NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 KA 0077

STATE OF LOUISIANA

VERSUS

CHRISTOPHER PETERS

Judgment rendered June 6, 2008.

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Appealed from the
22nd Judicial District Court
in and for the Parish of Washington, Louisiana
Trial Court No. 06 CR7 94806
Honorable Donald Fendlason, Judge

* * * * * *

HON. WALTER P. REED
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CHRISTOPHER PETERS

* * * * * *

BEFORE: CARTER, C.J., PETTIGREW, AND WELCH, JJ.

PETTIGREW, J.

Defendant, Christopher Peters, was charged by bill of information with one count of possession with intent to distribute cocaine, a violation of La. R.S. 40:967(A)(1). Defendant pled not guilty and was tried before a jury. The jury found defendant guilty as charged. The trial court sentenced defendant to a term of fifteen years at hard labor.

Defendant appeals, arguing the evidence was insufficient to support his conviction. After reviewing the record and considering defendant's assignment of error, we affirm his conviction and sentence.

FACTS

On the evening of August 23, 2005, Lieutenants Scott Crain and Chris Hickman of the Washington Parish Drug Task Force were riding in an unmarked police vehicle in Bogalusa. As members of the Drug Task Force, the officers were dressed in blue jeans and black shirts with "Sheriff" printed on each side.

Lieutenant Crain parked the vehicle near Lee's Lounge located on Fourth Street between Sullivan Street and Second Avenue. The officers regularly conducted "walk-throughs" at Lee's Lounge, sometimes at the request of the owner, due to the high volume of narcotics activity in the area. Lieutenant Crain explained that a "walk-through" is conducted when the officers enter a business and request that everyone present stand and produce identification. The officers then check the patrons' identification. Anyone not having identification is asked to leave the premises. According to Lieutenant Crain, sometimes drugs and weapons are found during these "walk-throughs."

On this evening, as Lieutenant Crain parked the vehicle and he and Lieutenant Hickman exited, both officers observed defendant standing on the sidewalk near a building on the passenger side of the vehicle. According to both officers, when defendant saw them exit their vehicle, he threw something behind him with his right hand and then turned and began to walk away from the officers. Lieutenant Hickman followed defendant to confront him, while Lieutenant Crain kept watching the area where he saw the object fall. Within twenty to thirty seconds of observing defendant throw the object,

Lieutenant Crain walked over to the area and located a clear plastic bag containing approximately eight rocks of crack cocaine. Defendant was then placed under arrest.

Lieutenant Crain testified that defendant was the only person standing in the area when the officers parked their vehicle. Although it was close to midnight during this encounter, there was enough light from nearby businesses to identify defendant. Lieutenant Crain could not identify the object at the time defendant threw it, but he kept his eyes on the area where it appeared to land. The plastic bag containing the crack cocaine was recovered approximately ten feet from where Lieutenant Crain perceived defendant to be standing when he threw the object. Neither officer observed defendant engaged in any activity that could be construed as a drug transaction prior to defendant throwing the object.

According to Lieutenant Crain, a typical crack user will usually smoke a rock valued at $10 or $20 at any given time. Normally, a typical user will not hold a rock of crack cocaine for very long, and they normally carry their crack pipe on them. No such paraphrenalia was found on defendant. Lieutenant Crain also explained that crack cocaine is usually packaged in clear plastic sandwich bags that have the corner cut off, and the rocks are placed inside the bag, rolled, and tied for closure. The clear plastic bag recovered was consistent with this practice.

Lieutenant Crain testified that the eight rocks of crack cocaine found in this incident usually sold for between $10 and $20 each. It would be unusual for a typical user to have as many rocks and the amount of cash, which was in denominations of one and five dollar bills, on his person, as defendant had.

Carla Colbert, a forensic scientist with the Louisiana State Police Crime Lab, was accepted by the trial court as an expert in drug chemistry. Colbert tested the evidence recovered in this case and determined the plastic bag contained 0.82 grams of cocaine.

Alfreda Crain[1] was subpoenaed to testify on behalf of defendant. Crain expressed reluctance to appear as a witness due to the fact her husband, from whom she was

[1] No relation to Lieutenant Scott Crain.

separated at the time of trial, would become jealous due to her having been with defendant on the night of this incident. Crain testified she and defendant had walked over to the area of Lee's Lounge just prior to his arrest. According to Crain, the police emerged from the alley near the air conditioning unit of Lee's Lounge. When the police appeared, most of the people in the area began to leave.

Crain testified that when the police approached defendant, she had already stepped away, so she could not hear the discussion. Crain saw one of the police officers pick up something, but could not tell what it was. Crain stated that she overheard this particular police officer state he "got something" from the area near the air conditioning unit, which was located several feet away from the sidewalk. Crain testified that defendant and another man, whom she could not identify, were arrested at the same time.

Lieutenant Crain disputed that anyone was arrested at the same time as defendant. According to Lieutenant Crain, Dedrick Varnado appeared on the scene approximately five minutes after defendant was arrested. Varnado had a history of throwing drugs down and running when the police appeared; however, at the time defendant threw the object, Varnado was not present.

Defendant did not testify.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, defendant contends that the State failed to present sufficient evidence to uphold the conviction for possession with intent to distribute cocaine, because the State failed to produce evidence of actual or constructive possession of the cocaine, as well as evidence indicating the cocaine was intended for distribution as opposed to personal consumption.

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. Code Crim. P. art. 821(B). The **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 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, pp. 4-5 (La. App. 1 Cir. 12/31/03), 868 So.2d 794, 798-799.

