

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 0882

STATE OF LOUISIANA

VERSUS

BURNELL LAWSON



**On Appeal from the 17th Judicial District Court
Parish of Lafourche, Louisiana
Docket No. 437246, Division "D"
Honorable Ashly Bruce Simpson, Judge Presiding**

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Burnell Lawson**

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

Judgment rendered October 31, 2008

PARRO, J.

The defendant, Burnell Lawson, was charged by bill of information with one count of possession of cocaine, a violation of LSA-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, a violation of LSA-R.S. 14:27 and LSA-R.S. 40:967(C). See also LSA-R.S. 40:979. He moved for post-verdict judgment of acquittal, but the motion was denied. He was sentenced to two years and six months of imprisonment at hard labor. He now appeals, contending that the state did not carry its burden of proof, pursuant to LSA-R.S. 15:438, with respect to circumstantial evidence. We affirm the conviction and sentence.

FACTS

On October 5, 2006, at approximately 12:55 a.m., Lafourche Parish Sheriff's Office Sergeant Trent Duplantis and Lafourche Parish Drug Task Force Sergeant John Champagne made a traffic stop of a vehicle driven by the defendant after he drove by them going over thirty miles-per-hour in a fifteen mile-per-hour speed zone. The stop was made in the Alidore community near Raceland. Street-level trafficking of drugs was common in the area. As Sergeant Champagne approached the vehicle, which was located in a federal housing project parking lot, he saw the defendant "fooling around" with his left pocket. At Sergeant Champagne's request, the defendant exited the vehicle. Sergeant Champagne asked for the defendant's driver's license, and the defendant gave him a non-license identification. Sergeant Champagne learned that the defendant's driver's license had been suspended. Sergeant Champagne asked what he "had been doing in his pocket," and the defendant claimed he had been getting out his identification. Sergeant Champagne asked the defendant to place his hands on the hood of the vehicle, and he momentarily complied. However, when Sergeant Champagne attempted to pat-down the defendant's pocket, the defendant repeatedly moved Sergeant Champagne's hand away. Sergeant Champagne told the defendant to put his hands back on the vehicle.

On Sergeant Champagne's third attempt to pat-down the defendant's pocket, the defendant grabbed his pocket, spun around, and began trying to reach inside his pocket.

Sergeant Champagne and Sergeant Duplantis began wrestling the defendant to the ground. During the struggle, Sergeant Champagne saw something fly out of the defendant's hand. Sergeant Champagne subsequently recovered a baggie containing 2.57 grams of cocaine approximately ten to fifteen feet away from where the defendant had been taken down. The baggie was dry, but the grass around it was wet with dew. No one else was in the area.

Sergeant Duplantis did not see the defendant remove anything from his pocket. Sergeant Duplantis indicated, however, that during the struggle with the defendant, he was concentrating on not getting hit by the defendant's elbows.

The defendant also testified at trial. He conceded he had a prior conviction for distribution of PCP and multiple convictions for driving under suspension. He claimed he had his identification in his hand when he exited the vehicle on the night of the incident. He claimed Sergeant Champagne forced him into broken glass on the ground because he accused him of harassment. He denied speeding prior to being stopped. He denied that Sergeant Champagne tried to pat him down. He also denied throwing anything while being taken down.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues there was insufficient evidence to support the verdict against him because numerous people lived in or visited the area where the cocaine was found, and the state failed to prove that the cocaine recovered belonged to him.

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 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs

denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, and 00-0895 (La. 11/17/00), 773 So.2d 732; see LSA-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**, 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).

We are also guided by **State ex rel. Elaire v. Blackburn**, 424 So.2d 246, 251 (La. 1982), cert. denied, 461 U.S. 959, 103 S.Ct. 2432, 77 L.Ed.2d 1318 (1983). Therein, the Louisiana Supreme Court recognized the legitimacy of a "compromise verdict," i.e., a legislatively approved responsive verdict which does not fit the evidence, but which (for whatever reason) the jurors deem to be fair, as long as the evidence is sufficient to sustain a conviction for the charged offense. If the defendant timely objects to an instruction on a responsive verdict on the basis that the evidence does not support that responsive verdict, the court overrules the objection, and the jury returns a verdict of guilty of the responsive offense, the reviewing court must examine the record to determine if the responsive verdict is supported by the evidence and may reverse the conviction if the evidence does not support the verdict. However, if the defendant does not enter an objection (at a time when the trial judge can correct the error), then the reviewing court may affirm the conviction if the evidence would have supported a conviction of the greater offense, whether or not the evidence supports the conviction of the legislatively approved responsive offense returned by the jury. See **State ex rel. Elaire**, 424 So.2d at 251.

In the instant case, the trial court charged the jury on attempted possession of cocaine without a timely defense objection. Accordingly, we review the sufficiency of the evidence to support possession of cocaine.

With certain exceptions inapplicable here, it is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance as classified in LSA-R.S. 40:964, Schedule II. LSA-R.S. 40:967(C). Cocaine is a controlled dangerous substance classified in Schedule II. LSA-R.S. 40:964, Schedule II(A)(4).

After a thorough review of the record, we are convinced the evidence presented in this case, 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 of cocaine and the defendant's identity as the perpetrator of that offense. The verdict rendered against the defendant indicates the jury accepted the testimony of the state's witnesses and rejected the testimony of the defense witness. As the trier of fact, the jury was free to accept or reject, in whole or in part, the testimony of any witness. **State v. Johnson**, 99-0385 (La. App. 1st Cir. 11/5/99), 745 So.2d 217, 223, writ denied, 00-0829 (La. 11/13/00), 774 So.2d 971. On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Glynn**, 94-0332 (La. App. 1st Cir. 4/7/95), 653 So.2d 1288, 1310, writ denied, 95-1153 (La. 10/6/95), 661 So.2d 464. The jury reasonably rejected the hypothesis of innocence presented by the defendant's testimony, i.e., that he had an identification, rather than cocaine in his hand, and that the police were lying. See Captville, 448 So.2d at 680. In reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See State v. Ordodi, 06-0207 (La. 11/29/06), 946 So.2d 654, 662.

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.