furtive movement on his part to indicate guilty knowledge. However, Officer Sinegar saw Washington holding the pipe in his right hand until he observed the policemen approaching, and then Washington stuck the pipe into his pants pocket, suggesting that Washington was aware of the contraband. Under the jurisprudence, the State produced sufficient evidence to sustain Washington's conviction for attempted 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 charged sufficient to exclude every reasonable hypothesis of innocence.

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

**AFFIRMED**