

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 0184

STATE OF LOUISIANA

VERSUS

KEITH T. WILLIAMS

Judgment Rendered: November 3, 2006

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Appealed from the  
Nineteenth District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Trial Court Number 08-04-0471

Honorable Leon A. Cannizzaro, Judge Ad Hoc

\*\*\*\*\*

Doug Moreau, District Attorney  
Stacy L. Wright, Asst. District Attorney  
Baton Rouge, LA

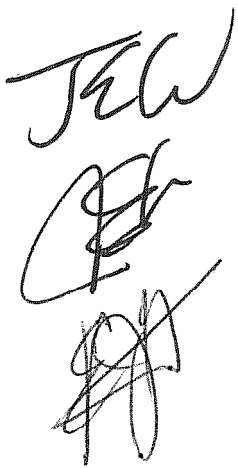
Attorney for  
State – Appellee

Marcie S. Koch  
Karl J. Koch  
Baton Rouge, LA

Attorneys for  
Defendant – Appellant  
Keith T. Williams

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.



WELCH, J.

The defendant, Keith T. Williams, was charged by bill of information with one count of possession of cocaine, a violation of La. R.S. 40:967(C). The defendant pled not guilty, waived a jury trial, and was tried in a bench trial.<sup>1</sup> The trial court determined the defendant was guilty as charged. The trial court sentenced the defendant to a term of five years at hard labor. The defendant appeals. After reviewing the record, we affirm the defendant's conviction and sentence.

### FACTS

On July 18, 2003, Officer Carl Mayo was working uniformed patrol with the Baton Rouge City Police Department. At approximately 6:00 p.m., in the daylight hours, Officer Mayo was returning to the district office in his marked police unit, accompanied by Officer Rucell Knighten, who had recently graduated from the Police Academy and was going through the training process for new officers. Officer Mayo was traveling northbound on Scenic Highway, followed by Officer Seth Sinclair, who was also in a marked police unit.

As Officer Mayo passed an older model Impala with both the driver and passenger windows down, he noted that neither the passenger (the defendant) nor the driver was wearing a seat belt. Officer Mayo advised Officer Knighten that they were about to conduct a traffic stop and radioed Officer Sinclair, who was still behind him, and advised him to stop the vehicle. After Officer Sinclair activated his lights and siren, the vehicle immediately pulled into a Fina gas station located at 7776 Scenic Highway. Officers Sinclair and Mayo both followed the vehicle into the parking lot. Officer Sinclair pulled up directly behind the Impala, and Officer Mayo positioned his vehicle directly adjacent to the passenger side of

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<sup>1</sup> The defendant was previously tried and convicted of this charge; however, the trial court granted the defendant a new trial based on the discovery of new evidence, i.e., the defense produced a witness, who claimed he was in the car during the incident.

Sinclair's unit, which allowed him to best observe the passenger and passenger side of the Impala. Officer Mayo testified that he observed only two occupants in the Impala.

Before Officer Sinclair reached the driver's door of the Impala to confront the driver on the seat belt violation, Officer Mayo noticed a small object come out of the open passenger window and mentioned such to Officer Knighten. Officer Mayo exited his vehicle to approach the passenger, the defendant, and place him into custody on a littering charge. Officer Mayo approached the vehicle, advised the defendant of his rights, and placed him in handcuffs while he was still in the vehicle. He then got the defendant out of the vehicle and performed a **Terry** "patdown" search for weapons, which revealed no weapons. Officer Mayo then recovered the item he had seen drop out of the passenger window from right beneath the vehicle, which he described as a clear plastic baggy containing six white rocks that he believed to be crack cocaine.

Subsequent tests confirmed that the bag contained 1.02 grams of cocaine. Officer Mayo grabbed the defendant by the arm and began to escort him to the police vehicle. After a few steps, the defendant broke free and began to flee. Officer Mayo chased the defendant for approximately seventy yards before tackling him. The defendant again was escorted by Officer Mayo to his police unit and placed in the back.

