NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 KA 0584

STATE OF LOUISIANA

VERSUS

MILTON WILSON

Judgment Rendered: September 14, 2007

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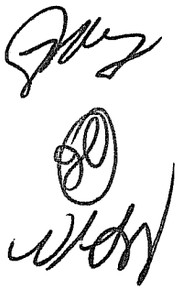

On appeal from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit Number 413805

Honorable Elaine W. DiMiceli, Presiding

* * * * * *

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BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

The defendant, Milton Wilson, 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), and pled not guilty. Following a jury trial, he was found guilty as charged. He moved for a new trial and a post-verdict judgment of acquittal, but the motions were denied. He was sentenced to ten years at hard labor, with two years of the sentence to be served without benefit of probation, parole, or suspension of sentence. Thereafter, the State filed a multiple-offender bill of information against the defendant, alleging he had eight predicate offenses. Following a hearing, the defendant was adjudged a third-felony habitual offender, the sentence previously imposed was vacated, and the defendant was sentenced to thirty years at hard labor without benefit of probation or suspension of sentence. He now appeals, designating one assignment of error. We affirm the conviction, the habitual-offender adjudication, and the sentence.

ASSIGNMENT OF ERROR

The trial court committed reversible error by accepting the jury's guilty verdict against the defendant because the evidence presented at trial could not outweigh the fact that the defendant purchased the drugs for himself with money he received from his construction company.

FACTS

On April 15, 2006, St. Tammany Parish Sheriff's Officers Sergeant Scott Knight and Deputy Richard Holman were using stationary radar to detect speeding vehicles at the intersection of Ben Thomas Road and Carnation in Slidell. Sergeant Knight instructed Deputy Holman to pull the defendant over for going 44 miles per hour in a 20 miles-per-hour zone.

A subsequent warrant check indicated that there was a warrant for the arrest of the defendant for failure to appear. Deputy Holman advised the defendant that

he was under arrest and instructed him to step out of his vehicle. When the defendant did not immediately exit his vehicle, Sergeant Knight opened the vehicle's door to see what the defendant was doing and to help him exit the vehicle. Even though there were available cup holders, the defendant was putting a "Coke cup" on the floor of the vehicle. Sergeant Knight felt that the defendant was trying to hide the cup.

After the defendant exited his vehicle, Sergeant Knight looked into the open vehicle and saw .31 grams of crack cocaine on a business card behind the cup. In moving the cup to get to the crack, Sergeant Knight noticed a "baggie" sticking out of the cup. Sergeant Knight opened the lid of the cup and discovered two clear tied plastic bags. One bag contained a net weight of .71 grams of crack, and the other 2.3 grams.

A subsequent search of the defendant revealed $3,250 in his left front pocket and a large rock of crack cocaine weighing 1.17 grams in his right pocket. The defendant did not have a crack pipe or any implements used to smoke crack on his person or in his vehicle.

Sergeant Knight indicated he had been in law enforcement for approximately ten years and had come into contact with people addicted to crack on hundreds of occasions. He was accepted as an expert in the street-level use and distribution of crack cocaine. He indicated it was not common for crack users to stockpile crack for later use because the nature of crack addiction was to go "from rock to rock." He indicated crack users usually smoked rocks weighing a tenth of a gram or two tenths of a gram. He indicated the rock weighing 1.17 grams was not in a form associated with personal consumption.

On cross-examination, Sergeant Knight indicated he had no knowledge of seven butane lighters that were allegedly in the defendant's vehicle. He conceded

that the business card in the defendant's vehicle indicated that the defendant owned a construction company.

The defendant also testified at trial. He conceded he had previously been convicted of distribution of cocaine (two counts), possession of cocaine (two counts), attempted possession with intent to distribute cocaine, attempted distribution of cocaine, and had "a cocaine charge" in Mississippi. He claimed he made $6,800 per week at his construction company and claimed the money recovered from his pocket was profit from that company. He claimed he only used drugs on the weekend. He claimed he had purchased the cocaine found on his person and in his vehicle for personal use. He denied intending to sell any of the cocaine.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues neither the drugs nor the money constitute absolute proof of his intent to distribute the drugs to others.

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. 1st 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. State v. Wright, 98-0601 at 3, 730 So.2d at 487.

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).

Louisiana Revised Statutes 40:967, in pertinent part, provides:

> A. ... it shall be unlawful for any person knowingly or intentionally:
>
> (1) To ... possess with intent to ... distribute, or dispense, a controlled dangerous substance ... classified in Schedule II[.]

Cocaine is a controlled dangerous substance classified in Schedule II. La. R.S. 40:964, Schedule II, A.(4).

In order to prove the element of intent to distribute, the State must prove the defendant's subjective specific intent to possess in order to distribute. Specific intent is a state of mind. It need not be proven as a fact and may be inferred from the circumstances present and the actions of the defendant. State v. Hamilton, 2002-1344, p. 11 (La. App. 1st Cir. 2/14/03), 845 So.2d 383, 392, writ denied, 2003-1095 (La. 4/30/04), 872 So.2d 480.

Factors useful in determining whether circumstantial evidence is sufficient to prove the intent to distribute a controlled dangerous substance include: (1) whether the defendant ever distributed or attempted to distribute the drug; (2) whether the drug was in a form usually associated with possession for distribution to others; (3) whether the amount of the drug created an inference of an intent to distribute; (4) whether the expert or other testimony established that the amount of

the drug found in the defendant's possession was inconsistent with personal use only; and (5) whether there was any paraphernalia, such as baggies or scales, evidencing an intent to distribute. The presence of large sums of cash also is considered circumstantial evidence of intent. State v. Young, 99-1264, p. 11 (La. App. 1st Cir. 3/31/00), 764 So.2d 998, 1006.

After a thorough review of the record, we are convinced the evidence, 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 possession with intent to distribute cocaine and the defendant's identity as the perpetrator of that offense. It was uncontested that the defendant possessed multiple "baggies" of cocaine, a large rock of cocaine, and a large sum of cash. The State presented expert testimony that it was not common for crack users to stockpile crack for later use and that the large rock of cocaine recovered from the defendant's pocket was not in a form associated with personal use. The verdict rendered against the defendant indicates the jury accepted the testimony of the State's witnesses and rejected the defendant's testimony. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a factfinder's determination of guilt. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. State v. Lofton, 96-1429, p. 5 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. The jury reasonably rejected the hypothesis of innocence presented by the defendant's testimony and the evidence did not support another hypothesis that raised a reasonable doubt. In reviewing the evidence, we cannot say that the jury's determinations were 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.