

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2000-KA-2666**
VERSUS * **COURT OF APPEAL**
ELAINE FRANCOIS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 415-503, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE
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JUDGE MAX N. TOBIAS, JR.
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(Court composed of Judge Steven R. Plotkin, Judge Michael E. Kirby, and Judge Max N. Tobias, Jr.)

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CONVICTION AND SENTENCE AFFIRMED

Elaine Francois was charged by bill of information on 10 July 2000 with possession of crack cocaine, a violation of La. R.S.40:967(C). At her arraignment on 18 July 2000 she pleaded not guilty. A six-member jury found her guilty of attempted possession of cocaine after trial on 1 August 2000. The state filed a multiple bill, and, after being advised of her constitutional rights and pleading guilty to the bill, she was sentenced as a second offender on 24 October 2000 to serve twenty months at hard labor pursuant to La. R.S. 15:529.1. A motion to reconsider the sentence was made by the defendant and denied by the court. The defendant's motion for an appeal was granted.

At trial, Agent Michael Hutton of the Bureau of Alcohol, Tobacco, and Firearms testified that on 27 June 2000 he was working with the Safe Home Task Force of the New Orleans Police Department, when he observed the defendant in the area of Toledano and South Dorgenois Streets. The agent was in that neighborhood because of citizen complaints, and he positioned his unmarked car so that he could watch the street without being observed. He noticed Francois walking up and down Toledano Street while

looking at one particular house. After a few minutes a man came out of that house, and she walked up to the porch to meet him. She took from her pocket something that the agent thought was money and gave it to the man, and he handed her something that she put in the front waistband of her pants. She then walked toward South Broad Street and turned onto South Dorgenois Street. Agent Hutton radioed her movements to the other members of his team, telling them also that he observed her in what appeared to be a narcotics transaction. As Francois walked on South Dorgenois Street, she met another man who walked along with her. Agent Hutton was able to watch as Officer Calvin Brazley detained Francois. Under cross-examination, the agent acknowledged that he did not know that the defendant lived at 3827 Toledano Street.

Officer Brazley testified that after receiving information from Agent Hutton he stopped the defendant and a male companion. Francois told him that her name was Linda Johnson. However, in the next breath, she told him her name was Elaine Francois and that she had a crack pipe in her underwear. Officer Brazley asked the female deputies at parish prison to search for the pipe. The officer charged the defendant with possession of drug paraphernalia. Although he knew the pipes had been found, he did not examine them because they were wrapped and he did not want to disturb

them. He realized that the charge would be amended if the pipes proved to contain cocaine.

Alva Caliste of the Orleans Parish Criminal Sheriff's Office testified that her job is to process inmates. When the defendant arrived at the prison, she admitted, "I have two pipes on me." Ms. Caliste described the pipes as having "burned ends with maybe cocaine residue in them." She found no drugs on the defendant.

Officer Harry O'Neal, an expert in the identification and analysis of controlled substances, testified that he examined two glass tubes taken from Francois. Each tube had a wire mesh filter at one end and each contained a white residue visible to the naked eye. The officer performed an alcohol and a crystal test on each tube, and each tested positive for cocaine. Under cross-examination, the officer said that he did not know the weight of the cocaine, but if he were to guess, he would estimate it to weigh one one-thousandth of a gram.

ERRORS PATENT

A review of the record discloses no errors patent.

ASSIGNMENT OF ERROR

In a single assignment of error, Francois argues that the evidence was insufficient to prove that she knowingly possessed cocaine.

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).

98-0011 at pp. 13-14, 744 So. 2d at 106-107, quoting State v. Egana, 97-0318, p. 5-6 (La. App. 4 Cir. 12/3/97), 703 So. 2d 223, 227-28.

Francois was convicted of attempted possession of cocaine, which is a violation of La. R.S. 40:979(A). La. R.S. 40:979(A) prohibits any attempt to commit an offense made unlawful by the controlled dangerous substance laws; La. R.S. 40:967(C) prohibits possession of a controlled dangerous substance as classified in Schedule II. Cocaine is a Schedule II controlled dangerous substance under La. R.S. 40:964. Attempted possession of a controlled dangerous substance is a responsive verdict to the charge of possession. La. C.Cr.P. art. 814(A)(50).

