

STATE OF LOUISIANA

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NO. 2002-KA-0868

VERSUS

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COURT OF APPEAL

ANGELA D. CARTER

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 426-133, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE

JUDGE MAX N. TOBIAS, JR.

(COURT COMPOSED OF JUDGE JOAN BERNARD ARMSTRONG,
JUDGE STEVEN R. PLOTKIN, JUDGE MAX N. TOBIAS, JR.)

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AFFIRMED.

On 14 November 2001, the defendant, Angela D. Carter (“Carter”) was charged by bill of information with possession of cocaine in violation of La. R.S. 40:967(C). She pleaded not guilty at her arraignment on 20 November 2001. At the trial on 4 December 2001, a six-member jury found her guilty of the responsive verdict of attempted possession of cocaine. She was sentenced on 4 February 2002 to serve thirty months at hard labor; the sentence was imposed under La. R.S. 15:574.2, the About Face Program in Orleans Parish Prison, pursuant to La. R.S. 15:574.5. The defendant’s motion for reconsideration of sentence was denied, and her motion for an appeal was granted.

At trial Officer Jeffery Amos testified that about 12:55 a.m. on 4 November 2001, he and his partner were on proactive patrol in the 2100 block of Delechaise Street. The officer defined proactive patrol as one in which officers stop people doing anything out of the ordinary or people loitering in areas known for high crime or drug-transactions; people are asked to give information and field interview cards are filled out. On that night, Carter was sitting on the steps at 2128 Delechaise Street. She told the officers she did not live at that address but that she knew the people who did.

When the officers knocked on the door, no one answered. When the defendant was asked her name she answered “Angela Lane” and said she had been arrested before. The officers realized she had given a false name, and she was transported to Central Lock Up. During the search of her person a crack pipe was found. Under cross-examination, Officer Amos said he noticed that the pipe had burned mesh ends. He admitted that his description in the police report of a white residue in the pipe was mistaken because no residue could be seen in the metal pipe.

Deputy Lisa Holmes of the Orleans Parish Criminal Sheriff’s Office testified that she searched Carter when she was taken to Central Lock Up. A crack pipe was found in Carter’s sock. Under cross-examination, the deputy said that the defendant took off her socks and shoes and she obviously had something in her closed hand. When asked what she was holding, Carter opened her hand and surrendered the crack pipe.

Officer William Giblin, an expert in testing and analysis of controlled dangerous substances, testified that he performed two tests on the pipe submitted into evidence in this case, and he found that the pipe contained cocaine. On cross-examination, the officer described the pipe as a metal rod with two burned ends. The officer stated that he could not see a white powder residue because the pipe was metal.

We note no error patent on the face of the record.

In a single assignment of error, the defendant argues that the evidence is insufficient to support the conviction. Specifically, she contends that no evidence of guilty knowledge exists in that no white residue could be seen on the pipe and that guilt could not be inferred from her actions when the pipe was discovered.

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, pp. 5-6 (La. App. 4 Cir. 12/3/97), 703 So. 2d 223, 227-28.

Carter was convicted of attempted possession of cocaine, 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 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; *State v. Jones*, 2000-1942 (La. App. 4 Cir. 2001), 792 So.2d 117,121. 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. Knowledge need not be proved 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. 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*, 732 So.2d at 109.

In this case Carter argues that Officer Amos admitted he saw no residue in the metal pipe she was carrying and there was no testimony as to

furtive behavior on her part when the pipe was discovered. However, Officer Amos testified that he noticed that the metal rod had burned mesh on each end. Furthermore, Officer Giblin told the court that he noticed the two burned ends and a white residue could not be seen because the pipe was a metal rod rather than glass. Two tests proved that the metal rod contained a cocaine residue. The jury evidently found the officers' testimony convincing.

Furthermore, possession of a pipe, used only for smoking cocaine, has been held to indicate guilty knowledge. *State v. McKnight*, 99-0997 at p. 4, 737 So.2d at 219.

Additionally Carter complains that there was no furtive movement on her part to indicate guilty knowledge. However, Deputy Holmes testified that Carter kept the pipe in her closed fist until she was asked to show what she was holding. Under the jurisprudence, the State produced sufficient evidence to sustain Carter's conviction for attempted 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.

Accordingly, we affirm Carter's conviction and sentence.

AFFIRMED.