NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2003-KA-0238**
VERSUS	*	**COURT OF APPEAL**
BOB NORFLEET	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 411-313, SECTION "C"
Honorable Robert J. Klees, Judge Pro Tempore
* * * * * *
Judge Patricia Rivet Murray
* * * * * *

(Court composed of Judge Patricia Rivet Murray, Judge Michael E. Kirby, Judge Edwin A. Lombard)

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AFFIRMED

The sole issue presented on this appeal is the sufficiency of the evidence to support Bob Norfleet's conviction for possession with intent to distribute. For the reasons that follow, we affirm his conviction and sentence.

STATEMENT OF THE CASE

On December 14, 1999, Mr. Norfleet was charged by bill of information with possession of cocaine with intent to distribute, a violation of La. R.S. 40:967(A). On February 20, 2001, he was arraigned and pleaded not guilty. Following a hearing on March 30, 2001, the trial court granted the defendant's motion to suppress evidence (a statement) based on the police officer's failure to appear. This court granted the State's writ application, and ordered the trial court to hold a complete hearing before granting the motion. Following a hearing on June 28, 2001, the trial court denied Mr. Norfleet's motion to suppress evidence.

On July 24, 2001, a twelve-member jury found Mr. Norfleet guilty as charged. On July 30, 2001, he filed a motion for new trial, which the trial court denied. On October 10, 2002, the trial court sentenced him to serve

five years at hard labor without benefit of probation or suspension of sentence. This appeal followed.

STATEMENT OF THE FACTS

On the evening of October 19, 1999, Officer Earl Razor was on patrol when he noticed a car with an expired license plate at the corner of Franklin and Marais Streets. According to Officer Razor, he could tell the plate was expired because of the color-coded yearly expiration decals. Officer Razor stopped the vehicle and asked the driver to produce his driver's license. The driver identified himself as Mr. Norfleet, and presented a Mississippi identification card in that name. Mr. Norfleet informed Officer Razor that he never had a Louisiana driver's license.

Before writing out the citation, Officer Razor ran Mr. Norfleet's name through the police computer, and learned that there were five outstanding warrants for his arrest in St. Bernard Parish. Officer Razor then advised Mr. Norfleet of his *Miranda* rights and placed him under arrest. In a search incident to arrest, Officer Razor found a plastic bag containing a large amount of what appeared to be cocaine hidden in Mr. Norfleet's crotch. More precisely, it was a clear plastic bag that contained five clear plastic bags of a hard off-white substance and weighed a total of 27.8 grams. Also found on Mr. Norfleet was about $300 in cash and a cell phone. Because of

the quantity of the drug and department policy, Officer Razor notified the Narcotics Investigative Unit. Upon that unit's arrival, Officer Razor turned the investigation over to them.

Sergeant (then Detective) Billy Marks testified that Officer Razor called him after Mr. Norfleet was arrested. Sgt. Marks immediately went to the scene to interview Mr. Norfleet. Uncertain if Mr. Norfleet had been advised of his constitutional rights, Sgt. Marks informed him of his *Miranda* rights. Mr. Norfleet answered that he understood his rights and that he wanted to cooperate. In his own words, Sgt. Marks described his interview of Mr. Norfleet as follows:

> Mr. Norfleet told me that he was engaged in the delivery of a wholesale amount of crack cocaine to a customer when he was stopped by Officer Razor. He explained to us that his normal territory for dealing crack was in the Slidell area in St. Tammany Parish. He did, however, tell us that when he buys wholesale amounts of crack cocaine that he did it in Orleans Parish. However, he would not elaborate on who he got it from.

Sgt. Marks was asked at trial whether Mr. Norfleet admitted that he was a "seller" of cocaine; he replied, "Absolutely, yes." On cross-examination, Sgt. Marks acknowledged that the police report contained neither a written statement by Mr. Norfleet, nor a signed *Miranda* rights form. Sgt. Marks explained that the interview was done in the field where neither *Miranda* forms nor typewriters are available.

Officer Harry O'Neal, who was qualified as an expert in the analysis of controlled dangerous substances, testified that the substance found in Mr. Norfleet's possession tested positive for cocaine.

The defense called only one witness at trial, Ms. Florence Norfleet Robinson, Mr. Norfleet's mother. Ms. Robinson testified that she maintained two residences, one at 1420 Franklin Street in New Orleans and the other at 202 Gerald Street in Picayune, Mississippi. She testified that her son lives with her at both locations. She further testified that she manages and sells real estate in both locations and that her son works for her. On October 19, 1999, the date he was arrested, she testified that her son removed carpet, at her request, from property at 2621 Desire Street. She indicated that she usually paid him in cash. She denied having spoke with her son about his arrest. She also denied having any knowledge of her son's friends in Slidell. Also, on cross-examination, she denied having any knowledge of the identity of the woman from Slidell that provided bail for Mr. Norfleet.

ERROR PATENT

A review of the record reveals one error patent. Mr. Norfleet's sentence for possession with intent to distribute was not imposed with the prohibition on parole required by La. R.S. 40:967 (B)(4)(b). However,

according to La. R.S. 15:301.1, the sentence would automatically be served without such benefit. That error is therefore automatically corrected.

DISCUSSION

Mr. Norfleet's sole assignment of error is that the evidence was insufficient to support his conviction. Particularly, he argues that the State failed to prove that he had intent to distribute cocaine.

