

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 1843

PMC
W. Hillman
JMM

STATE OF LOUISIANA

VERSUS

KAHALLI MARQUES CORMIER

Judgment Rendered: MAY 06 2011

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On Appeal from the Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Docket No. 545,114

Honorable David Arceneaux, Judge Presiding

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Kahalli Marques Cormier

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BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Defendant, Kahalli Marques Cormier, was charged by bill of information with possession with intent to distribute cocaine, a violation of LSA-R.S. 40:967. He entered a plea of not guilty and waived his right to a jury trial. At the conclusion of a bench trial, defendant was convicted as charged. The trial court sentenced defendant to imprisonment at hard labor for six years. The court ordered that the first two years of the imprisonment sentence be served without the benefit of probation, parole, or suspension of sentence. Defendant moved for reconsideration of the sentence. The trial court denied the motion. Defendant now appeals, urging a single assignment of error challenging the sufficiency of the state's evidence. Finding no merit in the assigned error, we affirm defendant's conviction and sentence.

FACTS

On April 17, 2009, Agent Stephen Bergeron, with the Terrebonne Parish Sheriff's Office, and officers Joseph Renfro, Curtis Howard, and Keith Craft, of the Houma Police Department, were conducting criminal patrol near Pel's Motel on Lafayette Street in Houma, Louisiana (an area known for drug activity), when they observed a tan Dodge Stratus traveling on Lafayette Street without the license plate illuminated. As the vehicle prepared to turn into the Pel's Motel parking lot, the officers engaged the emergency lights and siren of their unmarked vehicle and initiated a traffic stop. The vehicle continued to travel approximately 30-40 yards to the rear of the parking lot. The driver, who was subsequently identified as defendant, parked the vehicle, exited, and walked toward Agent Bergeron. Agent Bergeron advised defendant of the reason for the stop. According to Agent Bergeron, defendant appeared "very nervous." He refused to make eye contact and, instead, repeatedly scanned the surrounding area. Agent Bergeron believed that defendant's behavior suggested he was looking around for a means of escape. Defendant also repeatedly tapped at his left pocket. Having grown suspicious based upon defendant's behavior, Agent

Bergeron requested permission to conduct a safety pat down of defendant's person. Defendant agreed to allow the search.

As Agent Bergeron conducted the pat down of the right side of defendant's outer garments, defendant did not respond. However, once the search progressed toward the left pocket of defendant's pants, defendant's legs began to shake. Agent Bergeron reached into defendant's pocket and immediately felt a cellophane bag containing rock-like substances. Based upon his training and experience, Agent Bergeron suspected that the rocks inside defendant's pocket were crack cocaine. Once he realized Agent Bergeron felt the rocks, defendant quickly pulled away. Agent Bergeron grabbed defendant, handcuffed him, and removed from his pocket a large clear plastic bag containing the suspected crack cocaine. Agent Bergeron also removed a separate plastic bottle containing an additional amount of suspected crack cocaine from defendant's left pocket. Defendant was advised of his **Miranda** rights and placed under arrest. Two additional bags of suspected crack cocaine were found in plain view on the driver's side floorboard of the vehicle defendant had been driving.¹

At the trial, Agent Bergeron explained that the three bags recovered contained larger pieces of suspected crack cocaine. The bottle contained smaller "cut or broken" pieces of suspected crack cocaine. Agent Bergeron further explained that the pieces of suspected crack cocaine found inside the bottle were consistent with the size of a rock used for smoking. The larger rocks found inside the bags were not consistent with smoking. No drug paraphernalia was recovered from defendant or his vehicle.

Scientific analysis of all of the substances recovered revealed the presence of cocaine. The rocks in the plastic bags recovered from the vehicle were determined to have a net weight of 17.35 grams. The rocks in the plastic

¹ Defendant was the sole occupant of the vehicle. There were no passengers.

container weighed 5.29 grams. The net weight of the rocks in the plastic bag recovered from defendant's person was 3.65 grams.²

At trial, defendant testified that he is a crack cocaine addict and he possessed the crack cocaine for personal consumption.

SUFFICIENCY OF EVIDENCE

In his sole assignment of error, defendant contends the evidence is insufficient to support his conviction of possession of cocaine with intent to distribute. Specifically, he asserts the state failed to prove the requisite element of intent to distribute the cocaine found on his person.³ He contends a reasonable hypothesis of innocence is that he possessed the crack cocaine for personal use. Thus, he asserts, the evidence presented failed to prove specific intent to distribute and supports only a conviction of possession of cocaine.

