**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2007 KA 1292**

**STATE OF LOUISIANA**

**VERSUS**

**BLAINE KEITH BLANKS**

**Judgment Rendered: February 8, 2008**

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On Appeal from the Sixteenth Judicial District Court
In and For the Parish of St. Mary
State of Louisiana
Docket No. 2005-169055

Honorable Edward M. Leonard, Jr., Judge Presiding

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**BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.**

**McCLENDON, J.**

The defendant, Blaine Keith Blanks, was charged by bill of information with simple burglary of an inhabited dwelling, a violation of LSA-R.S. 14:62.2, and possession of cocaine, a violation of LSA-R.S. 40:967(C).[1] He pled not guilty. Following a trial by jury, the defendant was convicted as charged. The state filed a habitual offender bill of information seeking to have the defendant adjudicated and sentenced under LSA-R.S. 15:529.1. At the conclusion of a multiple-offender hearing, the defendant was found to be a third-felony habitual offender. He received an enhanced sentence of imprisonment at hard labor for twenty-four years on the simple burglary of an inhabited dwelling conviction.[2] The defendant was sentenced to five years imprisonment at hard labor on the possession of cocaine conviction. The trial court ordered the sentences to run concurrently. The defendant moved for reconsideration of the sentences. The trial court denied the motion. The defendant now appeals, urging the following assignments of error by counseled and pro se briefs:

*Counseled:*

1. The evidence was insufficient to support the conviction for possession of cocaine.

*Pro se:*

2. The evidence was insufficient to support the conviction for simple burglary of an inhabited dwelling.

3. The sentence is excessive.

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[1] The bill of information also charged two counts of illegal possession of stolen things, in violation of LSA-R.S. 14:69, and simple criminal damage to property under $500.00, a violation of LSA-R.S. 14:56. The defendant was not tried on these offenses.

[2] Prior to ordering the enhanced sentence on this conviction, the trial court vacated the previously imposed sentence of twelve years imprisonment at hard labor without benefit of probation, parole, or suspension of sentence.

Finding no merit in the assigned errors, we affirm the defendant's convictions, habitual offender adjudication, and sentences.

## FACTS

Around midnight, on December 11, 2005, Nancy Brandon returned to her home on Sixth Street in Franklin, Louisiana, after a night out. As she approached, Ms. Brandon noticed that the wooden steps leading to the front door of the residence were damaged. Upon further examination, she observed that the door was also damaged. According to Ms. Brandon, the door appeared to have been kicked in. Inside the residence, when Ms. Brandon heard movement in the kitchen, she turned and ran back out of the front door. The intruder then forced the back door open and ran out of the residence. He fled through an opening in the fence that led to a neighboring street.

Ms. Brandon ran to a neighbor's home and contacted the police. Franklin Police Department Officer Yvette Burgess was dispatched to the scene to investigate. Burgess observed evidence of forced entry. The lock on the front door of the residence had been "knocked off[.]" Ms. Brandon's jewelry box was in disarray, as if someone had rummaged through it. The freezer was still ajar and several items of meat were missing. Ms. Brandon was not able to identify the intruder. Officer Burgess learned from Ms. Brandon's neighbor, Quintella Smith, that the defendant had been suspiciously riding up and down the street in front of the residence earlier that day.

Meanwhile, another police officer stopped a vehicle in the area for driving without headlights. This vehicle was driven by seventeen-year-old Desmond Francis. Francis told the officer that he intentionally turned of his vehicle's lights so that he could be stopped. He further explained that there

was a man in his vehicle that he did not know. He stated that the man, subsequently identified as the defendant, had approached on a bicycle as Francis sat in his parked vehicle. The defendant had insisted that Francis give the defendant a ride. Although Francis refused to give the defendant a ride, the defendant still entered the vehicle. The defendant had a large garbage bag in his hand. Uncomfortable with the situation, but afraid of what would happen if he continued to refuse, Francis agreed to give the defendant a ride. Francis did not know the defendant prior to this date.