To support a conviction for the crime charged, the State had to prove beyond a reasonable doubt that the defendant: 1) possessed the controlled dangerous substance; and 2) had the intent to distribute the controlled dangerous substance. La. R.S. 40:967(A)(1); **Smith**, 2003-0917 at 5, 868 So.2d at 799.

On the issue of whether the evidence sufficiently proved possession, the State is not required to show actual possession of the narcotics by a defendant in order to convict. Constructive possession is sufficient. A person is considered to be in constructive possession of a controlled dangerous substance if it is subject to his dominion and control, regardless of whether or not it is in his physical possession. Also, a person may be in joint possession of a drug if he willfully and knowingly shares with another the right to control the drug. However, the mere presence in the area where narcotics are discovered, or mere association with the person who does control the drug or the area where it is located, is insufficient to support a finding of constructive possession. **Smith**, 2003-0917 at 5-6, 868 So.2d at 799.

A determination of whether there is "possession" sufficient to convict depends on the peculiar facts of each case. Factors to be considered in determining whether a defendant exercised dominion and control sufficient to constitute possession include his

knowledge that drugs were in the area, his relationship with the person found to be in actual possession, his access to the area where the drugs were found, evidence of recent drug use, and his physical proximity to the drugs. **Smith**, 2003-0917 at 6, 868 So.2d at 799.

In the instant matter, the State presented testimony from Lieutenant Crain that defendant was standing on a sidewalk near midnight in an area known for a high volume of narcotics activity. Both officers testified that as soon as they exited their unmarked vehicle, defendant threw an object behind him and turned to walk away. No one else was in the immediate vicinity of defendant at this time.

Lieutenant Crain testified that he never lost sight of the area where the object landed. Lieutenant Crain added that approximately thirty seconds elapsed from the time he saw defendant throw the object until he recovered the plastic bag containing the crack cocaine.

Clearly, the jury rejected the defense theory that the cocaine had been thrown down by someone else. Although a defense witness testified that she and another man were next to defendant when the police appeared on foot walking from an alley at the rear of the building, Lieutenant Crain testified that no one else was in the immediate vicinity of defendant when he and the other officer drove up and exited their vehicle. Moreover, the plastic bag containing the crack cocaine was found approximately ten feet from where defendant had been standing.

Viewing the evidence in the light most favorable to the prosecution, we find the jury had a reasonable basis to conclude defendant possessed the cocaine. The evidence established that the defendant, upon seeing the police, threw the plastic bag containing the crack cocaine down and began to walk away from the area. The jury reasonably rejected the theory that the cocaine had been thrown down by another person at another time.

As to the evidence of defendant's intent to distribute the cocaine, it is well settled that intent to distribute may be inferred from the circumstances. **Smith**, 2003-0917 at 7, 868 So.2d at 800. Factors useful in determining whether the State's circumstantial

evidence is sufficient to prove intent to distribute include: (1) whether the defendant ever distributed or attempted to distribute illegal drugs; (2) whether the drug was in a form usually associated with distribution; (3) whether the amount was such to create a presumption of intent to distribute; (4) expert or other testimony that the amount found in the defendant's actual or constructive possession was inconsistent with personal use; and (5) the presence of other paraphernalia evidencing intent to distribute. **Smith**, 2003-0917 at 7-8, 868 So.2d at 800.

In the absence of circumstances from which an intent to distribute may be inferred, mere possession of cocaine is not evidence of intent to distribute unless the quantity is so large that no other inference is reasonable. 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. The presence of large sums of cash also is considered circumstantial evidence of intent to distribute. **Smith**, 2003-0917 at 8, 868 So.2d at 800.

Applying these factors to the present case, we note that Lieutenant Crain testified that it was unusual for a crack user to have in his possession eight rocks of crack and any cash at all. Although the total amount of cash was never indicated, the State presented evidence that a street-level dealer of crack cocaine typically held denominations of one and five dollar bills on his person, which was consistent with what was found on defendant. Lieutenant Crain also explained that a typical crack user would have some device used to smoke the crack on his person, such as a crack pipe, and that no such paraphernalia was found on defendant. Finally, the packaging of the eight rocks of crack cocaine was consistent with what the officers had observed from street-level dealers, which was to place the rocks into a plastic bag, cut off a corner of the bag, and tie the bag.

Viewing the totality of the evidence in the light most favorable to the prosecution, a rational trier of fact could have concluded beyond a reasonable doubt that defendant intended to sell the crack cocaine in the plastic bag recovered by Lieutenant Crain.

As the trier of fact, a jury is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of witnesses, the matter is one of the weight of the evidence, not its sufficiency. **State v. Hamilton**, 2002-1344, p. 13 (La. App. 1 Cir. 2/14/03), 845 So.2d 383, 393, writ denied, 2003-1095 (La. 4/30/04), 872 So.2d 480. We do not find the jury's rejection of the hypothesis of innocence presented by the defendant unreasonable. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the State successfully excluded any reasonable hypothesis of innocence and proved the elements of the offense beyond a reasonable doubt. This assignment of error lacks merit.

REVIEW FOR ERROR

The defendant asks that this court examine the record for error under La. Code Crim. P. art. 920(2). This court routinely reviews the record for such error, whether or not such a request is made by a defendant. Under Article 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See **State v. Price**, 2005-2514, p. 18 (La. App. 1 Cir. 12/28/06), 952 So.2d 112, 123 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

CONCLUSION

Finding no error, we affirm defendant's conviction and sentence for possession of cocaine with intent to distribute.

CONVICTION AND SENTENCE AFFIRMED.