

STATE OF LOUISIANA

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NO. 2001-KA-1282

VERSUS

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COURT OF APPEAL

LASAUNDR A VARNER

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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. 415-001, SECTION "J"
Honorable Leon Cannizzaro, Judge

Charles R. Jones
Judge

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray,
and Judge Terri F. Love)

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AFFIRMED

Lasaundra Varner appeals her conviction and sentence for attempted possession of cocaine. We affirm.

At trial Officers Steven Payne and Johnny Young testified that at approximately 5 p.m. on May 14, 2000, they made a traffic stop of a motorcycle because of a traffic violation. Two people were riding on the motorcycle, and Varner was the passenger. Officer Young arrested the driver because his license had been suspended, and Officer Young knew that his partner was arresting Varner for drug paraphernalia. Officer Payne testified that after the motorcycle was stopped, he noticed a glass tube protruding from Varner's pocket. When he asked her to remove it, she did so and revealed a spoon with a pipe. Both items showed a residue of cocaine.

Officer Corey Hall, an expert in the identification and analysis of controlled dangerous substances, testified that he tested the pipe and spoon submitted as evidence in this case, and both tested positive for cocaine.

Varner was charged with possession of cocaine, but found guilty of attempted possession, and sentenced to thirty months imprisonment. This

appeal follows.

In a single assignment of error, Varner argues that the evidence was insufficient to prove that she possessed cocaine.

This court has often set out the well-settled standard for reviewing convictions for sufficiency of the evidence. State v. Ragas, 98-0011 (La. App. 4 Cir. 7/28/99) 744 So.2d 99.

Varner was convicted of attempted possession of cocaine, a violation of La. R.S. 40:979(A). 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. Cocaine is a Schedule II controlled dangerous substance under La. R.S. 40:964. According to La. C.Cr.P.art. 814 (A)(50), attempted possession of a controlled dangerous substances is a responsive verdict to the charge of possession.

To support a conviction for possession of cocaine, the state must prove that the defendant was in possession of the illegal drug and that she knowingly or intentionally possessed it. La. R.S. 40:967(C); State v. Chambers, 563 So. 2d 579 (La. App. 4 Cir. 1990). To prove attempt, the state must show that she committed an act tending directly toward the accomplishment of her 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. Id.; 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 proven as a fact, 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.

In this case Varner cites State v. Postell, 98-0503 (La. App. 4 Cir. 4/11/99), 735 So. 2d 782, and argues that there are no corroborating circumstances to support a conviction based on circumstantial evidence. She notes that she did not try to run away, and she did not appear to have been using drugs. However, unlike the defendant in Postell, Varner was holding a pipe and a spoon with a visible residue that the arresting officer suspected to be cocaine. Varner also complains that the officer did not describe the residue he observed in the pipe and on the spoon as “white” or a “white powder.” Although she is correct, this fact is of no material significance because Officer Payne saw a suspicious residue on the paraphernalia she was carrying, and when the objects were tested, the residue proved to be cocaine.

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, 98-2280, p. 3 (La. App. 4 Cir. 5/12/99), 740 So. 2d at 162. 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, 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; State v. Tassin, 99-1692 (La. App. 4 Cir. 3/15/00), 758 So. 2d 351.

Under the jurisprudence, the State produced sufficient evidence to sustain Varner'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.

This assignment of error is without merit.

Accordingly, Lasaundra Varner's conviction and sentence are affirmed.

AFFIRMED