Under the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), "the appellate court must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime have been proved beyond a reasonable doubt." *State v. Captville,* 448 So. 2d 676, 678 (La. 1978). The *Jackson* standard "preserves the role of the jury as the factfinder in the case but it does not allow jurors 'to speculate if the evidence is such that reasonable jurors must have a reasonable doubt.'" *State v. Pierre*, 93-0893, p. 5 (La. 2/3/94), 631 So. 2d 427, 429. Nonetheless, credibility calls are within the fact-finder's discretion and will not be disturbed unless clearly contrary to the evidence. *State v. Vessell*, 450 So. 2d 938, 943 (La. 1984).

Under the *Jackson* standard, all evidence, direct and circumstantial, must be sufficient to satisfy a rational juror that the defendant is guilty

beyond a reasonable doubt. *State v. Jacobs*, 504 So. 2d 817, 820 (La. 1987). When the conviction is based on circumstantial evidence, the totality of such evidence must exclude every reasonable hypothesis of innocence. La. R.S. 15:438. This circumstantial evidence rule codified in La. R.S. 15:438 is not a separate test from the *Jackson* standard; rather, it is simply "an evidentiary guideline for the jury when considering circumstantial evidence and facilitates appellate review of whether a rational juror could have found defendant guilty beyond a reasonable doubt." *State v. Wright*, 445 So. 2d 1198, 1201 (La. 1984). Ultimately, the totality of the evidence must be sufficient to satisfy a rational trier of fact that the defendant is guilty beyond a reasonable doubt. *State v. Sutton*, 436 So. 2d 471 (La. 1983).

To support a conviction for possession with intent to distribute, the State must prove both possession and specific intent to distribute. *See State v. Francois*, 2002-2056, p. 5 (La. App. 4 Cir. 4/9/03), 844 So. 2d 1042, 1046. Given that Mr. Norfleet clearly possessed the cocaine found on his body, possession is not at issue. Rather, the sole issue in this case is whether the State sufficiently established his specific intent to distribute the cocaine.

Addressing the standard of proof applicable to establishing specific intent to distribute, we stated in *Francois*:

> Because intent is a state of mind, "[i]t is very unusual to have direct evidence of intent." *State v. Perkins,* 97-1119, p. 16 (La. App. 3 Cir. 6/17/98), 716 So. 2d 120, 129. Instead, intent

> almost always must be proved by circumstantial evidence. Circumstantial evidence is "collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience." *State v. Williams,* 99-223, p. 8 (La. App. 5 Cir. 6/30/99), 742 So. 2d 604, 608. It follows then that "[s]pecific intent to distribute may be established by proving circumstances surrounding defendant's possession which give rise to a reasonable inference of intent to distribute." *State v. Crosby*, 98-0372, p. 6 (La. App. 4 Cir. 11/17/99), 748 So. 2d 502, 506; State *v. Dickerson*, 538 So.2d 1063 (La. App. 4 Cir. 1989).
>
> To aid in determining whether circumstantial evidence is sufficient to establish specific intent to distribute, the Louisiana Supreme Court, in the seminal case *State v. House*, 325 So. 2d 222, 225 (La. 1975), enumerated the following five factors:
>
> (1) whether the defendant ever distributed or attempted to distribute the drug;
>
> (2) whether the drug was in a form usually associated with possession for distribution to others;
>
> (3) whether the amount of drug created an inference of an intent to distribute;
>
> (4) whether expert or other testimony established that the amount of drug found in the defendant's possession is inconsistent with personal use only; and
>
> (5) whether there was any paraphernalia, such as baggies or scales evidencing an intent to distribute.

Francois, 2002-2056, pp. 6-7, 844 So. 2d at 1046-47.

In this case, the State's principal evidence of Mr. Norfleet's intent to distribute was his own statement to Sgt. Marks immediately after his arrest.

According to Sgt. Marks' testimony, Mr. Norfleet admitted in that statement that he bought cocaine in New Orleans and that he was in the process of delivering the cocaine to a customer in Slidell when he was stopped. Mr. Norfleet further admitted that he normally sold the drug in Slidell. Mr. Norfleet still further admitted that he had distributed drugs in the past and was in the process of doing so when he was stopped.

Applying the *House* factors enumerated in *Francois* to the facts of this case, we find the first four factors satisfied. First, Mr. Norfleet confessed to Sgt. Marks that he picked the cocaine up in New Orleans and planned to deliver it to his contact in Slidell. Second, the form of the drug was in large blocks, which is consistent with wholesale delivery. Third, the quantity of the drug, 27.8 grams, was too great for private consumption and thus created an inference of an intent to distribute. Finally, Sgt. Mark's testimony indicated that the quantity and form of the drugs found in Mr. Norfleet's possession were inconsistent with personal use; particularly, he testified that "[t]he amount of cocaine, the way that it is clumped together in the bags there and the way it was found in his possession, it has to be cut down with [a] razorblade into sizes that could be used and sold on the street."

Viewing the evidence in the light most favorable to the State, we find the evidence sufficient for a rational juror to have found beyond a reasonable

doubt that Mr. Norfleet possessed the cocaine with the intent to distribute. We thus find this argument unpersuasive.

DECREE

For the foregoing reasons, we affirm Mr. Norfleet's conviction and sentence.

AFFIRMED