

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2001-KA-1269**
VERSUS * **COURT OF APPEAL**
IRIS JOHNSON * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 415-641, SECTION "J"
Honorable Leon Cannizzaro, Judge
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Judge Miriam G. Waltzer
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(Court composed of Judge Miriam G. Waltzer, Judge Michael E. Kirby and Judge David S. Gorbaty)

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CONVICTION AND SENTENCE AFFIRMED.

STATEMENT OF CASE

On 14 July 2000, the defendant, Iris Johnson, was charged by bill of information with possession of cocaine in violation of La. R.S. 40:967. The defendant entered a plea of not guilty and her first trial on 16 August 2000 resulted in a mistrial due to a hung jury. After a jury trial on 5 September 2000, the defendant was found guilty of attempted possession of cocaine. On 7 September 2000, the trial court ordered a presentence investigative report, and on 13 March 2001, the trial court sentenced the defendant to serve thirty months at hard labor, suspending the sentence and placing the defendant on five years active probation with special conditions. The trial court denied defendant's motion to reconsider sentence. Defendant's motion for appeal was granted, her probation was revoked on 30 March 2001 and her sentence was made executory.

We affirm defendant's conviction and sentence.

STATEMENT OF FACT

At approximately 6:30 p.m. on 7 July 2000, New Orleans Police Officers Richard Welch and Trevor Reeves were on proactive patrol in the area of the Melpomene Housing Development when they observed the defendant staggering in a drunken manner towards Martin Luther King Boulevard. The officers conducted an investigatory stop. They noted the defendant's breath smelled of alcohol and her eyes were glassy and red. The officers checked the defendant's name and were informed that she had an outstanding municipal warrant. The officers then arrested the defendant for public drunkenness. In a search incident to the arrest, the officers found a crack pipe and razor in the defendant's right front pocket. Both the pipe and razor contained a white residue.

Officer Harry O'Neal of the NOPD Crime Lab, testified that the substance found in the pipe tested positive for cocaine. The substance found on the razor was negative for any controlled substance.

Defendant denied having been drunk on the day of her arrest. She testified that she suffers from seizures and was having a seizure at the time the officers stopped and arrested her. Defendant denied using cocaine, and testified that she was walking through the Melpomene Housing Development when a young girl found the pipe on the ground and asked her to take it and throw it away. Defendant claimed that she intended to throw the pipe away when she had the opportunity to do so.

ERRORS PATENT

A review of the record for errors patent reveals none.

FIRST ASSIGNMENT OF ERROR: The State failed to produce sufficient evidence to sustain defendant's 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).

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.

To support a conviction for possession of cocaine, the state must prove that the defendant was in possession of the illegal drug and that she knowingly possessed it; and to prove an attempt, the state must show that the defendant committed an act tending directly toward the accomplishment of her intent to possess cocaine. State v. Lavigne, 95-0204 (La. App. 4 Cir. 5/22/96), 675 So.2d 771. 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.

This Court, in State v. Gaines, 96-1850 (La. App. 4 Cir. 1/29/97), 688 So.2d 679, 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 which 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, at

779.

In the present case, Officer Welch and Reeves testified that the crack pipe and a razor were found in the defendant's pocket after she was arrested for public drunkenness. The officers stated that there was a visible residue, which tested positive for cocaine, in the pipe. The defendant acknowledged the pipe was in her pocket but she claimed, as did Lavigne, that she had intended to throw it away. Such testimony was sufficient for a jury to conclude, beyond a reasonable doubt, that the defendant was guilty of attempted possession of cocaine.

This assignment of error is without merit.

SECOND ASSIGNMENT OF ERROR: The trial court erred when it denied defendant's motion for mistrial.

The defendant moved for a mistrial during the State's closing argument, when the prosecutor referred to the defendant's testimony on direct and cross-examination concerning her prior arrests and/or convictions.

The scope of closing argument "shall be confined to evidence

admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case. The argument shall not appeal to prejudice. The state's rebuttal shall be confined to answering the argument of the defendant." La. C.Cr.P. art. 774. In State v. Langley, 95-1489, p. 7 (La. 4/14/98), 711 So.2d 651, 659, the Supreme Court stated:

In any event, prosecutors are allowed broad latitude in choosing closing argument tactics. See, e.g. State v. Martin, 539 So. 2d 1235, 1240 (La. 1989). Although under La. C.Cr.P. art. 774 closing argument must be "confined to the record evidence and the inferences which can be reasonably drawn therefrom," both sides may still draw their own conclusions from the evidence and convey such views to the jury. State v. Moore, 432 So. 2d 209, 221 (La. 1983), cert. denied 464 U.S. 986, 104 S.Ct. 435, 78 L.Ed.2d 367 (1983).

In the present case, the defendant stated on direct examination that she had not ever been arrested. On cross-examination, the prosecutor asked the defendant if she had ever been arrested. When the defendant responded in the negative, the prosecutor impeached her testimony with an arrest for drug

paraphernalia on 24 February 2000. During closing argument, the prosecutor referred to the defendant's impeached testimony.

As the defendant opened the door to the impeachment testimony during her direct examination, the state's comments on the testimony and evidence during its closing argument was clearly within the scope of closing argument as permitted by La. C.Cr. P. article 774. The trial court correctly denied the defendant's request for a mistrial.

This assignment of error is without merit.

CONCLUSION AND DECREE

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

CONVICTION AND SENTENCE AFFIRMED.