

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 KA 2318

STATE OF LOUISIANA

VERSUS

RANDOLPH MANUEL

Judgment Rendered: May 7, 2010

Appealed from the
Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Case Number 494,620
Honorable David W. Arceneaux, Presiding

Joseph L. Waitz, Jr.
District Attorney

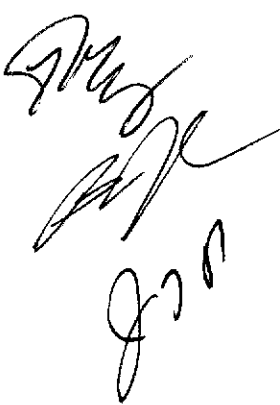
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BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.



GUIDRY, J.

The defendant, Randolph Manuel, was charged by bill of information with one count of possession of cocaine, a violation of La. R.S. 40:967(C), and pled not guilty. Following a jury trial, he was found guilty as charged. He was sentenced to five years at hard labor. He now appeals, contending that there was insufficient evidence to support the conviction. For the following reasons, we affirm the conviction and sentence.

FACTS

Terrebonne Parish Sheriff's Office Deputy Timothy Goemans testified at trial that on May 18, 2007, he was patrolling the Grand Caillou/Dulac area of Houma. At approximately 11:14 p.m., near the Combo Bridge, he observed a vehicle swerving in the roadway. The vehicle touched the fog line twice and crossed the center line once. Deputy Goemans activated his emergency lights and spotlights to signal the vehicle to pull over and further observed the driver turning toward the back seat, either reaching under the seat or moving around the console area. The defendant was driving the vehicle, and Brown was a passenger in the vehicle. While asking the defendant for his driver's license and registration, Deputy Goemans shined his flashlight into the vehicle, looking for weapons. He saw an open can of beer wedged between the center console and the seat. He asked the defendant to step out of the vehicle, and the defendant exited the vehicle. Deputy Goemans questioned the defendant about the beer in the vehicle and asked him if there were any weapons or illegal narcotics in the vehicle. The defendant denied that there was anything illegal in the vehicle. Deputy Goemans asked the defendant for permission to search the vehicle, and the defendant consented to a search of the vehicle. According to Deputy Goemans, thereafter, he discovered a white powdery substance, later determined to be cocaine, scattered on top of the center console. Deputy Goemans indicated that the defendant's face would have

been over the center console when he turned toward the back seat prior to pulling over.

Deputy Goemans advised the defendant of his Miranda¹ rights, asked him if he understood his rights, and asked him if, having these rights in mind, he wished to talk to him. According to Deputy Goemans, the defendant admitted to using “cocaine about a minute ago[,]” and added that he had “used powder in the past three hours.” Deputy Goemans told the defendant that he (Deputy Goemans) had discovered suspected crack cocaine in the vehicle, and asked the defendant to identify the substance. According to Deputy Goemans, the defendant identified the substance as cocaine and stated it was “left over from earlier.” According to Deputy Goemans, when asked if the cocaine belonged to him or the passenger, the defendant stated that “the beer belonged to him, and that [Brown] knew nothing about the powder.” Following the stop, Deputy Goemans determined that the vehicle was registered to someone other than the defendant.

Beverly Thomas, the defendant’s sister, also testified at trial. She conceded that she had previously pled guilty to introduction of contraband into a penal institution. She indicated that the vehicle the defendant had been driving belonged to their mother. She claimed that at least twenty different family members, including her son who was a drug addict, had ridden in the car at one time or another.

The defendant also testified at trial. He conceded that he had previously pled guilty to distribution of marijuana. He claimed Deputy Goemans stopped him as he was returning from Houma. The defendant claimed, while in Houma, he had been stopped for speeding by eight or nine police officers. The defendant claimed that during the earlier stop, the police officers saw the open can of beer in the car, looked around the inside of the car, and did not arrest him for anything.

¹ Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

In regard to the stop by Deputy Goemans, the defendant claimed, at the time of the stop, he was giving his brother, John Brown, a ride home. The defendant denied reaching around in the vehicle prior to stopping the vehicle. He claimed that after stopping his vehicle, he immediately exited the vehicle and approached Deputy Goemans. He conceded that he consented to a search of the vehicle. He, however, denied claiming any ownership of the cocaine in the car. He also denied using cocaine on the day of the incident. He claimed that his nephew, Beverly Thomas's son, had ridden in the car earlier that day. He conceded he did not bring any documentation to court or subpoena any witnesses to corroborate his claim of the traffic stop in Houma.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues there was insufficient evidence to support the conviction because the State failed to exclude the reasonable hypothesis of innocence that the cocaine belonged to the passenger in the car or to one of the other people who had previously borrowed the car from the defendant's mother.

The standard of review for sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove," every reasonable hypothesis of innocence is excluded. State v. Wright, 98-0601, p. 2 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, 00-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. Wright, 98-0601 at p. 3, 730 So.2d at 487.

As applicable here, it is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance as classified in Schedule II. La. R.S. 40:967(C). Cocaine is a controlled dangerous substance as classified in Schedule II. See La. R.S. 40:964, Schedule II (A)(4).

The State is not required to show actual possession of drugs by a defendant in order to convict. Constructive possession is sufficient. A person is considered to be in constructive possession of a controlled dangerous substance if it is subject to his dominion and control, regardless of whether or not it is in his physical possession. Also, a person may be in joint possession of a drug if he willfully and knowingly shares with another the right to control the drug. However, the mere presence in the area where narcotics are discovered or mere association with the person who does control the drug or the area where it is located is insufficient to support a finding of constructive possession. State v. Smith, 03-0917, pp. 5-6, (La. App. 1st Cir. 12/31/03), 868 So.2d 794, 799.

A determination of whether there is "possession" sufficient to convict depends on the peculiar facts of each case. Factors to be considered in determining whether a defendant exercised dominion and control sufficient to constitute possession include his knowledge that drugs were in the area, his relationship with the person found to be in actual possession, his access to the area where the drugs were found, evidence

of recent drug use, and his physical proximity to the drugs. Smith, 03-0917 at p. 6, 868 So.2d at 799.

Once the crime itself has been established, a confession alone may be used to identify the accused as the perpetrator. State v. Carter, 521 So.2d 553, 555 (La. App. 1st Cir. 1988).

After a thorough review of the record, we are convinced that a rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of possession of cocaine, and the defendant's identity as the perpetrator of that offense. The jury rejected the defendant's theory that the cocaine on the console belonged to someone other than the defendant who had been in the car. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. State v. Lofton, 96-1429, p. 5 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. Additionally, when a case involves circumstantial evidence, and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. State v. Captville, 448 So.2d 676, 680 (La. 1984). No such hypothesis exists in the instant case. We also cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See State v. Ordodi, 06-0207, p. 14 (La. 11/29/06), 946 So.2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that

of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. State v. Calloway, 07-2306, pp. 1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.