NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 1047

STATE OF LOUISIANA

VERSUS

EDWARD MAURICE LAURENT

Judgment rendered: November 2, 2007

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On Appeal from the 22nd Judicial District Court
Parish of St. Tammany, State of Louisiana
Number 408495-1 "J"
The Honorable William J. Knight, Judge Presiding

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Walter P. Reed
District Attorney
Covington, LA

Kathryn W. Landry
Baton Rouge, LA

Counsel for Appellee
State of Louisiana

Mary E. Roper
Baton Rouge, LA

Counsel for Appellant
Edward Maurice Laurent

BEFORE: PARRO, KUHN AND DOWNING, JJ.

DOWNING, J.

The defendant, Edward Maurice Laurent, was charged by bill of information with possession of a Schedule II controlled dangerous substance (cocaine), a violation of La. R.S. 40:967(C).[1] The defendant pled not guilty. Following a jury trial, the defendant was found guilty of the responsive offense of attempted possession of cocaine, a violation of La. R.S. 40:967(C) and 40:979. *See also* La. R.S. 14:27. The State filed a multiple offender bill of information. At the hearing, the trial court denied the defendant's motions for new trial and post-verdict judgment of acquittal. Upon being advised of his rights, the defendant stipulated to the multiple offender bill of information, i.e., that he was the same person who previously pled guilty to possession of cocaine, and the trial court adjudicated him a second felony habitual offender. The defendant waived all sentencing delays and was sentenced to eighteen (18) months at hard labor, with one year of the sentence to run consecutive to any sentence he was currently serving. The defendant now appeals, designating the following three assignments of error: the evidence was insufficient to support a conviction; the trial court erred in denying his motions for new trial; and the trial court erred in denying his motions for post-verdict judgment of acquittal. We affirm the conviction, habitual offender adjudication, and sentence.

FACTS

On February 10, 2006, Lieutenant Kevin Swann with the Slidell Police Department received complaints about narcotics activity and prostitution from the manager of a Motel 6 on Taos Street in Slidell. After making several arrests at the Motel 6, Lieutenant Swann saw the defendant and two other men standing together near a car in the rear parking lot of the

[1] Byron Knockum also appears on the bill of information charged with the same crime. However, the defendant was tried alone in this matter.

motel. He recognized one of the men as a known drug dealer in Slidell. When Lieutenant Swann approached the men and began speaking with them, they became nervous. For his safety, Lieutenant Swann patted down the men for weapons. During his pat-down of the defendant, Lieutenant Swann found a crack pipe in the defendant's left pocket. The crack pipe, which was a metal tube containing a metal screen and residue, was submitted to the St. Tammany Parish Sheriff's Office Crime Laboratory for analysis. The Crime Laboratory Scientific Analysis Report indicated that the crack pipe was determined to contain cocaine.

ASSIGNMENTS OF ERROR NOS. 1, 2, AND 3

In these three assignments of error, the defendant argues the evidence was insufficient to support his conviction.[2] Specifically, the defendant contends that there is no evidence to show that he knowingly and intentionally possessed cocaine, or attempted to do so, since the crack pipe he was found in possession of contained no visible cocaine residue.

A conviction based on insufficient evidence cannot stand as it violates due process. *See* U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). *See also* La. Code Crim. P. art. 821(B); **State v. Ordodi**, 06-0207, p. 10 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988). The

[2] The defendant combines these three assignments of error to address the sole issue of sufficiency of evidence. Sufficiency is properly raised by a motion for post-verdict judgment of acquittal, not by a motion for new trial. Under La. Code Crim. P. art. 851(1), the trial court can consider only the weight of the evidence, not the sufficiency. *See* **State v. Williams**, 458 So.2d 1315, 1324 (La. App. 1 Cir. 1984). Therefore, if the defendant meant to also argue that the weight of the evidence warranted a new trial, our review is limited to whether the trial court abused its wide discretion. We find no abuse of discretion in the instant matter of the trial court's denial of the defendant's motion for new trial.

Jackson v. Virginia standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. *See* **State v. Patorno**, 01-2585, pp. 4-5 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

La. R.S. 40:967(C) provides 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[.]

To support a conviction for possession of cocaine, the State must present evidence establishing beyond a reasonable doubt that the defendant was in possession of the drug and that he knowingly or intentionally possessed it. Guilty knowledge is an essential element of the crime of possession of cocaine. The elements of knowledge and intent are states of mind and need not be proven as facts, but may be inferred from the circumstances. Evidence which would support a conviction of a charged offense would necessarily support a conviction of a lesser included offense. Attempted possession of cocaine is an authorized responsive verdict to a charge of possession of cocaine. La. Code Crim. P. art. 814A(50.1). **State v. Sylvia**, 01-1406, p. 3 (La. 4/9/03), 845 So.2d 358, 361.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. *See* **State v. Taylor**, 97-2261, pp. 5-6 (La. App. 1 Cir. 9/25/98), 721 So.2d 929, 932.

The defendant contends that the State failed to prove he knowingly or intentionally possessed cocaine because there were no facts to establish that he was seeking to purchase cocaine at the time Lieutenant Swann stopped him. According to the defendant, the State did not establish when he obtained the crack pipe, whether he had ever used it, or whether he was aware it contained cocaine residue. Also, according to the defendant, no cocaine residue was visible on the metal pipe found in his possession. Instead, the only visual evidence of prior use was burnt marks on the ends of the pipe.

The only witness to testify at the trial was Lieutenant Swann. According to Lieutenant Swann, upon patting down the defendant, he discovered a crack pipe in the defendant's left pocket. Lieutenant Swann testified, "It had been used for ingesting crack cocaine. There was residue that you could tell in the pipe." Also, a Crime Laboratory Scientific Analysis Report was submitted into evidence, which established that the residue found on the defendant's crack pipe tested positive for cocaine.

Because of their singular association with narcotics consumption, crack pipes constitute single-use instrumentalities. From the nature of the defendant's possession of a crack pipe with no use other than as drug paraphernalia, there is no other reasonable explanation but that he had guilty knowledge that the crack pipe contained cocaine residue. *See* **State v. Lipscomb**, 00-2836, pp. 3-4 (La. 1/25/02), 807 So.2d 218, 220 (per curiam); **State v. Spates**, 588 So.2d 398, 402 (La. App. 2 Cir. 1991). *See also* **Sylvia**, 01-1406 at p. 5, 845 So.2d at 362.

It is obvious from the finding of guilt that the jury concluded the testimony of Lieutenant Swann was credible. And no other witness, including the defendant, testified to offer conflicting testimony. Conviction

for possession of cocaine may rest on the possession of mere traces or residue of cocaine. *See* **State v. McMooain**, 95-2103, pp. 5-6 (La. App. 1 Cir. 9/27/96), 680 So.2d 1370, 1373-74.

After a thorough review of the record, we conclude that the evidence supports the jury's verdict. We are convinced that viewing the evidence in the light most favorable to the State, a rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of attempted possession of cocaine.[3]

These assignments of error are without merit.

DECREE

For the foregoing reasons, we affirm the conviction, habitual offender adjudication, and sentence.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED

[3] We note that the evidence is sufficient to support a conviction for the charged offense of possession of cocaine. It follows, thus, that the evidence is sufficient to support the jury's responsive verdict of attempted possession of cocaine.