Officer Burgess was called to the scene of the stopped vehicle. Upon discovering that the garbage bag the defendant carried contained several packages of frozen meat, Burgess suspected that the defendant was the perpetrator of the Brandon residence burglary. The defendant was arrested. A folded, unused trash bag, similar to the one used to carry the meat, was located inside the defendant's pocket. A single earring that matched another earring in Ms. Brandon's jewelry box was also found inside the defendant's pocket. Ms. Brandon subsequently identified the frozen meat items and the earring as items taken from her home.

On December 12, 2005, in connection with the follow-up of the burglary investigation, Captain Jim Broussard, of the Franklin Police Department, went to the residence where the defendant resided with his mother, Lillian Blanks. Ms. Blanks granted Captain Broussard permission to search the defendant's bedroom. Under the defendant's bed, Captain Broussard found a plate and a knife with white residue powder on them. A field test of the residue indicated the presence of cocaine. The plate and knife were seized and sent to the crime laboratory for further testing. At trial, Lorretta Rapp, a forensic chemist, testified that the knife and plate tested positive for cocaine.

## COUNSELED ASSIGNMENT OF ERROR

In his sole counseled assignment of error, the defendant challenges the sufficiency of the evidence in support of the possession of cocaine conviction. He argues that the circumstantial evidence presented by the state in support of this conviction failed to exclude the reasonable hypothesis that the plate and knife were placed under the bed by someone other than the defendant.

The standard of review for the 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 that the state proved the essential elements of the crime and the defendant's identity as the perpetrator of that 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 LSA-C.Cr.P. art. 821; **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. The **Jackson** standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that, in order to convict, the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 2002-1492, p. 5 (La. App. 1 Cir. 2/14/03), 845 So.2d 416, 420.

The appellate court will not assess the credibility of witnesses or the relative weight of the evidence to overturn the determination of guilt by the fact finder. See **State v. Polkey**, 529 So.2d 474, 476 (La. App. 1 Cir. 1988), writ denied, 536 So.2d 1233 (La.1989). As the trier of fact, the jury is free to accept or reject, in whole or in part, the testimony of any witness. Where

there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of witnesses, the question is one of the weight of the evidence, not its sufficiency. **State v. Young**, 99-1264, p. 10 (La. App. 1 Cir. 3/31/00), 764 So.2d 998, 1006. A determination of the weight to be given evidence is a question of fact for the trier of fact, and is not subject to appellate review. **State v. Payne**, 540 So.2d 520, 524 (La. App. 1 Cir.), writ denied, 546 So.2d 169 (La.1989).

To support a conviction of possession of a controlled dangerous substance, the state must prove that the defendant was in possession of the illegal drug and that he knowingly or intentionally possessed the drug. Guilty knowledge therefore is an essential element of the crime of possession. A determination of whether or not there is "possession" sufficient to convict depends on the peculiar facts of each case. To be guilty of the crime of possession of a controlled dangerous substance, one need not physically possess the substance; constructive possession is sufficient. In order to establish constructive possession of the substance, the state must prove that the defendant had dominion and control over the contraband. A variety of factors are considered in determining whether a defendant exercised "dominion and control" over a drug, including: a defendant's knowledge that illegal drugs are in the area; the defendant's relationship with any person found to be in actual possession of the substance; the defendant's access to the area where the drugs were found; evidence of recent drug use by the defendant; the defendant's physical proximity to the drugs; and any evidence that the particular area was frequented by drug users. **State v. Harris**, 94-0696, pp. 3-4 (La. App. 1 Cir. 6/23/95), 657 So.2d 1072, 1074-75, writ denied, 95-2046 (La. 11/13/95), 662 So.2d 477.

In this case, the jury was presented with two theories of who possessed the cocaine laced plate and knife found by Captain Broussard: the state's theory that the defendant constructively possessed the cocaine on the items that were found in his bedroom, and the defendant's theory that the items (and the cocaine) were placed under his bed by someone else.[3] Captain Broussard testified that the defendant's mother, Ms. Blanks, indicated that the defendant was the only person residing in the bedroom in question. Regarding the plate and knife, Ms. Blanks stated that those items belonged to her, but she did not know anything about the residue or powder found on them. The jury obviously accepted Captain Broussard's testimony as true and rejected the hypothesis of innocence suggested by the defense as a fabrication designed to deflect blame from the defendant. The state established, with both physical and testimonial evidence, that cocaine was found in the defendant's bedroom of his mother's house. We find no error in the jury's conclusion that the defendant, having dominion and control over the area where the items were found, constructively possessed the cocaine found on them. See **State v. Harrison**, 2006-1823, pp. 2-3 (La. App. 1 Cir. 3/23/07), 2007 WL 866247 (unpublished opinion), writ denied, 2007-1025 (La. 11/16/07), ___ So.2d ___. When a case involves circumstantial evidence and the jury 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. Moten**, 510 So.2d 55, 61 (La. App. 1 Cir.), writ denied, 514 So.2d 126 (La.1987).

