

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-0911**
VERSUS * **COURT OF APPEAL**
MATTHEW J. KNOWLSON * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 422-104, SECTION "K"
Honorable Arthur Hunter, Judge
* * * * *
Judge David S. Gorbaty
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(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge David S. Gorbaty)

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AFFIRMED

On June 6, 2001, Matthew J. Knowlson was charged by bill of information with possession of cocaine in violation of La. R.S. 40:967(C). At a preliminary hearing on July 24, 2001, the court found probable cause and denied the motion to suppress the evidence. After a judge trial, defendant was found guilty as charged. He was sentenced to two years at hard labor. The sentence was suspended under La. C.Cr.P. art. 893, and he was placed on two years active probation and fined \$1,500. Defendant subsequently filed this appeal.

FACTS

At trial, Officer Hans Gaunthier testified that on April 6, 2001, he and his two partners were working undercover in the French Quarter. The officer observed a man who appeared to be smoking a narcotic drug and followed him into a bar at 819 St. Louis Street. As he looked around the barroom, the officer noticed what he believed to be a drug transaction occurring between the defendant and another man standing at the bar. A man, later identified as Lance Turner, handed Matthew Knowlson a small

plastic bag of white powder. The officer heard Turner say that the bag cost \$30 and “it’s good.” Knowlson examined it. He turned around and saw the police officer standing behind him, and tried to hide the plastic bag. The officer identified himself by producing his badge, and Knowlson dropped the plastic bag to the floor. The bag was retrieved, and Knowlson was charged with possession of cocaine. On cross-examination, the officer said he saw Knowlson remove some currency.

Matthew Knowlson testified that on the night in question, he and a girlfriend had gone to a bar on St. Louis Street. They were sitting at the left-hand corner of the bar and Lance Tucker, another friend who happened to see them, sat down next to Knowlson. When Knowlson noticed the policeman, the officer was sitting at the bar. He ordered everyone to remain still, and Knowlson stood so as to see him. The officer then said, “Go ahead and turn around, and I’ll beat the f... out of you.” Knowlson immediately sat down. The officer grabbed the defendant’s left hand and then his right hand, but both were empty. Knowlson claimed to have no money with him. A property receipt from Parish Prison showed that Knowlson had a pager, an I.D., a chain necklace, two coins and a watch when he was admitted. He maintained that his girlfriend bought him a beer at the bar. Knowlson denied receiving any cocaine from Tucker. After he and Tucker were

handcuffed, Knowlson saw the police officer pick up the plastic bag from the floor near the corner of the bar.

The parties stipulated that the cocaine seized in this case was tested and proved to be cocaine.

ERRORS PATENT

Our review of the record for errors patent reveals a potential error patent. The trial court sentenced the defendant within twenty-four hours of denying his motions for new trial or post judgment verdict of acquittal. Absent a waiver by the defendant, La. C.Cr.P. art. 873 requires a twenty-four delay between the denial of a motion for new trial or in arrest of judgment and sentencing. In this case, there is no indication that the defendant waived this delay.

In State v. Augustine, 555 So. 2d 1331, 1334 (La. 1990), the Supreme Court vacated the defendant's sentence and remanded for resentencing when the defendant did not expressly waive the delay as required by Article 873 and challenged his sentence on appeal. In this case, however, the defendant has not challenged his sentence on appeal. Thus, there is no error. State v. Collins, 584 So. 2d 356 (La. App. 4th Cir. 1991).

ASSIGNMENT OF ERROR NUMBER ONE

In his sole assignment of error, the defendant now argues that the evidence is insufficient to support the conviction because there is no evidence to prove the defendant possessed cocaine, had dominion and control over it, or even knew that cocaine was in the plastic bag.

In State v. Ash, 97-2061, pp. 4-5 (La. App. 4 Cir. 2/10/99), 729 So.2d 664, 667-668, this court summarized the standard of review that applies when a defendant claims that the evidence produced to convict him was constitutionally insufficient:

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). 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). Additionally, the 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. *Id.* The trier of fact's determination of credibility is not to be disturbed on appeal absent an abuse of discretion. *State v. Cashen*, 544 So.2d 1268 (La. App. 4th Cir. 1989). 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 proved 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 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*, 504 So.2d 817 (La. 1987).

To support a conviction for possession of narcotics, the state must prove that a defendant knowingly possessed narcotics. *State v. Chambers*, 563 So. 2d 579, 580 (La. App. 4 Cir. 1990). The state need not prove that the defendant was in actual possession of the narcotics found; constructive possession is sufficient to support conviction. See *State v. Trahan*, 425 So. 2d 1222, 1226 (La. 1983); see also *State v. Cann*, 319 So. 2d 396, 397 (La. 1975). The mere presence of a defendant in the area where the narcotics were found is insufficient to prove constructive possession. See *State v. Collins*, 584 So. 2d 356, 360 (La. App. 4 Cir. 1991).

After the state presented its case at trial, the defense attorney asked for a directed verdict on the same grounds that the defendant now raises. The judge denied the motion. Thus, before Knowlson testified, the trial judge

found enough evidence to link the defendant to the cocaine.

The evidence offered at trial supports the finding that the defendant possessed cocaine. Officer Gaunthier testified that he saw Knowlson standing with Tucker and then saw Tucker hand Knowlson a plastic bag. The officer also saw Knowlson with currency. Knowlson held the drug until he observed the officer and then he dropped it. When Knowlson offered another version of events, the finder of fact rejected that version as incredible.

The defendant cites State v. Jackson, 557 So. 2d 1034 (La. App. 4 Cir. 1990), for the proposition that the evidence was insufficient to establish that he had dominion and control over the drugs. However, that case can be distinguished from the instant case. In Jackson, the police followed a suspect into an apartment. There the defendant, a woman, was standing near a bar containing drug paraphernalia with cocaine residue. The woman did not live in the apartment, and the cocaine pipe was not warm. This court concluded that the trial court erred in finding the woman guilty of possession of cocaine because she was simply in proximity to the drug with no links to it. In the case at bar, the officer saw the defendant holding the bag of cocaine and also observed the defendant when he glanced up and realized a police officer was

nearby; the defendant then was seen dropping the plastic bag. Those actions indicate guilty knowledge as well as dominion and 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, for the foregoing reasons, the defendant's conviction and sentence are affirmed.

AFFIRMED