NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 KA 2329

STATE OF LOUISIANA

VERSUS

BARBARA ANN LAMBERT

Judgment Rendered: NOV - 3 2006

JMM
by RHH

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On Appeal from the 21st Judicial District Court
In and for the Parish of Livingston, State of Louisiana
Docket No.18452, Division "G"

Honorable Ernest G. Drake, Jr., Judge Presiding

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BEFORE: PARRO, McDONALD, AND HUGHES, JJ.

Parro, J., concurs.

HUGHES, J

The defendant, Barbara Ann Lambert, was charged by bill of information with possession of hydrocodone, a Schedule II controlled dangerous substance (count one), and possession of diazepam, a Schedule IV controlled dangerous substance (count two), violations of LSA-R.S. 40:967(C) and LSA-R.S. 40:969(C). See also LSA-R.S. 40:964. The defendant entered a plea of not guilty as charged. After a trial by jury, the defendant was found guilty as charged. The defendant was sentenced, as to each count, to four years imprisonment at hard labor.[1] The sentences are to run consecutively. The defendant now appeals, assigning error as to the sufficiency of the evidence. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

On or about December 27, 2003, Springfield Police Chief James Jones was approached by the defendant as he stood outside of town hall.[2] The defendant exited her vehicle and staggered toward Chief Jones. The defendant began speaking to Chief Jones in an unclear, slurred manner. According to Chief Jones's trial testimony, the defendant continued to make unclear, senseless statements as she placed some pills in his hand.[3] Chief Jones was unable to understand the defendant's speech. The defendant indicated that more drugs were in her vehicle. Chief Jones summoned his

[1] At the sentencing hearing, the defendant entered a plea of no contest (nolo contendere) to a DWI charge (case no. 81129). The defendant waived sentencing delays and was sentenced to six months in the parish jail to run concurrently "with any and all Department of Correction time." The plea and sentence in case no. 81129 are not related to this appeal.

[2] The record indicates that the defendant's boyfriend (at the time of the offense) initially arrived at the town hall and the defendant arrived shortly thereafter. There had been a disturbance involving the defendant and her boyfriend. The facts of the disturbance are not relevant and were not developed during the trial.

[3] However, Chief Jones's initial investigative report from the day of this incident states that it was the defendant's boyfriend, Robert Cook, who gave him "a handful of pills" that he claimed to have taken from the defendant.

K-9 officer, Officer Jessie Savick, to the scene. Officer Savick lived one block away.

Officer Savick arrived and allowed his dog to approach the defendant's vehicle. The dog immediately detected the presence of narcotics in the vehicle. Officer Savick recovered the narcotics from the defendant's vehicle and gave them to Chief Jones. Pastor Andrew Stafford, a former officer of the Springfield Police Department, delivered the drugs to the Louisiana State Police Crime Laboratory. The evidence collected from the defendant and her vehicle consisted of one yellow round tablet with a pink "Post-It" notepaper attached to it, one prescription bottle containing blue oblong tablets, one prescription bottle containing white round tablets, and one prescription bottle containing small white round tablets.[4] The results of the Louisiana State Police Crime Laboratory were as follows: the yellow round tablet with a pink "Post-It" notepaper attached to it contained diazepam (0.16 grams); the blue oblong tablets contained hydrocodone (16.19 grams); the white round tablets contained carisoprodol (42.42 grams); and no controlled dangerous substances were detected in the small white round tablets.[5]

ASSIGNMENT OF ERROR

In her sole assignment of error, the defendant asserts that there is insufficient evidence that she illegally possessed the drugs. The defendant argues that the jury ignored evidence of valid prescriptions for the drugs. The defendant notes that she was intoxicated at the time of the offenses, but

[4] These evidentiary items are not included in the appeal record. The record indicates that one of the labels bears the name of defense witness James Gordon and another bears the name of defense witness Paul Thompson.

[5] The defendant was not charged with possession of the carisoprodol, as it is not a scheduled controlled dangerous substance in Louisiana. See LSA-R.S. 40:964.

honest in admitting that she had possession of the drugs. She argues that she gave a plausible explanation for her possession of the drugs.

In reviewing the sufficiency of the evidence to support a conviction, a Louisiana appellate court is controlled by the standard enunciated by the United States Supreme Court in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). That standard of appellate review, adopted by the legislature in enacting LSA-C.Cr.P. art. 821 (pertaining to motions for post-verdict judgment of acquittal based on insufficiency of evidence), is whether or not the evidence, when 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 had been proved beyond a reasonable doubt. **State v. Brown**, 2003-0897, p. 22 (La. 4/12/05), 907 So.2d 1, 18. The **Jackson** standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that in order to convict, the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 2002-1492, p. 5 (La. App. 1 Cir. 2/14/03), 845 So.2d 416, 420. When a case involves circumstantial evidence and the jury 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 which raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984). See also **State v. Parker**, 2000-2861, p. 4 (La. App. 1 Cir. 11/9/01), 818 So.2d 85, 88.