[3] The defendant did not testify or present any witnesses at the trial. The defense theory was gleaned from argument by counsel.

After a thorough review of the record, we find that the evidence supports the jury's verdict of guilty. We are convinced that viewing the evidence in the light most favorable to the state, any 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 possession of cocaine.

This assignment of error lacks merit.

**PRO SE ASSIGNMENT OF ERROR 1**

In his first pro se assignment of error, the defendant argues that the evidence presented at the trial was not sufficient to support the simple burglary of an inhabited dwelling conviction. Specifically, he argues that the evidence failed to prove his identity, beyond a reasonable doubt, as the individual who unlawfully entered Ms. Brandon's home. He contends the evidence proved, at best, his guilt of the offense of illegal possession of the items stolen from the residence.

Simple burglary of an inhabited dwelling "is the unauthorized entry of any inhabited dwelling, house, apartment or other structure used in whole or in part as a home or place of abode by a person or persons with the intent to commit a felony or any theft therein . . . ." LSA-R.S. 14:62.2.

The facts established by the evidence in this case are undisputed. Ms. Brandon returned home around midnight on the night in question and found that her home appeared to have been broken into. When she entered the residence, she realized that the intruder was still present. He was in the kitchen rummaging through the freezer. Upon hearing Ms. Brandon as she ran from the residence, the intruder fled the house through the back doorway. Ms. Brandon immediately contacted the police. The police initiated an investigation and inventoried the stolen items, which included

several frozen meat items. The police also observed that Ms. Brandon's jewelry box was in a state of disarray, although Ms. Brandon could not specifically identify what, if anything, was missing. Shortly thereafter, the defendant was found in possession of a large trash bag containing the meat taken from Ms. Brandon's residence. He also had, on his person, another unused trash bag and a single earring that also had been taken from Ms. Brandon's residence.

Possession of recently stolen property is not by itself sufficient proof that the possessor committed the burglary. **State v. Brown**, 445 So.2d 422, 423 (La.1984). Thus, possession of the frozen meat items and the earring is alone arguably insufficient proof that the defendant made the unauthorized entry into Ms. Brandon's home. However, the circumstances surrounding the defendant's actions on the night in question, particularly his insistence that an unfamiliar individual give him a ride although he lived in the area and was in possession of a bicycle, coupled with his possession of the stolen property shortly after the burglary, does sufficiently establish the defendant as the perpetrator of the crime in this case.

Furthermore, the record reflects that prior to the defendant ever being caught in possession of the items taken from Ms. Brandon's residence, Ms. Smith, a neighbor, implicated him by name as a potential suspect in the burglary based upon his actions of suspiciously riding back and forth past Ms. Brandon's residence on the day in question. Also, while the defendant claimed to have purchased the frozen meat items from another individual, there is no reasonable innocent explanation for the defendant's possession of the single earring taken from Ms. Brandon's residence or his possession of an unused trash bag similar to the one used to carry the stolen items from

Ms. Brandon's residence. Therefore, we conclude that the evidence, though circumstantial, sufficiently identifies the defendant as the burglar.

This assignment of error lacks merit.

