

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	NO. 2002-KA-1850
VERSUS	*	COURT OF APPEAL
KENNETH ROBERTS	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA
	*	
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* * * * *		

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 416-511, SECTION "J"
Honorable Leon Cannizzaro, Judge
* * * * *
Judge Patricia Rivet Murray
* * * * *

(Court composed of Chief Judge William H. Byrnes, III, Judge Patricia Rivet Murray, Judge James F. McKay, III)

Harry F. Connick
District Attorney of Orleans Parish
Juliet Clark
Assistant District Attorney of Orleans Parish
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Mary Constance Hanes
LOUISIANA APPELLATE PROJECT
P. O. Box 4015
New Orleans, LA 70178-4015

COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

Defendant, Kenneth Roberts, was convicted of possession of cocaine.

He has filed this appeal claiming that the evidence was insufficient to support the conviction. For the following reasons, we affirm.

STATEMENT OF THE CASE

On Mr. Roberts' initial appeal in this matter, we found the trial court's failure to rule on defendant's motion for reconsideration resulted in the lack of a final sentence and that "without a final sentence the conviction is not appealable." *State v. Roberts*, 2001-0283 at p. 3 (La. App. 4 Cir. 1/23/02), 807 So. 2d 1072, 1074. We thus remanded to the trial court for a ruling on the motion to reconsider the sentence. In so doing, we summarized the procedural background of this case as follows:

The defendant, Kenneth Roberts, was charged by bill of information on August 31, 2000, with possession of cocaine, a violation of La. R.S. 40:967(C). At arraignment on September 6, 2000, he pleaded not guilty. However, after trial on September 19, 2000, a six-member jury found him guilty as charged. On November 27, 2000, [Mr.] Roberts was sentenced to serve five years at hard labor; his sentence was suspended, and he was placed on five years of active, supervised probation with special conditions. On December 18, 2000, [Mr.] Roberts' probation was revoked, and he was sentenced to five years at hard labor under La. R.S. 15:574.5, the About Face Program in Orleans Parish Prison. The trial court deferred a ruling on the defendant's motion for reconsideration of sentence until such time as defendant finished the About Face Program. His motion for appeal was granted.

2001-0283 at p. 1, 807 So. 2d at 1073.

On Mr. Robert's initial appeal, we reserved Mr. Roberts' right to appeal his conviction and sentence after the trial court ruled on the motion. On March 6, 2002, the defendant withdrew his motion to reconsider the sentence and filed a motion for an appeal. The trial court granted his motion. This appeal followed.

STATEMENT OF THE FACTS

At trial, Officer Joe Hartman testified that on August 4, 2000 at about 5:00 p.m. he and his partner, Officer Thompson, spotted Mr. Roberts walking in the courtyard of the Melpomene Housing Development between Martin Luther King Boulevard and Thalia Street. Officer Hartman testified that his attention was drawn to Mr. Roberts because he was using a handrail to stand up and because he appeared to be obviously drunk. Officer Hartman further testified that they decided to arrest Mr. Roberts for his own safety after they observed him walk right in the middle of the busy street.

In conducting a search incidental to arrest, Officer Hartman found a crack pipe in Mr. Roberts' pants pocket and sent it to be tested for illegal narcotics. As a result, Mr. Roberts was charged with possession of drug paraphernalia.

The only other witness to testify at trial was John F. Palm, Jr., a

criminalist for the New Orleans Police Department. The parties stipulated that Mr. Palm was an expert in the field of the analysis and identification of controlled dangerous substances. Mr. Palm testified that he tested the substance in the crack pipe and that it proved to be crack cocaine. Under cross-examination, Mr. Palm acknowledged that he could not have sworn to the fact that the pipe contained cocaine before testing it. He also acknowledged that he never weighed the substance.

DISCUSSION

In a single assignment of error, Mr. Roberts argues that the evidence is insufficient to support his conviction because the state failed to prove he knowingly or intentionally possessed cocaine. The standard for reviewing a claim of insufficient evidence is well settled. The standard of review of circumstantial evidence is also well settled.