LSA- R.S. 40:967(C) states, in pertinent part:

> It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance as classified in Schedule II unless such substance was obtained directly or

> pursuant to a valid prescription or order from a practitioner, as provided in R.S. 40:978[6] while acting in the course of his professional practice, or except as otherwise authorized by this Part.

LSA-R.S. 40:969(C) states, in pertinent part:

> It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance classified in Schedule IV unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner, or as provided in R.S. 40:978, while acting in the course of his professional practice or except as otherwise authorized by this Part.

Hydrocodone is a controlled dangerous substance pursuant to LSA-R.S. 40:964, Schedule II(A)(1)(k). Diazepam is a controlled dangerous substance pursuant to LSA-R.S. 40:964, Schedule IV(17). "Actual possession" means having an object in one's possession or on one's person in such a way as to have direct physical contact with and control of the object. **State v. Walker**, 32,342, p. 4 (La. App. 2 Cir. 9/24/99), 747 So.2d 133, 138. A person may be in constructive possession of a drug even though it is not in his physical custody, if it is subject to his dominion and control. Guilty knowledge is an essential element of the crime of possession of contraband, and such knowledge may be inferred from the circumstances. **State v. Gentras**, 98-1095, p. 8 (La. App. 5 Cir. 3/30/99), 733 So.2d 113, 117, writ denied, 99-1302 (La. 10/15/99), 748 So.2d 464.

Herein, the defendant does not contest her possession of the drugs in question. She merely argues that the State failed to refute her claim that the drugs were obtained pursuant to valid prescriptions. Therefore, the inquiry in this case is whether or not, when viewed in the light most favorable to the

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[6] LSA-R.S. 40:978 states in pertinent part that:

> A. Except when dispensed or administered directly by a medical practitioner or administered by a person authorized to administer by such practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule II, which is a prescription drug as determined under the Louisiana Revised Statutes, of 1950, may be dispensed or administered without the written prescription of a practitioner, except that in emergency situations, as prescribed by the department by regulation, such drug may be dispensed or administered upon oral prescription reduced promptly to writing and filed by the pharmacist. Prescriptions shall be retained in conformity with the requirements of R.S. 40:976. No prescription for a Schedule II substance may be refilled.

prosecution, the State met its burden of proving beyond a reasonable doubt that the defendant knowingly or intentionally possessed the drugs without valid prescriptions.

Chief Jones testified that the defendant informed him that she had purchased the drugs from an old man from Ponchatoula, Louisiana.[7] The defendant told Chief Jones the drugs were placed in her possession, explaining that she had been asked to administer the drugs to the gentlemen by his children.

Defense witness James Gordon, the defendant's friend, stated that the defendant was his former employee and would pick up his prescribed medications and deliver them to him. Gordon stated that the defendant never purchased medicine from him. The defense produced a computer printout to show that Gordon had a prescription for the bottle of carisoprodol (a sleeping aid commonly known as "Soma") that was seized from the defendant. Gordon stated that only this bottle belonged to him. He further stated that the defendant picked up the medication. On the date of the defendant's arrest, Gordon waited for the defendant to deliver the drugs to him. After receiving a telephone communication, Gordon picked the defendant up from jail. On cross-examination, Gordon indicated that the defendant was living with him at the time of the trial, but not at the time of her arrest. Gordon stated that he has only a limited ability to drive, explaining that he has an artificial shoulder and a birth defect in one of his arms.

Defense witness Paul Thompson, also a friend of the defendant who lived in Ponchatoula, indicated that the defendant often picked up his prescribed medications. He further indicated that he would occasionally

[7] This statement was made when Chief Jones reviewed his initial investigative report on the witness stand. However, that report actually states, "Robert [Cook] then told me that she had lots more pills in the car not belonging to her [and] that she buys them from [an] old man toward Ponchatoula."

forget his medicine in the defendant's vehicle. The defense produced a printout to show that Thompson had a prescription for the bottle of hydrocodone pills (a pain medication commonly known as "Vicodin") that were seized from the defendant. Thompson indicated that the defendant would sleep at his home irregularly. According to the bottle label and the printout, the bottle originally contained 100 hydrocodone pills and was filled on December 10, 2003. At the time of the arrest, the bottle was one-half to one-third full. Thompson indicated that he would normally take hydrocodone once at night, but corrected his statement when he realized this was his pain medicine which he took whenever he felt bad, sometimes 2 – 3 times a day. He took his sleeping pill once a night. Thompson also indicated that he never witnessed the defendant take any of his drugs.

