STATE OF LOUISIANA	*	**NO. 2000-KA-1638**
VERSUS	*	**COURT OF APPEAL**
JOHN SYLVIA	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 411-976, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE
* * * * * *
JAMES F. MC KAY, III
JUDGE
* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones, Judge James F. McKay, III)

BRIAN P. BRANCATO
LOUISIANA APPELLATE PROJECT
New Orleans, Louisiana
Attorney for Defendant/Appellant

AFFIRMED

John Sylvia was charged by bill of information on January 13, 2000, with possession of cocaine, a violation of La. R.S. 15:529.1. At his arraignment on January 19th he pleaded not guilty. A six-member jury found him guilty of attempted possession of cocaine after trial on February 1st. The State filed a multiple bill, and after a hearing on May 8th in which he was found to be a second felony offender under La. R.S. 15:529.1, Sylvia was sentenced to serve five years at hard labor. The defendant's motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

At trial Officer Joshua Burns testified that on December 23rd about 3:50 p.m. he noticed John Sylvia and another man on the corner of St. Joseph and Carondelet Streets because they were screaming and pushing each other. As he got close to the men, he detected a strong odor of alcohol; additionally, he realized the men had slurred speech and could barely stand up. The officer arrested the defendant for public intoxication, and in a search incident to arrest, he found a metal crack pipe in Sylvia's left rear pant's pocket. Sylvia was initially charged with possession of drug paraphernalia rather than possession of cocaine because the officer could not test the pipe for cocaine when he found it. Officer Burns also found a lighter

which he confiscated.

Officer Stanley Doucette, Officer Burns' partner, testified to the same facts.

Officer Harry O'Neal, an expert in identification and analysis of controlled dangerous substances, testified that he examined the metal pipe and performed two tests; both indicated that the substance in the pipe was cocaine. The officer testified that he could not see the cocaine in the metal tube prior to the testing process.

The well-settled standard for reviewing convictions for sufficiency of the evidence was set out by this Court 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.
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> 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, 744 So.2d at 106-107, quoting State v. Egana, 97-0318, (La. App. 4 Cir. 12/3/97), 703 So.2d 223, 227-228.

Defendant was convicted of attempted possession of cocaine, a violation of La. R.S. 14:27 and 40:967. La. R.S. 40:967(C) provides that "[I]t is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance as classified in Schedule II …." Cocaine is a Schedule II controlled dangerous substance. La. R.S. 40:964. The "Attempt" statute, La. R.S. 14:27, provides in pertinent part:

> A. Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

* * * *

> C. An attempt is a separate but lesser grade of the intended crime; and any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was actually perpetrated by such person in pursuance of such attempt.

"If the evidence adduced at trial was sufficient to support a conviction of the charged offense, the jury's [responsive] verdict is authorized." State v. Harris, 97-2903, (La. App. 4 Cir. 9/1/99), 742 So. 2d 997, 1001-1002.

To support a conviction for possession of cocaine, the State must establish that the defendant was in possession of the drug and that he knowingly or intentionally possessed it. State v. Shields, 98-2283 (La. App. 4 Cir. 9/15/99), 743 So. 2d 282, 283. Guilty knowledge is an essential element of the crime of possession of cocaine. State v. Williams, 98-0806, (La. App. 4 Cir. 3/24/99), 732 So. 2d 105, 109, writ denied, 99-1184 (La. 10/1/99) 748 So. 2d 433. The elements of knowledge and intent need not be proven as facts, but may be inferred from the circumstances. State v. Porter, 98-2280, (La. App. 4 Cir. 5/12/99), 740 So. 2d 160, 162. A trace amount of cocaine in a crack pipe can be sufficient to support a conviction for possession. See Shields, 743 So. 2d at 284; Porter, 740 So. 2d at 162. In crack pipe cases, "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, (La. App. 4

Cir. 5/10/99), 737 So. 2d 218, 219; Williams, 98-0806, 732 So. 2d at 109.

In State v. Shields, 98-2283 (La. App. 4 Cir. 9/15/99), 743 So. 2d 282, and State v. Porter, 98-2280 (La. App. 4 Cir. 5/12/99), 740 So. 2d 160, this court affirmed each of the defendants' convictions for possession of cocaine after crack pipes were discovered on each defendant's person during a frisk for weapons. In each case the arresting officer testified that he observed a white residue in the pipe, but neither decision reflects whether or not the officer believed it was cocaine residue. As in the instant case, a criminalist testified in both Shields and Porter that two tests performed on the residue found in the pipe were positive for the presence of cocaine.

Defendant cites State v. Postell, 98-0503 (La. App. 4/22/99), 735 So. 2d 782, writ granted, 748 So.2d 1172 (La. 11/12/99), where this court reversed a defendant's conviction for possession of cocaine when only trace amounts were found in a crack pipe in his possession. A police officer lawfully approached the defendant who, in response, dropped something to the ground. The officer recognized the object as a crack pipe, but was unable to detect the presence of any drugs in the pipe. The presence of cocaine in the pipe was discovered by chemical tests. The defendant points out that in Postell, as in the instant case, there was no corroborating evidence in that the defendant did not attempt to flee, did not make exculpatory

statements, or did not display furtive behavior upon seeing the arresting officer approaching him. Postell is distinguishable from the instant case, however, in that in the instant case the pipe was found on the defendant's person. In Postell the arresting officer retrieved the pipe from the sidewalk near the defendant. 735 So. 2d at 787. Also in the case at bar, the defendant appeared to be very intoxicated, and thus, his failure to react to the police officer can be ascribed to his inebriation rather than his lack of anxiety.

This case bears a close resemblance to the facts in State v. Taylor, 96-1843 (La. App. 4th Cir. 10/29/97), 701 So. 2d 766, writ denied, 98- 2233 (La.1/8/99), 734 So. 2d 1224, wherein the defendant was convicted of attempted possession of cocaine on the basis of some residue in the crack pipe found in the defendant's pocket. This court then reasoned that guilty knowledge could be inferred and the evidence, though a small residue, was still sufficient to sustain a conviction. See also State v. Nowak, 98-0012 (La. App. 4th Cir. 12/9/98), 727 So. 2d 526, and State v. Guillard, 98-0504 (La. App. 4th Cir 4/7/99), 736 So. 2d 273.

Accordingly, there is sufficient evidence to sustain the defendant's conviction and sentence.

The defendant's conviction and sentence are affirmed.

AFFIRMED