

**STATE OF LOUISIANA**

\*

**NO. 2001-KA-1375**

**VERSUS**

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**COURT OF APPEAL**

**ALICIA NICHOLS**

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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. 419-592, SECTION "F"  
Honorable Dennis J. Waldron, Judge

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**Charles R. Jones**  
**Judge**

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(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris Sr.,  
and  
Judge David S. Gorbaty)

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**AFFIRMED**

Appellant, Alicia Nichols, appeals the district court's judgment sentencing her to eighteen months without benefit of probation or suspension of sentence on one count of possession of cocaine in violation of La R.S. 40:967. The State filed a multiple bill charging Nichols as a second felony offender. Nichols filed the instant appeal and we affirm the judgment of the district court.

Nichols was charged by bill of information with one count of possession of cocaine in violation of La R.S. 40:967. She pleaded not guilty. The district court denied Nichol's motion to suppress the evidence. On March 13, 2001 Nichols was found guilty of attempted possession of cocaine. The State filed a multiple bill charging Nichols as a second felony offender. Nichols pleaded guilty to the multiple bill and was sentenced to eighteen months without benefit of probation or suspension of sentence. This timely appeal follows.

**FACTS**

At trial, Officer Ray Jones of the New Orleans Police Department, testified at trial that on January 10, 2001, he and his partner, Officer Gerald Parker, observed Nichols walking in the three thousand block of Second Street in New Orleans. As their marked police vehicle approached Nichols, she turned and began walking in the opposite direction. Officer Jones further testified that as Nichols walked away she repeatedly looked over her shoulder attempting to observe the officers' actions. Nichols then entered a gate and stood on the porch of 3012 Second Street. Officer Jones testified that she stood on the porch watching as they drove by. The officers, concerned that Nichols may be trespassing, stopped and questioned her. When asked she told the officers that she did not live at the address. The officers ran Nichols' name and found that she was wanted on other charges so they arrested her. Officers Jones and Parker performed a brief pat down search of Nichols then transported her to central lockup.

Deputy Melissa Crump testified at trial that during her search of Nichols she found a metal piece of pipe and a matchbox that contained a hand rolled cigarette in Nichols' jacket pocket. Deputy Crump turned what she found over to Officers Jones and Parker.

Officers Jones and Parker read Nichols her rights and she was re-arrested for possession of marijuana and drug paraphernalia.

Glen Gilyot, a criminalist with the New Orleans Police Department, testified at trial that he tested the substance in the hand rolled cigarette and confirmed the presence of marijuana. Mr. Gilyot further testified that he also tested the metal pipe and confirmed the presence of cocaine residue.

### **ERRORS PATENT**

A review of the record revealed no errors patent.

### **ASSIGNMENT OF ERROR NUMBER 1**

In her first assignment of error, Nichols argues that the district court erred in failing to grant her motion to suppress the evidence. Specifically, she argues that Officers Jones and Parker lacked reasonable suspicion to make an investigatory stop.

The trial court is vested with great discretion when ruling on a motion to suppress. *State v. Oliver*, 99-1585, p.4 (La. App. 4 Cir. 9/22/99), 752 So.2d 911, 914.

La. C.Cr.P. art. 215.1 provides in part:

A. A law enforcement officer may stop a person in a public place whom he reasonably suspects is committing, has committed, or is about to commit an offense and demand of him his name, address, and an explanation of his actions.

This Court in *State v. Anderson*, 96-0810, p.2 (La. App. 4 Cir. 5/21/97), 696 So.2d 105,106, noted:

A police officer has the right to stop a person and investigate conduct when he has a reasonable suspicion that the person is, has been, or is about to be engaged in criminal conduct. Reasonable suspicion for an investigatory stop is something less than probable cause; and, it must be determined under the facts of each case whether the officer had sufficient articulable knowledge of particular facts and circumstances to justify an infringement upon an individual's right to be free from governmental interference. The totality of the circumstances must be considered in determining whether reasonable suspicion exists.

An investigative stop must be justified by some objective manifestation that the person stopped is or is about to be engaged in criminal activity or else there must be reasonable grounds to believe that the person is wanted for past criminal conduct.

In reviewing the totality of the circumstances, the officer's past experience, training and common sense may be considered in determining if his inferences from the facts at hand were reasonable. *State v. Short*, 96-1069, p.4 (La. App. 4 Cir. 5/7/97), 694 So.2d 549, 552.