To support a conviction for possession of cocaine, the State must prove that an accused was in possession of the illegal drug and that the accused knowingly or intentionally possessed it. La. R.S. 40:967(C); State v. Chambers, 563 So. 2d 579, 580 La. App. 4 Cir. 1990). To prove attempt, the State must show that the accused committed an act tending directly toward the accomplishment of the intent to possess cocaine. State v. Lavigne, 95-0204, P. 11 (La. App. 4 Cir. 5/22/96), 675 So. 2d 771, 779. Guilty knowledge is an essential element of the crime of possession of a controlled dangerous substance. State v. Williams, 98-0806, p. 6 (La. App. 4 Cir. 3/24/99), 732 So. 2d 105, 109, writ denied, 99-1184 (La. 10/1/99), 748

So.2d 433. Knowledge need not be proven as a fact, but may be inferred from the circumstances. State v. Porter, 98-2280, p. 3 (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 of cocaine. State v. Shields, 98-2283, pp. 3-4 (La. App. 4 Cir. 9/15/99), 743 So. 2d 282, 283; State v. Porter, *supra*. Furthermore, this court has held that "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, p. 4 (La. App. 4 Cir. 5/10/99), 737 So. 2d 218, 219, quoting State v. Gaines, 96-1850, p. 6 (La. App. 4 Cir. 1/29/97), 688 So.2d 679, 683; State v. Williams, *supra*.

The presence of visible cocaine residue in a pipe is often cited as evidence of guilty knowledge in crack pipe cases. For example, in State v. Tassin, 99-1692 (La. App. 4 Cir. 3/15/00), 758 So. 2d 351, this court held that the testimony of two police officers that visible cocaine residue in a crack pipe found in an accused's purse was sufficient to show guilty knowledge. In State v. Lewis, 98-2575, (La. App. 4 Cir. 3/1/00), 755 So. 2d 1025, where an arresting officer noticed what he believed to be cocaine residue in a crack pipe, we noted that "the presence of visible cocaine

residue in the crack pipe found in the defendant's front coat pocket is sufficient evidence to support the inference that the defendant had the requisite intent to attempt to possess cocaine.” Id. at p. 4. 755 So.2d at 1028. In State v. Drummer, 99-0858 (La. App. 4 Cir. 12/22/99), 750 So. 2d 360, writ denied, 2000-0514 (La. 1/16/01), ___ So. 2d ___, 2001 WL 83886, the defendant’s possession of two crack pipes containing visible cocaine residue was sufficient to establish guilty knowledge. In State v. Guillard, 98-0504 (La. App. 4 Cir. 4/7/99), 736 So.2d 273, the arresting officer testified that a crack pipe recovered from the defendant appeared to contain cocaine residue; this court stated: “Defendant’s possession of a crack pipe with visible cocaine residue in it allows an inference that the defendant had the intent to attempt possess cocaine.” Id., 98-0504 at p. 6, 736 So. 2d at 277.

This case is also similar to State v. Taylor, 96-1843 (La. App. 4 Cir. 10/29/97), 701 So. 2d 766, where the defendant was convicted of attempted possession of cocaine on the basis of residue in a crack pipe found in his pocket. This court held under the circumstances guilty knowledge could be inferred and the evidence was sufficient to sustain the conviction. See also State v. Nowak, 98-0012 (La. App. 4 Cir. 12/9/98), 727 So. 2d 526.

Although the defendant in this case argues that the amount of cocaine in the pipes was so infinitesimal that she was unaware of it, her confession

that she possessed the pipes and the testimony of Officer O’Neal that a white residue was visible in each pipe belies her position. The evidence here suggests that the defendant was aware of the contraband, and the contraband was subject to her control. Under the jurisprudence, the State produced sufficient evidence to sustain the defendant’s conviction for possession of cocaine. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged sufficient to exclude every reasonable hypothesis of innocence.

This assignment of error is without merit.

CONCLUSION

Accordingly, the defendant’s conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED