NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2000-KA-2403**
VERSUS	*	**COURT OF APPEAL**
JUAN DOLEMAN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 410-959, SECTION "B"
Honorable Patrick G. Quinlan, Judge
* * * * * *
Chief Judge William H. Byrnes III
* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Miriam G. Waltzer,
Judge James F. McKay III)

Harry F. Connick
District Attorney
William L. Jones, III
Assistant District Attorney
619 So. White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Peggy J. Sullivan

LOUISIANA APPELLATE PROJECT
P.O. Box 1315
Monroe, LA 712101315
COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

On November 29, 1999, the State filed a bill of information charging Juan Doleman with possession of cocaine, a violation of La. R.S. 40:967(C)(2). He pled not guilty at his arraignment on December 2, 1999. On March 15, 2000, the jury found the defendant guilty of attempted possession of cocaine. That same day, the defendant was multiple billed and pled not guilty. On April 10, 2000, the defendant was adjudged a third offender, and sentenced to forty months, with credit for time served.

STATEMENT OF FACT

At approximately 4:30 a.m. on October 25, 1999, Officer Christopher Buckley and his partner, Officer Jeardine Daniels, observed the defendant's car speeding on Louisa Avenue. The officers activated their vehicle's overhead lights and pursued the defendant. The defendant lost control of his vehicle, struck a light pole at the intersection of Louisa Avenue and Almonaster Boulevard, and attempted to flee the officers on foot. As Officers Buckley and Daniels chased the defendant, they saw him drop a

clear plastic bag containing a white substance. Officer Daniel retrieved the bag while Officer Buckley continued to pursue, and apprehend the defendant.

The State and defense stipulated that if Criminalist Corey Hall, an expert in the identification of controlled substances, was called to testify he would confirm that the substance dropped by the defendant tested positive for crack cocaine.

ERRORS PATENT

A review for errors patent on the face of the record reveals none.

ASSIGNNMENT OF ERROR NUMBER 1

In his first assignment of error, the defendant argues the evidence is insufficient to support the conviction. Specifically, he maintains that the officers were unable to link him with the contraband.

This court set out the well-settled standard for reviewing convictions for sufficiency of the evidence 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.
>
> 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).

Id. at pp. 13-14, 744 So. 2d at 106-107, quoting State v. Egana, 97-0318, pp. 5-6 (La.App. 4 Cir. 12/3/97), 703 So.2d 223, 227-228.

In State v. Mitchell, 99-3342 (La. 10/17/00), 772 So.2d 78, the Louisiana Supreme Court stated:

> "The actual trier of fact's rationality's credibility calls, evidence weighing, and inference drawing are preserved ... by the admonition that the sufficiency inquiry does not require a court

> to ask itself whether it believes that the evidence at trial established guilt beyond a reasonable doubt." State v. Mussall, 523 So.2d 1305, 1311 (La.1988). The reviewing court is not called upon to determine whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. Id. Rather, the court must assure that the jurors did not speculate where the evidence is such that reasonable jurors must have a reasonable doubt. (citing 2 C. Wright, Federal Practice and Procedure, Criminal 2d, § 467, at 465-466 (1982)). The reviewing court cannot substitute its idea of what the verdict should be for that of the jury. Id. Finally, the "appellate court is constitutionally precluded from acting as a 'thirteenth juror' in assessing what weight to give evidence in criminal cases; that determination rests solely on the sound discretion of the trier of fact." State v. Azema, 633 So.2d 723, 727 (La. App. 1 Cir.1993).

Id. at p. 8, 772 So.2d at 83.

The reviewing court is to consider the record as a whole and not just the 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).

To prove attempted possession of cocaine, the State must show that the defendant had the specific intent to possess cocaine and committed an act directly tending toward his intent to possess the drug. *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.

In the present case, the police officers observed the defendant speeding. He tried to elude the officers by increasing his already excessive

speed and wrecked his vehicle. As he fled on foot, the officers pursued him. Both officers observed the defendant discard a clear plastic bag containing what proved to be cocaine. In the course of his flight, the defendant committed at least three traffic violations. This attempted flight and the officers' observation that defendant threw something from his person were indicative that the defendant attempted to possess cocaine before encountering the police. The defendant offered no evidence to refute the State's testimony. There was sufficient evidence for the jury to convict the defendant. Viewing the evidence in the light most favorable to the State, the jury was not irrational in finding defendant guilty beyond a reasonable doubt.

ASSIGNMENT OF ERROR NUMBER 2

In the second and final assignment of error the defendant argues that the trial court imposed an unconstitutionally excessive sentence at the multiple offender adjudication.

Article 1, Section 20 of the Louisiana Constitution of 1974 provides that "No law shall subject any person ... to cruel, excessive or unusual punishment." Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. State v. Brady, 97-1095, p. 17 (La. App. 4 Cir. 2/3/99), 727

So.2d 1264, 1272, rehearing granted on other grounds, (La.App. 4 Cir. 3/16.99); State v. Francis, 96-2389, p. 6 (La.App. 4 Cir. 4/15/98), 715 So.2d 457, 461, writ denied, 98-2360 (La. 2/5/99), 737 So.2d 741. However, the penalties provided by the legislature reflect the degree to which the criminal conduct is an affront to society. Baxley, 94-2984 at p. 10, 656 So.2d at 979, citing State v. Ryans, 513 So.2d 386, 387 (La.App.4 Cir.1987), writ denied, 516 So.2d 366 (La.1988). 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. Smith,* 97-2221 (La. App. 4 Cir. 4/7/99), 734 So.2d 826, *writ den.* 99-1128 (La. 10/1/99), 747 So.2d 1138. A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. Baxley, 94-2984 at p. 9, 656 So.2d at 979; State v. Hills, 98-0507, p. 5 (La.App. 4 Cir. 1/20/99), 727 So.2d 1215, 1217.

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*, *supra*; *State v.Guajardo*, 428 So.2d 468 (La.1983).

In this case, the defendant was convicted of attempted possession of cocaine under La. R.S. 40:979(A) which provides:

> Except as otherwise provided herein, any person who attempts or conspires to commit any offense denounced and or made unlawful by the provisions of this Part shall, upon conviction, be fined or imprisoned in the same manner as for the offense planned or attempted, but such fine or imprisonment shall not exceed one-half of the punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

La. R.S. 40: 967C(2) dictates the sentence for possession of cocaine is a sentence of not more than five years, with or without hard labor, plus the possibility of a fine. However, defendant received an enhanced sentence pursuant to La. R.S. 15:529.1 A(1)(b)(i) of forty months, as a third felony offender with two prior convictions for possession of cocaine. His sentence was in the mid-range, twenty months more than the minimum and twenty months less than the maximum.

Prior to sentencing the defendant, the judge afforded the defendant an opportunity to make a statement; however, the defendant declined the court's offer. Sentencing the defendant, the trial judge noted:

> . . . Because of his two priors, obviously [the defendant] does have a problem with drugs. The court has reviewed the provisions of Article 894.1. The Court believes the defendant cannot control himself when he is on the street so the Court does believe he is in need of a custodial environment . . .

Here the trial judge considered the sentencing guidelines under La.C.Cr.P. 894.1 in his reasons for judgment. Obviously the judge imposed sentence bearing in mind that the defendant had 1996 and 1997 convictions for possession of cocaine, followed by the present conviction, less than three years later. This assignment is without merit.

DECREE

For the foregoing reasons the defendant's conviction and sentence are affirmed.

AFFIRMED