NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 0457

STATE OF LOUISIANA

VERSUS

MARTIN BRADLEY JOHNSON

Judgment rendered June 8, 2007.

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Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 416733
Honorable Martin E. Coady, Judge

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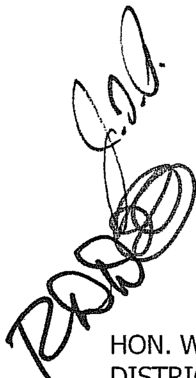

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MARTIN BRADLEY JOHNSON

* * * * * *

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

PETTIGREW, J.

The defendant, Martin Bradley Johnson, was charged by bill of information with one count of possession of cocaine, a violation of La. R.S. 40:967(C), and pled not guilty. Following a jury trial, he was found guilty of the responsive offense of attempted possession of cocaine. He moved for a new trial and for a post-verdict judgment of acquittal, but the motions were denied. He was sentenced to two and one-half years at hard labor. Thereafter, the State filed a habitual offender bill of information against the defendant, alleging he was a second-felony habitual offender. The defendant admitted the allegations of the habitual offender bill, and was adjudged a second-felony habitual offender. The trial court vacated the previously imposed sentence and sentenced the defendant to three and one-half years at hard labor without the benefit of probation or suspension of sentence. The defendant now appeals, designating one assignment of error. We affirm the conviction, habitual offender adjudication, and sentence.

FACTS

On July 24, 2006, Slidell Police Department Officer Bradford Dean Hoops conducted a traffic stop of a vehicle driven by the defendant and in which Valerie Woody was a passenger. Officer Hoops stopped the vehicle after he saw it pass through two stop signs without stopping. The defendant advised Officer Hoops that the defendant was driving under a suspended license. Officer Hoops asked the defendant to exit the vehicle and arrested him. The defendant claimed he had picked up Woody on Washington Street. However, Officer Hoops knew this claim was false because he had seen Woody in the vehicle when the defendant turned onto Washington Street. Officer Hoops asked the defendant if he had any weapons or drugs in the vehicle, and the defendant gave his consent for a search of the vehicle.

Slidell Police Department Officer Jason Bettis assisted Officer Hoops in the search of the vehicle the defendant was driving. On the front floorboard of the passenger side of the vehicle, Officer Bettis located crack cocaine and a metal rod, commonly used to push cocaine into a pipe. Officer Bettis discovered Brillo padding between the passenger seat and the center console of the vehicle. Officer Bettis also found some "plainly visible"

crack cocaine on the driver's side of the gearshift of the vehicle. Officer Bettis indicated he did not remember the crack cocaine that he recovered from the vehicle being wet, adding that if it had been wet, he would have "annotated" that fact.

Following the discovery of the drugs in the vehicle, Officer Hoops also arrested Woody. Thereafter, Woody removed a crack pipe from her shorts and surrendered it to Officer Hoops. Additional drug paraphernalia was recovered from Woody at the jail. On the way to jail, Woody indicated that when Officer Hoops asked the defendant to exit the vehicle, she had placed the cocaine in her mouth, but had spit it out when the police approached her side of the vehicle. Woody also indicated that the defendant had driven her into the area to buy cocaine. Officer Hoops did not touch the cocaine in the vehicle, but indicated it did not appear to be wet.

SUFFICIENCY OF THE EVIDENCE

On appeal, the defendant argues that the evidence, when viewed in the light most favorable to the prosecution, was not sufficient to convince a rational trier of fact that the State proved the essential elements of the crime beyond a reasonable doubt. The defendant asserts the State failed to present any evidence that he exercised dominion and control over the contraband.

The standard of review for 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 the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove, in order to convict," every reasonable hypothesis of innocence is excluded. **State v. Wright**, 98-0601, p. 2 (La. App. 1 Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence

in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. **Wright**, 98-0601 at 3, 730 So.2d at 487.

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, p. 5 (La. App. 1 Cir. 12/31/03), 868 So.2d 794, 799.

On the issue of whether the evidence sufficiently proved possession, the State is not required to show actual possession of drugs 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 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.

As set forth in La. R.S. 14:27(A), an attempt is defined as follows:

> Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

Specific criminal intent is that "state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act." La. R.S. 14:10(1). Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. Specific intent may be proven by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Henderson**, 99-1945, p. 3 (La. App. 1 Cir. 6/23/00), 762 So.2d 747, 751, writ denied, 2000-2223 (La. 6/15/01), 793 So.2d 1235.

After a thorough review of the record, we are convinced the evidence presented herein, viewed in the light most favorable to the State, proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of attempted possession of cocaine and the defendant's identity as the perpetrator of that offense. The State sufficiently established the defendant's dominion and control over the cocaine recovered from the vehicle he was driving. Although the defendant did not testify, the defense conceded that he knew about the cocaine in the vehicle. Moreover, Officer Hoops testified that Woody had stated that the defendant had driven her into the area to buy cocaine. The defense argued, however, that Woody had exclusive dominion and control over the cocaine, citing the alleged fact that she had placed both rocks of cocaine in her mouth. Officer Bettis testified, however, that he handled the cocaine and did not note that it was wet. Further, the fact that two rocks of cocaine were recovered from the vehicle, and that one of these rocks was on the driver's side of the gearshift, was consistent with joint possession of the cocaine by the defendant

and Woody. Additionally, the defendant made a false statement to Officer Hoops concerning picking up Woody on Washington Street. Purposeful misrepresentation reasonably raises the inference of a guilty mind. **State v. Mitchell**, 99-3342, p. 11 (La. 10/17/00), 772 So.2d 78, 85. In reviewing the evidence, we cannot say that the jury's determination that the defendant attempted to possess cocaine was irrational under the facts and circumstances presented to them. See **State v. Ordodi**, 2006-0207, p. 14 (La. 11/29/06), 946 So.2d 654, 662. This assignment of error is without merit.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.