The defendant testified that she would pick up prescribed medications for Gordon and Thompson. The defendant indicated, however, that the one pill of diazepam, (an anxiety medicine commonly known as "Valium"), belonged to her. She stated that she had a prescription for it. She also stated that it was not in a prescription bottle because she did not always carry the bottle with her. During cross-examination, the defendant did, however, produce a bottle of prescribed diazepam with her name on it that was dated May 18, 2005. She did not have any evidence that she had such a prescription at the time of the 2003 offense.

On cross-examination, the defendant responded affirmatively when asked whether she used the drugs that she picked up for others. The State again specifically asked the defendant whether she physically took any of the hydrocodone that she picked up for Thompson. The defendant again responded affirmatively. She, confusingly, later stated that she used her own prescribed drugs. The defendant further testified that she did not pick

up Thompson's hydrocodone pills. She stated that he forgot the pills in her car after she had given him a ride. The defendant then stated that she had her own hydrocodone and did not take the ones that belonged to Thompson. She further testified that she had her own somas (carisoprodol). The defendant indicated that Gordon had forgotten his pills in her car also.

Where 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. Richardson**, 459 So.2d 31, 38 (La. App. 1 Cir. 1984). Accordingly, our role is not to assess credibility or reweigh evidence. **State v. Smith**, 94-3116, p. 2 (La. 10/16/95), 661 So.2d 442, 443. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Azema**, 633 So.2d 723, 727 (La. App. 1 Cir. 1993), writ denied, 94-0141 (La. 4/29/94), 637 So.2d 460; **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1 Cir. 1985).

A similar situation to the instant case is found in **State v. Craft**, 2001-248 (La. App. 3 Cir. 10/3/01), 796 So.2d 907. In **Craft**, the defendant told a deputy that he took one pill each from two prescription medicine bottles found in the console of his truck. The defendant's sister testified that the prescriptions were hers and that the defendant was bringing them home for her while she was in the hospital. The court stated:

> Considering the testimony, we find that the State presented sufficient evidence to show that the Defendant had the specific intent to possess the pills found on the console of the truck. At the time of his arrest, the Defendant told Deputy Iles that the pills in the bottle belonged to him. His statement did not differentiate between the different types of pills. Based upon the evidence presented, the trial court made a credibility

> determination and was free to believe or reject any of the evidence.

Craft, 2001-248 at p. 4, 796 So.2d at 911.

Also, in **State v. Parfait**, 2002-348 (La. App. 5 Cir. 10/16/02), 831 So.2d 360, the defendant was found in "actual possession" of seven Vicodin pills (hydrocodone). The court found that the defendant's knowledge that she possessed the drugs could be inferred from her initial statement to the investigating officer that the pills were in her pocket. Her intent with regard to the drugs was not as clear because the defendant told the arresting officer that she had a prescription for the drugs and had lost it in a vacant lot. No prescription bottle was found in the vacant lot where defendant alleged she lost her purse with the prescription bottle. The defendant's mother testified that the pills were her prescriptive medication that was held by her daughter, because she was elderly and ill and her daughter took care of her. The court stated, "When faced with these apparently conflicting facts, a jury could have reasonably found that the defendant attempted to possess the controlled substance for her own use." **Parfait**, 2002-348 at p. 11, 831 So.2d at 369.

In **State v. Clark**, 2005-0136 (La. App. 4 Cir. 5/18/05), 904 So.2d 793, drugs were in what appeared to be a prescription bottle, but the bottle's label had been removed. Upon questioning, the defendant testified that an unidentified person was going to throw the pills away, but instead gave them to him, thus admitting that he had not obtained the drugs pursuant to a valid prescription. The court stated as follows:

> LSA-R.S. 40:967(C) contemplates that possession of Schedule II drugs is illegal unless the possessor obtained them directly from a practitioner or that the possessor obtained them pursuant to a valid prescription. That is, it would subvert the obvious purpose of the statute to interpret it to mean that one could legally possess Schedule II drugs as long as someone in

> the chain of possession had obtained them pursuant to a valid prescription.

Clark, 2005-0136 at pp. 4-5, 904 So.2d at 795. The court concluded the jury could infer that this unidentified person from whom the defendant acquired the drugs was not a medical practitioner or someone authorized to dispense the drugs.

Herein, the defendant admitted that the diazepam pill belonged to her and she did not produce a prescription for this drug. The defendant also admitted to using drugs, including hydrocodone, for which she presented no documentary evidence that she had a prescription. The jury obviously rejected the defendant's hypothesis of innocence that the drugs were obtained pursuant to valid prescriptions. We find such rejection reasonable. Viewing all of the evidence in a light most favorable to the prosecution, any rational trier of fact could have found that all of the essential elements of the offenses of possession of Schedule II and Schedule IV controlled dangerous substances were proven beyond a reasonable doubt. This assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.