

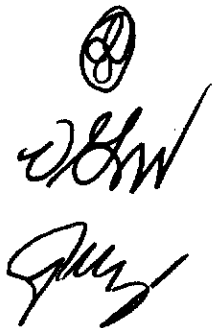
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 0045

Handwritten initials and signatures in black ink, including a circular stamp at the top, followed by 'WBW' and a signature that appears to be 'Guz'.

STATE OF LOUISIANA

VERSUS

MICHAEL DESMOND CRAFT

Judgment Rendered: May 2, 2008

On Appeal from the 22nd Judicial District Court
In and For the Parish of St. Tammany
Trial Court No. 423,613

Honorable William J. Burris, Judge Presiding

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BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

HUGHES, J.

Defendant, Michael Desmond Craft, was charged by bill of information with one count of possession of cocaine, a violation of LSA-R.S. 40:967(C). Defendant entered a plea of not guilty and was tried before a jury. The jury determined the defendant was guilty as charged. The State instituted habitual offender proceedings against the defendant. Following a hearing, the defendant was adjudicated a fourth felony habitual offender. The trial court subsequently sentenced the defendant to a term of thirty-two years at hard labor.

Defendant appeals, citing the following assignments of error:

1. It was manifest error for the district court to accept the jury's guilty verdict against [the defendant] because the alleged cocaine substance that was in the pipe was in the form of dust at the time the police discovered the pipe and this dust was no longer visible at the time of trial.
2. The district court committed a sentencing error by failing to sentence [the defendant] on the instant conviction. Instead, it reserved its sentence until it adjudicated [the defendant] to be a multiple offender. Therefore, [the defendant]'s adjudication as a multiple offender as well as his subsequent sentence are defective and not properly before this Court.

After considering the defendant's assignments of error and the applicable law, we affirm his conviction, habitual offender adjudication, and sentence.

FACTS

On December 8, 2006, Officer George Skinner of the Slidell Police Department was dispatched to the Kangaroo Texaco on Voters Road in response to a report of a shoplifting in progress. While en route to the scene, the dispatcher advised that the suspect was a black male who had exited the store and entered his vehicle in the parking lot. The dispatcher relayed information indicating that the suspect was in the process of leaving.

Officer Skinner arrived on the scene within five minutes of the initial call. When he arrived, there was only one vehicle in the parking lot. According to Officer Skinner, the vehicle was running and the reverse lights were lit. Officer Skinner pulled up behind the vehicle and blocked it. He then advised the subject, later identified as the defendant, to step out of his vehicle. According to Officer Skinner, he requested the defendant to exit his vehicle more than two times, but the defendant failed to comply.

Officer Skinner walked up to the defendant's vehicle, shined his flashlight into the defendant's vehicle, and ordered the defendant out of the vehicle. Officer Skinner observed a bottle of vodka and a bag of potato chips on the front seat of the defendant's vehicle. After the defendant exited his vehicle, Officer Skinner asked the defendant to step to the back of his vehicle where he then asked the defendant if he had any weapons on him. Officer Skinner detained the defendant, placed him in handcuffs, and then patted him down for weapons in order to ensure officer safety.

At this point, Officer Jeff Theriot, also of the Slidell Police Department, arrived. Officer Theriot detained the defendant in the parking lot, while Officer Skinner went inside the store to speak with the clerk regarding the shoplifting complaint. When Officer Skinner returned to the parking lot where the defendant had been detained, he advised Officer Theriot that the defendant was going to be arrested for shoplifting.

Officer Theriot proceeded to conduct a search incident to the defendant's arrest, which is a more thorough search than a simple weapons pat down, in order to prohibit any contraband from being taken into the jail. During the search, Officer Theriot retrieved a small, metal object from the defendant's left-front pants pocket. The pipe had a metal filter on one end, and a device on the other end to prevent the holder's fingers from being

burned. A charred residue was also visible on the filter. Officers Skinner and Theriot both testified that this type of pipe was commonly associated with the use of crack cocaine. As a result of this discovery, the defendant was also charged with possession of crack cocaine.

The pipe was sent to the St. Tammany Parish Sheriff's Office Crime Lab. Deputy Harry O'Neal, who was accepted as an expert drug analyst, tested the pipe. According to Deputy O'Neal, both tests he performed on the pipe revealed the presence of cocaine.

Defendant did not testify at trial.