**PRO SE ASSIGNMENT OF ERROR 2**

In his final pro se assignment, the defendant contends that the trial court erred in imposing an excessive sentence on the simple burglary of an inhabited dwelling conviction and subsequent habitual offender adjudication.[4] The defendant asserts that, considering the fact that his prior convictions were of a nonviolent nature, the maximum sentence imposed herein amounts to a "purposeless and needless infliction of pain and suffering[.]" The defendant further asserts that the lengthy sentence places an undue hardship on his six-year-old son.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. **State v. Sepulvado**, 367 So.2d 762, 767 (La.1979); **State v. Lanieu**, 98-1260, p. 12 (La. App. 1 Cir. 4/1/99), 734 So.2d 89, 97, writ denied, 99-1259 (La. 10/8/99), 750 So.2d 962. A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. **State v. Dorthey**, 623 So.2d 1276, 1280 (La.1993). A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. **State v. Hogan**, 480 So.2d 288, 291 (La.1985). A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed by

[4] The defendant does not challenge the concurrent sentence imposed on the possession of cocaine conviction.

it should not be set aside as excessive in the absence of manifest abuse of discretion. **State v. Lobato**, 603 So.2d 739, 751 (La.1992).

As a general rule, maximum sentences are appropriate in cases involving the most serious violation of the offense and the worst type of offender. See **State v. James**, 2002-2079, p. 17 (La. App. 1 Cir. 5/9/03), 849 So.2d 574, 586. The maximum sentence permitted under a statute may also be imposed when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. See **State v. Hilton**, 99-1239, p. 16 (La. App. 1 Cir. 3/31/00), 764 So.2d 1027, 1037, writ denied, 2000-0958 (La. 3/9/01), 786 So.2d 113.

At the habitual offender hearing, the state proved that the defendant had prior felony convictions for possession of cocaine and forgery. During the sentencing hearing, Elton Trahan of the Department of Corrections, Office of Probation and Parole, testified that despite having been adjudicated only a third-felony habitual offender, the defendant is actually classified a fifth offender. The defendant has several prior felony convictions that predate the ones alleged as predicates in the habitual offender bill of information. Sabra McGuire, Chief of Police for the City of Franklin, testified that the defendant's criminal record reflects a history of crime dating back to 1983. Chief McGuire further testified that the search of the defendant's mother's house led to the recovery of items that were stolen in at least two other burglaries of inhabited dwellings in the area.

The defendant also testified at the sentencing hearing. He denied committing the instant offenses and asked the court for leniency in sentencing. The defendant explained that he is not a "criminal" or a "bad person[.]" He is an individual with "some serious problems[.]" He further explained that he is addicted to drugs and desired to be sentenced to drug

treatment instead of prison. On cross-examination, when questioned regarding his extensive criminal history, which included a 1986 simple burglary conviction and a 1992 possession of stolen property over five-hundred dollars conviction, the defendant stated that he did not recall whether he was convicted of those offenses.

Prior to imposing sentence, the trial court considered the circumstances of the instant offenses and the defendant's extensive criminal history. The court specifically noted that the defendant "has shown a tendency to commit crimes going back a number of years." The court also noted the defendant's failure to take responsibility for his actions. Applying the guidelines set forth in Louisiana Code of Criminal Procedure article 894.1, the court found the defendant to be in need of correctional treatment and a custodial environment. A lesser sentence, the court reasoned, would deprecate the seriousness of the crime, "especially in view of the defendant[']s habitual conduct."

Upon review of the record, we find that the trial court adequately considered the criteria of article 894.1 and did not manifestly abuse its discretion in imposing the statutory maximum sentence upon this defendant. Such a sentence is clearly supported by the record. Considering the defendant's extensive history of arrests, convictions, and incarceration, the maximum sentence is neither grossly disproportionate to the severity of the offense, in light of the harm to society, nor so disproportionate as to shock our sense of justice. While the factual circumstances and nature of the instant offense may not be the worst found in the jurisprudence, the defendant, who has repeatedly shown absolutely no regard for the law for almost twenty years, and continuously fails to take any responsibility for his actions, is certainly the worst type of criminal offender. Based upon his past

conduct of repeated criminality and his propensity to continue criminal activity, we find that the defendant poses an unusual risk to the public safety. Therefore, we conclude that the maximum sentence imposed in this case is not unconstitutionally excessive. This assignment of error lacks merit.

For the foregoing reasons, the defendant's convictions, habitual offender adjudication, and sentences are affirmed.

**CONVICTIONS, HABITUAL OFFENDER ADJUDICATION, AND SENTENCES AFFIRMED.**