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 LSA-C.Cr.P. art. 821B. 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. LSA-R.S. 15:438. See **State v. Northern**, 597 So.2d 48, 50 (La.App. 1 Cir. 1992). 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. See **State v. Fisher**, 628 So.2d 1136, 1141 (La.App. 1 Cir. 1993), writs

² The total net weight of the substances found in defendant's possession was 26.29 grams.

³ Defendant does not contest the fact that he possessed the cocaine.

denied, 94-0226 (La. 5/20/94), 637 So.2d 474 and 94-0321 (La. 5/20/94), 637 So.2d 476. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984).

To support a conviction for possession with intent to distribute a controlled dangerous substance, the state was required to prove both possession and specific intent to distribute. See LSA-R.S. 40:967A(1); **State v. Young**, 99-1264, p. 10 (La.App. 1 Cir. 3/31/00), 764 So.2d 998, 1006. In this case, possession is not at issue. Defendant clearly possessed the cocaine found on his person. Thus, the issue herein is whether the state established the element of intent to distribute. In order to prove the element of intent to distribute, the state must prove the defendant's specific intent to possess to distribute. Specific intent is a state of mind. It need not be proven as a fact and may be inferred from the circumstances present and the actions of the defendant. **State v. Young**, 99-1264 at p. 11, 764 So.2d at 1006.

Because evidence of intent is generally circumstantial, the Louisiana Supreme Court has enunciated criteria for determining intent to distribute. We should consider whether: (1) defendant ever distributed or attempted to distribute illegal drugs; (2) the drug was in a form usually associated with distribution; (3) the amount of the drug was such to create a presumption of intent to distribute; (4) expert or other testimony established that the amount of the drug found in defendant's actual or constructive possession was inconsistent with personal use; and (5) there was any paraphernalia, such as baggies or scales, evidencing an intent to distribute. See **State v. House**, 325 So.2d 222, 225 (La. 1975).

In the absence of circumstances from which an intent to distribute may be inferred, mere possession of illegal drugs is not evidence of intent to distribute unless the quantity is so large that no other inference is reasonable. **State v.**

Greenway, 422 So.2d 1146, 1148 (La. 1982). For mere possession to establish intent to distribute, the state must prove the amount of the drug in the possession of the accused and/or the manner in which it was carried is inconsistent with personal use only. See State v. Hearold, 603 So.2d 731, 736 (La. 1992).

Analyzing the facts of the instant case and applying the **House** factors, we conclude the state's evidence adequately proved defendant's intent to distribute the cocaine. We find that there was sufficient circumstantial evidence from which an intent to distribute may be inferred. At the trial, Narcotics Agent Derrick Collins, of the Terrebonne Parish Sheriff's Office, was accepted as an expert in the packaging, distribution, and consumption of cocaine. Agent Collins explained that crack cocaine is made from inositol (a dietary supplement), water, baking soda, and powder cocaine. He explained that a common technique for manufacturing crack cocaine is to utilize indirect heat to cook a bulk amount of the ingredients until they reach a solid state. The ingredients yield a large portion often referred to as a "cookie." Typically, a cookie weighs approximately one ounce. Next, the cookie is divided into quarter-sized "slabs." Dealers purchase the larger rocks and cut them down into "dosage units," which are approximately 0.10 grams, and sell them for a profit. There are approximately 28 grams in an ounce (roughly 280 dosage units). The drug consumers purchase the smaller "dosage units" for approximately \$20.00 each.

Agent Collins further testified that a key factor in determining whether a gram of crack cocaine is intended for distribution is whether it has been separated into dosage units. Scales and instruments of consumption are also factors to consider whether intent to distribute exists. Agent Collins noted that the cocaine found in defendant's possession was in two different weight amounts. Larger "chunks" were found inside the vehicle, while smaller pieces were found inside the container removed from the defendant's pocket. Agent Collins hypothesized that the differing sizes of the rocks and the absence of any

smoking paraphernalia was more consistent with intent to distribute, and not for personal use.

As further support for the conclusion that defendant intended to distribute the cocaine, Agent Collins testified that crack cocaine users typically purchase the drug in small increments, not in bulk. Agent Collins opined that the quantity of crack cocaine was also indicative of retail sale or distribution as opposed to personal consumption.

The trial judge was entitled to accept the expert's opinion and conclude that defendant intended to distribute the cocaine seized from his person. Even in the absence of direct evidence that defendant actually distributed or attempted to distribute the cocaine, the circumstantial evidence, viewed in the light most favorable to the state, established beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, the intent to distribute cocaine. This assignment of error lacks merit.

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

CONVICTION AND SENTENCE AFFIRMED.