When a law enforcement officer has probable cause to believe that a person has committed a crime, he may place that person under arrest. Incident to such lawful arrest, the officer may lawfully conduct a full search of the arrestee and the area within his immediate control for weapons and for evidence of a crime. *State v. Morgan*, 445 So.2d 50, 51 (La. App. 4<sup>th</sup> Cir. 1984).

In *State v. Hill*, 97-2551 p.5 (La. 11/6/98), 725 So.2d 1282, 1285, the Louisiana Supreme Court found that the probable cause provided by an outstanding arrest warrant constitutes an intervening circumstance which dissipates the taint of an initial impermissible encounter.

In the instant case, Officers Jones and Parker both testified that upon Nichols seeing them, she turned and walked in the opposite direction, as she walked away she looked over her shoulder to try and see what they were doing. Further, she stopped at a residence to watch the officers as they drove past her. When questioned by the officers, Nichols admitted that she did not live in the house where she stopped. Additionally, once the officers ran her name and found that she was wanted on unrelated criminal charges the officers had probable cause to arrest, and the marijuana and crack pipe seized were taken pursuant to a lawful search incident to that arrest. The district court did not err in denying Nichols' motion to suppress. This assignment of error lacks merit.

### **ASSIGNMENT OF ERROR NUMBER 2**

In her second assignment of error, Nichols argues that the evidence was insufficient to support her conviction for attempted possession of cocaine.

The standard for reviewing a claim of insufficient evidence is

whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found all of the essential elements of the offense proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The reviewing court is to consider the record as a whole and not just evidence most favorable to the prosecution; and if rational triers of fact could disagree as to the interpretation of the evidence, the rational decision to convict should be upheld. *State v. Mussall*, 523 So.2d 1305 (La. 1988).

Additionally, the 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. *Id.* The trier of fact's determination of credibility is not to be disturbed on appeal absent an abuse of discretion. *State v. Cashen*, 544 So.2d 1268 (La. App. 4<sup>th</sup> Cir. 1989).

When circumstantial evidence forms the basis for the conviction, such evidence must exclude every reasonable hypothesis of innocence. La. R.S. 15:438. "This Court does not determine whether another possible hypothesis suggested by the defendant could afford an exculpatory explanation of the events. Rather, this Court, when evaluating the evidence in the light most favorable to the prosecution, must determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror

could not have found proof of guilt beyond a reasonable doubt under *Jackson*.” *State v. Davis*, 92-1623 (La. 5/23/94), 637 So.2d 1012. This is not a separate test from *Jackson*, but is instead an evidentiary guideline for the jury when considering circumstantial evidence, and this test facilitates appellate review of whether a rational juror could have found the defendant guilty beyond a reasonable doubt. *State v. Wright*, 445 So.2d 1198 (La. 1984).

The elements of possession of cocaine as found in La. R.S. 40:967 (c), are proof that the defendant knowingly or intentionally possessed cocaine. The State need not prove that the defendant was in actual possession of the narcotics found; constructive possession is sufficient to support conviction. *State v. Allen*, 96-0138 (La. App. 4 Cir. 12/27/96), 686 So.2d 1017, 1020. A person not in physical possession of narcotics may have constructive possession when the drugs are under that person’s dominion and control. *Allen, id*, citing *State v. Jackson*, 557 So.2d 034, 1035 (La. App. 4<sup>th</sup> 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. *State v. Council*, 2001-0639, p.4 (La. App. 4 Cir. 11/28/01), 802 So.2d 970, 973.

In *State v. Guillard*, 98-0504, p.5 (La. App. 4 Cir. 4/7/99), 736 So.2d 273, 277, we found evidence introduced revealing that the officers retrieved a crack pipe from the defendant's pocket, that the pipe contained cocaine residue, and that the crime lab tested the substance and found it to be positive for cocaine, was sufficient to sustain a conviction for attempted possession of cocaine.

In the instant case, like *Guillard*, Nichols was found to be in possession of a crack pipe that contained a residue that tested positive for cocaine. Therefore, it does not appear that the district court abused its discretion in finding Nichols guilty of attempted possession of cocaine. This assignment of error lacks merit.

**DECREE**

For the reasons stated herein, we affirm the conviction and sentence as to Alicia Nichols.

**AFFIRMED**