Mr. Roberts was convicted of possession of cocaine. To support a conviction for possession of cocaine, the State must prove that the defendant was in possession of the illegal drug and that he knowingly possessed it. *State v. Guillard*, 98-0504 (La. App. 4 Cir. 4/7/99), 736 So. 2d 273, 276 (citing *State v. Lavigne*, 95-0204 (La. App. 4th Cir. 5/22/96), 675 So. 2d 771; *State v. Chambers*, 563 So. 2d 579 (La. App. 4th Cir. 1990)). Guilty knowledge is an essential element of that crime. *State v. Monette*, 99-

1870 at p. 5 (La. App. 4 Cir. 3/22/00), 758 So. 2d 362, 365.

The elements of knowledge and intent are states of mind and need not be proven as facts, but rather may be inferred from the circumstances. The fact finder may draw reasonable inferences to support these contentions based upon the evidence presented at trial. *Guillard, supra* (citing *State v. Reaux*, 539 So. 2d 105 (La. App. 4th Cir. 1989)).

Guilty knowledge sufficient to support a conviction for possession can be inferred from even a trace amount of cocaine in a crack pipe. *See State v. Drummer*, 99-0858 at p. 3 (La. App. 4 Cir. 12/22/99), 750 So. 2d 360, 363 *writ denied*, 2000-0514 (La. 1/26/01), 781 So. 2d 1257. Guilty knowledge likewise may be inferred from possession of an item used only for smoking crack cocaine. *See State v. McKnight*, 99-0997 (La. App. 4 Cir. 5/10/99), 737 So. 2d 218. As we noted in *McKnight*, “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.” 99-0997 at p. 4, 737 So. 2d at 219.

In this case, Mr. Roberts argues the evidence is insufficient for three reasons: (1) he did not attempt to evade the officer, (2) there was no cocaine visible in the pipe, and (3) there was no recent evidence of his drug use.

First, Mr. Roberts’s failure to attempt to flee at the sight of the officers

can be attributed to his degree of intoxication; Officer Hartman testified that Mr. Roberts could hardly walk. Thus, the lack of furtive behavior cannot be attributed to a sense of being above suspicion.

Second, although there is a lack of evidence of recent drug use, the evidence reflects that Mr. Roberts was obviously intoxicated, yet the arresting officers failed to mention smelling alcohol on him. Under similar circumstances, in *Monette, supra*, where the obviously intoxicated defendant—who did not smell of alcohol—was found to be carrying a pipe in her pants pocket, we affirmed a conviction for attempted possession of cocaine. In so doing, we noted that there was an inference that the defendant was impaired due to “some other substance, such as cocaine, which would constitute evidence of recent drug use.” 99-1870 at p. 8, 758 So. 2d at 367.

Finally, Mr. Roberts emphasizes that neither Officer Hartman nor the criminologist testified that he saw visible cocaine residue in the pipe. Yet, Officer Hartman testified that, after finding the pipe on the obviously intoxicated Roberts, he sent it to be tested for illegal narcotics, indicating that apparently he suspected the presence of cocaine. The criminologist was asked if he could swear to the jury that prior to testing the pipe he knew it contained a cocaine residue. Naturally, the criminologist stated that he could not and relied on testing to produce definite proof.

This case is factually similar to *Drummer, supra*, in which we affirmed the conviction of a defendant for possession of cocaine. There, the defendant was found in possession of two crack pipes, which the court found was in and of itself evidence of guilty knowledge by the defendant that he possessed cocaine. Although a police officer testified that he observed burned cocaine residue on the end of the pipe, a police criminalist testified that one generally cannot see cocaine in crack pipes. There was no testimony that the defendant attempted to flee or that he engaged in any furtive behavior. There was no evidence of recent drug use by the defendant, or evidence that he was attempting to obtain drugs.

Viewing all of the evidence in this case in light most favorable to the prosecution, any rational trier of fact could have found that Mr. Roberts knowingly and intentionally possessed a pipe containing crack cocaine residue. All of the essential elements of the offense of possession of cocaine were thus satisfied. For the foregoing reasons, the defendant's conviction and sentence are affirmed.

AFFIRMED.