Officer Knighten's testimony was consistent with Officer Mayo's account of the traffic stop. Officer Knighten testified that he observed "a little white plastic baggy" slide down the door of the passenger's side of the vehicle and onto the ground below. Neither Officer Mayo nor Officer Knighten saw the driver make any movement consistent with throwing something out of the passenger window. None of the police officers saw the bag actually leave the defendant's hand. However, Officer Mayo testified that the object was not thrown but was dropped

right alongside the vehicle. No fingerprints were recovered from the plastic bag. According to Officer Mayo, based on the trajectory of the item coming out of the car, there was no one who could have put that item out of the car except the passenger.

Once the defendant was placed in the back of Officer Mayo's car, it was discovered that there was an outstanding warrant for his arrest. The driver of the vehicle also was arrested on outstanding warrants.

Officer Sinclair, who initiated the stop and directed the driver out of the car, testified that he never saw the driver lean over the passenger side, throw or drop an object out of the window, or make any movement that would indicate something was being thrown out of the passenger window. Officer Sinclair also testified that he was "positive" that the driver and the passenger were the only two occupants in the Impala.

Edward Dumas, the defendant's brother, had a prior conviction for aggravated battery and did not testify in the defendant's first trial. At the second trial, he testified that he was a third person riding in the back seat of the Impala on the day of this incident. Dumas claimed that after he exited the car, the police told him to stand there while they ran his name to check for outstanding warrants. After it was determined that there were no outstanding warrants on Dumas, the police let him leave on foot. Dumas admitted that he did not know if defendant dropped something from the window of the vehicle.

The defendant did not testify.

#### **SUFFICIENCY OF THE EVIDENCE**

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the State proved the essential elements of the crime beyond a reasonable doubt. See La. C.Cr.P. art.

821(B). The **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979), standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, i.e., "assuming every fact to be proved that the evidence tends to prove," every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. The reviewing court is required to evaluate the circumstantial evidence in the light most favorable to the prosecution and determine if any alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Smith**, 2003-0917 (La. App. 1<sup>st</sup> Cir. 12/31/03), 868 So.2d 794, 798-99.

Guilty knowledge is an essential element of the crime of drug possession. **State v. Harris**, 94-0696 (La. App. 1<sup>st</sup> Cir. 6/23/95), 657 So.2d 1072, 1074, writ denied, 95-2046 (La. 11/13/95), 662 So.2d 477. Evidence of flight or furtive behavior by the defendant may support a finding of guilty knowledge sufficient to prove defendant's knowing possession of cocaine. **State v. Sylvia**, 2001-1406 (La. 4/9/03), 845 So.2d 358, 361.

Viewing the evidence in the light most favorable to the prosecution, we find the evidence sufficiently supports defendant's conviction for possession of cocaine. All three police officers involved in the traffic stop of the Impala and ensuing arrests testified positively that there were only two men in the Impala. None of the officers saw the driver make any type of movement consistent with throwing an object out of the passenger window. Moreover, the two officers who saw the plastic bag containing the cocaine leave the vehicle testified they were

certain the bag was dropped and not thrown. Finally, we note that the defendant cooperated with the police until he realized that the police had recovered the plastic bag containing cocaine, at which time he attempted to flee from custody. Although no one witnessed the plastic bag actually leave defendant's hand, the facts and circumstances ruled out the item being thrown from the vehicle by the driver or any other person. (Obviously, the trial court rejected the testimony of Dumas, who claimed he was a third person in the vehicle at the time of this incident. This finding is reasonable given the conflicting testimony of all three police officers and that Dumas's own testimony indicated that he was not in a position to know if the defendant had, in fact, dropped any item out of the vehicle.)

This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The testimony of the police officer alone is sufficient to prove the elements of the offense. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. **State v. Lofton**, 96-1429 (La. App. 1<sup>st</sup> Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331.

In this case, the trial court's determination that the testimony of the three police officers was more credible than the testimony of Dumas cannot be overturned on appeal. The trial court rejected the theories of the defense that the bag was thrown by the driver or Dumas. No other reasonable hypothesis of innocence raises a reasonable doubt.

This assignment of error is without merit.

**CONVICTION AND SENTENCE AFFIRMED.**