

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2000-KA-1817**
VERSUS * **COURT OF APPEAL**
DAVID A. CASE * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 413-390, SECTION "J"
Honorable Leon Cannizzaro, Judge
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Judge Terri F. Love
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(Court composed of Judge James F. McKay III, Judge Terri F. Love, Judge Max N. Tobias Jr.)

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**AFFIRMED
STATEMENT OF CASE**

On March 17, 2000, the defendant, David A. Case, was charged by bill of information with possession of cocaine in violation of La. R.S. 40:967. At his arraignment on March 22, 2000, the defendant pled not guilty. The defendant was found guilty as charged after a jury trial on March 28, 2000. The trial court ordered a pre-sentence investigative report. On May 30, 2000, the trial court sentenced the defendant to serve three years at hard labor. The trial court denied the defendant's motion to reconsider sentence.

STATEMENT OF FACT

On February 25, 2000, Orleans Parish Criminal Deputy Sheriff Jeffrey Howard was assigned to Central Lockup. His job was to receive all arrested subjects taken to Central Lockup by New Orleans police officers and Louisiana State police officers. The defendant, David A. Case, was taken to Central Lockup on that night by a New Orleans police officer. When the defendant came in, Deputy Howard asked the defendant to remove all items from his pants pockets. The defendant took out an object which, at first

glance, appeared to be a clear glass pen. When the officer viewed the item on the counter, he realized it was a crack pipe with residue in it.

Officer Harry O'Neal, a chemist with the New Orleans Police Department's Crime Lab, testified at trial that the residue in the pipe tested positive for cocaine.

ERRORS PATENT

A review of the record for errors patent reveals none.

DISCUSSION

ASSIGNMENT OF ERROR NUMBER 1

In his first assignment of error, the defendant contends that the State failed to produce sufficient evidence to support his conviction for possession of cocaine.

When assessing the sufficiency of evidence to support a conviction, the appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Jacobs, 504 So.2d 817 (La. 1987).

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. The test provided in La. R.S. 15:438 is not a separate test from Jackson v. Virginia, but rather is 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. Id. at 269.

To support a conviction for possession of cocaine, the state must prove that the defendant was in possession of the illegal drug and that he knowingly possessed it. State v. Lavigne, 95-0204 (La. App. 4 Cir. 5/22/96), 675 So.2d 771, writ denied, 96-1738 (La. 1/10/97), 685 So.2d 140; State v. Chambers, 563 So.2d 579 (La. App. 4 Cir. 1990). Guilty knowledge is an essential element of the crime of possession of cocaine. State v. Goiner, 410 So.2d 1085 (La. 1982). Although a conviction for possession of cocaine can stand on the possession of the slightest amount of the drug, the amount of the substance will have some bearing on the defendant's guilty knowledge. State v. Spates, 588 So.2d 398 (La. App. 2 Cir. 1991). In

addition, the possession of drug paraphernalia such as a metal pipe or "straight shooter" is indicative of guilty knowledge. Id.

In State v. Jones, 94-1261 (La. App. 3 Cir. 5/17/95), 657 So.2d 262, the court concluded that the defendant's actions and possession of an object which was typically only used to smoke cocaine provided sufficient evidence to show that the defendant knowingly possessed cocaine. This Court, in State v. Gaines, 96-1850 (La. App. 4 Cir. 1/29/97), held that defendant's possession of a glass pipe which contained cocaine residue was sufficient to prove defendant's possession of cocaine.

In Lavigne, the defendant was found to be in possession of a crack pipe that had a residue in it. The residue was found to be cocaine. The defendant alleged that he found the pipe on the street and did not know it contained cocaine as he could not see the residue. The defendant stated that he intended to throw the pipe away once he got home. In affirming the defendant's conviction, this Court noted that the defendant's guilty knowledge could be inferred from the defendant's dominion and control over the pipe and the residue of cocaine found in the pipe. State v. Lavigne, 675 So.2d 771 at 779.

In the present case, Deputy Howard stated that he observed the defendant take the glass pipe out of his pocket and place it on the counter.

When Deputy Howard examined the pipe closely, he noticed that there was a residue in the pipe. Officer O'Neal testified at trial that the residue in the pipe tested positive for cocaine. Such evidence was sufficient to prove that the defendant was in possession of cocaine.

ASSIGNMENT OF ERROR NUMBER 2

The defendant also argues that the trial court imposed an unconstitutionally excessive sentence.

Article I, Section 20 of the Louisiana Constitution of 1974 provides that "No law shall subject any person . . . to cruel, excessive or unusual punishment."

A sentence within the statutory limit is constitutionally excessive if it is "grossly out of proportion to the severity of the crime" or is "nothing more than the purposeless imposition of pain and suffering." State v. Caston, 477 So.2d 868 (La. App. 4 Cir. 1985). Generally, a reviewing court must determine whether the trial judge adequately complied with the sentencing guidelines set forth in La. C.Cr.P. art. 894.1 and whether the sentence is warranted in light of the particular circumstances of the case. State v. Soco, 441 So.2d 719 (La. 1983); State v. Quebedeaux, 424 So.2d 1009 (La. 1982).

If adequate compliance with Article 894.1 is found, the reviewing court must determine whether the sentence imposed is too severe in light of

the particular defendant and the circumstances of his case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. State v. Quebedeaux, 424 So.2d 1009 (La. 1982); State v. Guajardo, 428 So.2d 468 (La. 1983).

Prior to sentencing the defendant, the trial court ordered a pre-sentence investigative report. At the sentencing hearing, the trial court noted that the defendant was a second felony offender. The defendant was convicted in Mississippi in 1994 of three counts of felonious bad checks and was sentenced to three years. At the time of the present offense, the defendant was wanted in Mississippi for a probation violation. The pre-sentence investigative report also indicated that the defendant had municipal convictions for possession of marijuana, illegally carrying a weapon, public drunkenness and lewd conduct. Probation was not recommended.

The trial court sentenced the defendant to a mid-range sentence of three years at hard labor. In light of the defendant's criminal history and the fact that he was on probation at the time of the present offense, the sentence imposed by the trial court was not excessive.

Accordingly, we find the defendant's two assignments of error to be without merit.

CONCLUSION

The defendant's conviction and sentence are affirmed.

AFFIRMED