

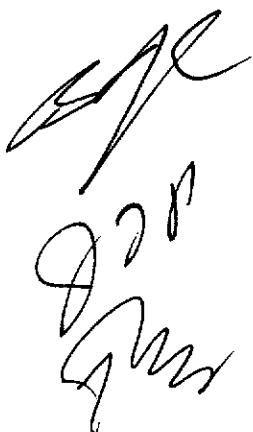
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 0142

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STATE OF LOUISIANA

VERSUS

PATRICK D. WASHINGTON

Judgment Rendered: June 11, 2010.

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On Appeal from the
22nd Judicial District Court,
in and for the Parish of St. Tammany
State of Louisiana
District Court No. 449302

The Honorable Allison H. Penzato, Judge Presiding

* * * * *

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Patrick D. Washington

* * * * *

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

CARTER, C.J.

The defendant, Patrick D. Washington, was charged by bill of information with possession of cocaine, a violation of La. R.S. 40:967C. He pled not guilty. The defendant was tried by a jury and convicted as charged. The defendant filed motions for a new trial and for a post-verdict judgment of acquittal. The trial court denied both motions. The defendant was sentenced to imprisonment at hard labor for five years and ordered to pay a \$1000.00 fine. The court suspended four years of the sentence and ordered that the defendant serve a period of five years on supervised probation upon his release. The defendant now appeals, urging in a single assignment of error that the evidence presented by the state is insufficient to support the conviction.

Finding no merit in the assignment of error, we affirm the defendant's conviction and sentence.

FACTS

On April 1, 2008, the St. Tammany Parish Sheriff's Office received a complaint regarding narcotics activity at the apartment the defendant shared with his girlfriend, Melissa Krepps, in Slidell, Louisiana. Several narcotics detectives were dispatched to the residence to conduct a "knock and talk" investigation. The defendant, Krepps, Kellie Dean (Krepps's aunt), and two small children were present when the officers arrived. Detective Brandon Stevens advised the defendant of the nature of the complaint and requested permission to search the residence. The defendant agreed to allow the search and executed a written consent to search form.

During the search of the residence, the detectives found what they recognized as a "crack pipe" under an air mattress in the guest bedroom. Kellie

Dean admitted that she owned the crack pipe and that she used it that day to smoke drugs at the residence. Dean also claimed that she received the crack cocaine she smoked from the defendant.

Detective Scott Saigeon proceeded to search the yard of the residence. During the search, Det. Saigeon observed a two-by-four stake loosely implanted in the center of the backyard. When he removed the stake, Det. Saigeon found a medicine bottle attached to the end of the stake with wire and electrical tape. Several rock-like substances, that were later determined to contain cocaine, were found inside the medicine bottle.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant contends the evidence presented at trial is insufficient to sustain the possession of cocaine conviction. Specifically, the defendant contends the circumstantial evidence presented at the trial was insufficient to establish that he was aware of the presence of the small amount of crack cocaine in his yard or that it was subject to his dominion and control. He asserts the state failed to exclude the hypothesis of innocence that the medicine bottle containing the crack cocaine actually belonged to his girlfriend, Melissa Krepps, with whom he shared the apartment.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, when viewing the evidence in the light most favorable to the prosecution, a 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. See La. Code Crim. P. art. 821; **State v. Johnson**, 461 So.2d 673, 674 (La. App. 1st Cir. 1984). **The Jackson v. Virginia**, 443 U.S. 307,

99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), standard of review incorporated in Article 821 is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. **State v. Summit**, 454 So.2d 1100, 1104 (La. 1984), cert. denied, 470 U.S. 1038, 105 S.Ct. 1411, 84 L.Ed.2d 800 (1985).

When analyzing circumstantial evidence, Louisiana Revised Statutes 15:438 provides that the fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. **State v. Nevers**, 621 So.2d 1108, 1116 (La. App. 1st Cir.), writ denied, 617 So.2d 906 (La. 1993). When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

To support a conviction for possession of a controlled dangerous substance, the state must prove that the defendant knowingly and intentionally possessed the contraband, herein cocaine. La. R.S. 40:967C. The state need not prove that the defendant was in actual possession of the narcotics found; constructive possession is sufficient to support a conviction. **State v. Trahan**, 425 So.2d 1222, 1226 (La. 1983). A person not in physical possession of narcotics may have constructive possession when the drugs are under that person's dominion and control. **State v. Gordon**, 93-1922 (La. App. 1 Cir. 11/10/94), 646 So.2d 995, 1002. A person may be deemed to be in joint possession of a drug that is in the physical possession of another if he willfully and knowingly shares with the other the right to control it. See State v. Hamilton, 2002-1344 (La. App. 1 Cir. 2/14/03), 845 So.2d 383, 392, writ denied, 2003-1095 (La. 4/30/04), 872 So.2d 480.

At trial of this matter, the state used circumstantial evidence to prove beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant had dominion and control over the cocaine found in his yard. The St. Tammany Parish Sheriff's officials testified that they were dispatched to the defendant's residence in response to complaints of narcotics activity. Dean, an overnight guest at the residence, admitted that she owned the crack pipe found inside the residence and that she had recently smoked crack cocaine that she received from the defendant. Dean further testified that the defendant exited the back door of the residence to retrieve the cocaine he provided her.

Consistent with Dean's claim, Det. Saigeon testified that the crack cocaine was found in the center of the defendant's backyard, approximately 10 to 15 feet from the back door. Det. Keith Dowling and Det. Scott Saigeon both testified that once the stake and connecting medicine bottle were brought inside the residence, the defendant immediately lowered his head before claiming he did not know there was cocaine on the premises. Det. Saigeon further testified that the defendant "looked like he was going to be sick."

Although the defendant now claims that the crack cocaine possibly belonged to Krepps, defense questioning at the trial seemed to suggest that the cocaine belonged to Dean, an admitted drug addict. The jurors, who sat as triers of fact and judges of credibility, were aware of Dean's admitted drug problem and that Krepps resided at the apartment with the defendant. The jury rejected the hypothesis of innocence that the crack cocaine belonged to Dean or Krepps. The jury apparently considered Dean's testimony establishing that the defendant provided her with crack cocaine after returning from the back yard of the residence—the location

where the drugs were found—and the detectives’ description of the defendant’s reaction once he realized the medicine bottle had been discovered and concluded that the crack cocaine belonged to the defendant and that he exercised dominion and control over it. We do not find this conclusion unreasonable. The evidence presented at the trial of this matter was sufficient to prove beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the essential elements of the crime of possession of cocaine and the defendant’s identity as the perpetrator. In reviewing the evidence, we cannot say that the jury’s determination was irrational under the facts and circumstances presented to them. See State v. Ordodi, 2006-0207 (La. 11/29/06), 946 So.2d 654, 662. Furthermore, 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, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (*per curiam*).

This assignment is without merit. For the foregoing reasons, the defendant’s conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.