Following his conviction for possession of cocaine, the State instituted habitual offender proceedings against the defendant, seeking to have his instant conviction for possession of cocaine enhanced. During this hearing, the State introduced evidence of the defendant's prior convictions, which were also from the Twenty-Second Judicial District Court in St. Tammany Parish and included: a conviction for felony theft, entered on May 18, 1992 under docket number 204,602; two convictions for simple burglary entered on November 16, 1992, under docket number 209,620; and a conviction for simple burglary, entered on May 12, 1997, under docket number 268,858.

Following the hearing, the trial court adjudicated the defendant as a fourth felony habitual offender and sentenced the defendant to a term of thirty-two years at hard labor.

SUFFICIENCY OF THE EVIDENCE

In his first assignment of error, the defendant contends that the evidence is insufficient to support his conviction for possession of cocaine. Specifically, the defendant argues that a miniscule trace of cocaine used to convict a person of possession is "inappropriate and shocks one's sense of

justice." Defendant argues the only reasonable verdict in this case should have been a guilty verdict for possession of drug paraphernalia.

Louisiana Revised Statute 40:967(C) requires proof that the defendant "knowingly or intentionally" possessed a controlled dangerous substance as classified in Schedule II. Whether an accused knows a substance he possessed is a narcotic may be proven by direct and circumstantial evidence. A conviction for possession of a controlled dangerous substance may rest on the possession of mere traces or residue of the substance, even absent admissions by the defendant which might constitute guilty knowledge. **State v. McMooain**, 95-2103, pp. 5-6 (La. App. 1 Cir. 9/27/96), 680 So.2d 1370, 1373-74.

In evaluating whether evidence is constitutionally sufficient to support a conviction, an appellate court must determine, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. LSA-C.Cr.P. art. 821; **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979).

It is undisputed that the crack pipe containing the residue was recovered from the defendant's left-front pants pocket, as he was being searched incidental to his arrest for shoplifting. Further, Deputy O'Neal testified that he scraped out a portion of the lining of the inside of the pipe seized from the defendant. This scraping tested positive for the presence of cocaine.

Despite the defendant's argument against using traces or residue to support a conviction for possession of cocaine, the jurisprudence clearly allows for such a finding. See **State v. McMooain**, 95-2103 at pp. 5-6, 680 So.2d at 1373-74; **State v. Leblanc**, 2004-1032, p. 4 (La. App. 1 Cir.

12/17/04), 897 So.2d 736, 739, writ denied, 2005-0150 (La. 4/29/05), 901 So.2d 1063, cert. denied, 546 U.S. 905, 126 S.Ct. 254, 163 L.Ed.2d 231 (2005). As a reviewing court, we are constitutionally precluded from acting as a thirteenth juror in assessing what weight to give evidence in criminal cases; that determination rests solely on the sound discretion of the trier of fact. **State v. Mitchell**, 99-3342, p. 8 (La. 10/17/00), 772 So.2d 78, 83.

Accordingly, we find the evidence supports the defendant's conviction for possession of cocaine.

This assignment of error is without merit.

SENTENCING

In his second assignment of error, the defendant argues the trial court erred in failing to sentence him on his instant conviction, and instead, reserved sentencing until the defendant was adjudicated a multiple offender. Defendant maintains that the trial court's failure to do so renders his habitual offender adjudication and sentence defective.

Defendant cites no applicable authority to support his contention that the trial court's failure to sentence the defendant on his underlying conviction for possession of cocaine renders his habitual offender adjudication and sentence defective.¹ Rather, we note LSA-R.S. 15:529.1(D)(3) provides in pertinent part:

When the judge finds that [the defendant] has been convicted of a prior felony or felonies ... the court shall sentence him to the punishment prescribed in this Section, and shall vacate the previous sentence **if already imposed**, deducting from the new sentence the time actually served under the sentence so vacated. [Emphasis added.]

The plain wording of the statute imposes no such requirement that the trial court sentence the defendant on his underlying conviction prior to

¹ The cases cited by the defendant address situations wherein the ten-year cleansing period was at issue and where the trial court issued a single sentence when a defendant was convicted of multiple counts. Neither scenario is at issue in the present case.

adjudicating and sentencing the defendant as a habitual offender. Accordingly, there is no error in the trial court's action of only imposing an enhanced sentence as a habitual offender for the defendant's instant conviction of possession of cocaine.

This assignment of error is without merit.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION,
AND SENTENCE AFFIRMED.**