

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 KA 1459

STATE OF LOUISIANA

VERSUS

JOHN ALLEN CRAWFORD

Judgment Rendered: February 12, 2010

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 440,848

Honorable William J. Crain, Judge

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and
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State – Appellee

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John Allen Crawford

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

JAW

WJM

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WELCH, J.

The defendant, John Allen Crawford, was charged by bill of information with one count of possession of a firearm or carrying a concealed weapon by a convicted felon, a violation of La. R.S. 14:95.1, and pled not guilty. Following a jury trial, he was found guilty as charged by unanimous verdict. He moved for a new trial and a post-verdict judgment of acquittal, but the motions were denied. He was sentenced to fifteen years at hard labor without benefit of probation, parole, or suspension of sentence. He now appeals, contending that the circumstantial evidence was insufficient to prove beyond a reasonable doubt that he knowingly and intentionally possessed a firearm. For the following reasons, we affirm the conviction and sentence.

FACTS

At approximately midnight on December 2, 2007, St. Tammany Parish Sheriff's Office Detective Jared Lunsford conducted a traffic stop of a pickup truck driven by the defendant on U.S. Highway 11 for failure to illuminate the rear registration plate. See La. R.S. 32:304(C). The vehicle was dented, scratched, and dirty. A subsequent check of documents contained in the vehicle and the vehicle's registration indicated that the defendant was the owner of the vehicle.

The defendant stopped the truck, exited, and rapidly approached Detective Lunsford. According to Detective Lunsford, the defendant was nervous and agitated and his speech was slurred. The defendant indicated he was on his way to confront his wife because he had been made aware she was meeting another man at the Waffle House. Detective Lunsford noticed that the defendant continually looked back towards his vehicle while speaking. Detective Lunsford felt that the defendant's behavior indicated that there was "most likely" something in the defendant's truck that Detective Lunsford needed to know about.

After other deputies arrived at the scene, Detective Lunsford asked the

defendant for consent to search the truck, and the defendant consented. As soon as Detective Lunsford approached the truck, he saw a firearm in plain view in the bed of the truck, directly behind the driver's seat. The firearm was a .45 caliber Kimber, Raptor II, with a custom wood handle and night gun sights, worth approximately \$1,500.00.

Buffy Crawford Singletary, the defendant's sister, testified at trial. She claimed that approximately two days before the defendant's arrest, she had placed the gun in the truck without the defendant's knowledge. She claimed that the gun belonged to her father and she wrapped it in a towel and put it under a tire in the truck to keep it away from him after he threatened "to kill the whole neighborhood." She claimed that she thought the defendant was no longer driving the truck because their parents had given him a new truck to drive and there was no insurance on the old truck. She conceded that she did not have a good relationship with the defendant.

The State and the defense stipulated that under docket #H-01-81173, on June 17, 2002, the defendant was convicted of burglary of an inhabited dwelling.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues that the circumstantial evidence presented at trial did not exclude the reasonable hypothesis that Singletary concealed the pistol in the bed of the pickup truck without his knowledge.

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. **Wright**, 98-0601 at p. 3, 730 So.2d at 487.

It is unlawful for any person who has been convicted of burglary of an inhabited dwelling to possess a firearm or carry a concealed weapon. La. R.S. 14:95.1(A). Whether the proof is sufficient to establish possession under La. R.S. 14:95.1 turns on the facts of each case. Further, guilty knowledge may be inferred from the circumstances of the transaction and proved by direct or circumstantial evidence. **State v. Johnson**, 2003-1228, p. 5 (La. 4/14/04), 870 So.2d 995, 998.

Constructive possession of a firearm occurs when the firearm is subject to the offender's dominion and control. Louisiana cases hold that a defendant's dominion and control over a weapon constitutes constructive possession even if it is only temporary and even if the control is shared. However, mere presence of a defendant in the area of the contraband or other evidence seized alone does not prove that he exercised dominion and control over the evidence and therefore had it in his constructive possession. **Johnson**, 2003-1228 at pp. 5-6, 870 So.2d at 998-999.

After a thorough review of the record, we are convinced that a rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that the State proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of

possession of a firearm by a convicted felon and the defendant's identity as the perpetrator of that offense. The defendant's argument relies upon the testimony of Singletary. The verdict returned in this case, however, indicates that the jury rejected that testimony and accepted Detective Lunsford's testimony. Absent a showing that the defendant was not granted the fundamental due process of law, it is not appropriate for this court to impinge on the fact finder's discretion and reject that credibility determination. See Johnson, 2003-1228 at pp. 7-8, 870 So.2d at 1000. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. **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. Further, 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, 2006-0207, p. 14 (La. 11/29/06), 946 So.2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. **State v. Calloway**, 2007-2306, pp. 1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

This assignment of error is without merit.

REVIEW FOR ERROR

Initially, we note that our review for error is pursuant to La. C.Cr.P. art. 920, which provides that the only matters to be considered on appeal are errors designated in the assignments of error and "error that is discoverable by a mere

inspection of the pleadings and proceedings and without inspection of the evidence.” La. C.Cr.P. art. 920(2).

The trial court failed to impose the mandatory fine of not less than one thousand dollars nor more than five thousand dollars. See La. R.S. 14:95.1(B). Although the failure to impose the fine is error under La. C.Cr.P. art. 920(2), it certainly is not inherently prejudicial to the defendant. Because the trial court’s failure to impose the fine was not raised by the State in either the trial court or on appeal, we are not required to take any action. As such, we decline to correct the illegally lenient sentence. See State v. Price, 2005-2514, pp. 18-22 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

CONCLUSION

For the foregoing reasons, the defendant’s conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.