NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 1719

STATE OF LOUISIANA

VERSUS

TRACY LEE TRAHAN AND SHAWN VERDIN

Judgment Rendered: MAY - 4 2007

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On appeal from the
Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Suit Number 437,704

Honorable David Arceneaux, Presiding

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Joseph L. Waitz, Jr.
District Attorney

Counsel for First Appellee/
Second Appellant
State of Louisiana

Ellen Daigle Doskey
Assistant District Attorney
Houma, LA

Douglas H. Greenburg
Houma, LA

Counsel for Defendants/
First Appellant/Second Appellees
Tracy Lee Trahan and Shawn Verdin

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

GUIDRY, J.

The defendants, Tracy Lee Trahan and Shawn David Verdin, were charged by bill of information with possession of over 400 grams of cocaine (a schedule II controlled dangerous substance), a violation of La. R.S. 40:967(F)(1)(c). The defendants entered pleas of not guilty. The defendants waived their right to a trial by jury. After a bench trial, the defendants were found guilty of the responsive offense of attempted possession of over 400 grams of cocaine. The trial court denied the defendants' motion for post-verdict judgment of acquittal and motion for new trial. Both defendants were sentenced to eight years imprisonment at hard labor. The trial court suspended the execution of the sentences and imposed five years supervised probation. The court further ordered that the five years supervised probation commence after the service of one-year imprisonment at hard labor. The trial court denied the defendants' motion to reconsider sentence. The defendants now appeal, raising the following assignments of error:

> 1. The trial court erred in finding the defendants guilty of attempted possession of over 400 grams of cocaine and in denying the defendants' post-trial motion for post verdict judgment of acquittal and motion for new trial, as the evidence adduced at trial was insufficient as a matter of law to sustain a verdict of guilty beyond a reasonable doubt.
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> 2. The trial court erred in overruling the defendants' motion for new trial on the ground that the State failed to disclose exculpatory materials discovered pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).
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> 3. The trial court erred in denying the defendants' motion for new trial on the grounds asserted pursuant to La. Code Crim. P. art. 851(1), (4), and (5).
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> 4. The trial court erred in sentencing the defendants and denying their motion for reconsideration of sentence, as the sentences rendered were constitutionally excessive.

The State filed a cross appeal challenging the legality of the sentences imposed. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

On or about June 9, 2004, Officer Richard Liner (of the Terrebonne Parish Sheriff's Office) was instructed, by supervisory assignment, to patrol Grand Caillou Bayou and the Ship Channel for drug-carrier suspects. Officer Liner launched his vessel at approximately 2:15 p.m., positioned it as instructed, and stood by for further instruction. Lieutenant Danny Theriot (also of the Terrebonne Parish Sheriff's Office) patrolled by separate vessel. The two officers communicated by telephone and radio. Lieutenant Theriot ultimately instructed Officer Liner to meet him in the Bayou Plott area. Officer Liner and Lieutenant Theriot patrolled in 21-foot aluminum boats. The officers received a telephone communication stating they were in search of a white Carolina Skiff with three subjects aboard.

At approximately 4:00 p.m., the officers saw a white Carolina Skiff with two visible subjects aboard (defendants Verdin and Trahan) traveling north, toward Grand Caillou Bayou. The officers pursued the defendants. Verdin, the driver, made a right turn off of Bayou Plott into a canal to a dead end. Officer Liner noted splashing water as the defendants traveled into the canal and suspected that something or someone went overboard. The Carolina Skiff ultimately came to a stop in a shallow area.

Officer Liner positioned his boat alongside the Carolina Skiff and stepped aboard it. Lieutenant Theriot approached shortly thereafter. The officers questioned the defendants and Officer Liner conducted a brief search of the boat. After the search, Officer Liner went back to his boat. As the officers moved their boats out of the shallow area, the defendants began traveling east. Officer Liner and Lieutenant Theriot proceeded to the area that Officer Liner observed splashing water. Officer Liner recovered a black garbage bag. The bag contained fifteen blocks. The cellophane-wrapped blocks were enclosed in a brown sack and

doubled black garbage bags. Each block consisted of two separate kilos (approximately 2.5 pounds each) of suspected cocaine (a total of thirty packages).[1]

ASSIGNMENTS OF ERROR NUMBERS ONE AND THREE

The defendants argue that there was insufficient evidence of guilty knowledge. The defendants specifically contend that a rational trier of fact could not have excluded the hypothesis that the defendants innocently discovered and retrieved the garage bag, suspected that it contained something illegal, planned to bring it to the dock, and disposed of the bag out of fear when the police began to pursue them. In the third assignment of error, the defendants add that the trial court erred in denying their motion for a new trial on the grounds that the verdicts are contrary to the law and the evidence.[2] The defendants specifically argue that the trial court abused its discretion by failing to consider all exculpatory evidence consistent with innocence. The defendants note the following evidence: the testimony of defense witness Lolita Trosclair Neil (regarding an incident wherein she inadvertently discovered drugs in the late 1980's, turned them in to the police, and communicated the incident to the defendants); the defendants' work history; and an absence of motive, means, or an indication of drug use. The defendants also assert that a prejudicial defect or error in the proceedings, which they could not reasonably anticipate, was created by the trial court's erroneous findings of fact enunciated in the oral reasons for judgment. The defendants note that the trial court heavily relied on testimony that alleged volumes of cocaine had been recovered locally when found floating as bales and not wrapped in garbage bags as the evidence in the instant case. The defendants contend that the trial court was erroneous in concluding that Verdin knew that additional water-patrol officers

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[1] Five of the thirty packages were randomly selected and sent to the Louisiana State Police Crime Laboratory for analysis. Each package was determined to contain cocaine. They had a combined gross weight of 5.275 kilograms.

[2] The defendants cite La. C.Cr P. art. 851(1), (4) and (5) in assignment of error number three.

were in the waters of Terrebonne Parish on the lookout for bales of cocaine. The defendants note that Verdin merely testified that he was aware of additional water-patrol boats but did not know their purpose.

The constitutional standard for testing the sufficiency of the evidence, as enunciated in Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979), and adopted by the Legislature in enacting La. C.Cr. P. art. 821, requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime beyond a reasonable doubt. 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, La. 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. 1st Cir. 2/14/03), 845 So.2d 416, 420.

To support a conviction for possession of cocaine in violation of La. R.S. 40:967(F)(1)(c), the State must present evidence establishing beyond a reasonable doubt that: (1) the defendant was in possession of the drug; (2) the defendant knowingly or intentionally possessed it; and (3) the amount possessed was 400 grams or more of cocaine or of a mixture or substance containing a detectable amount of cocaine or of its analogues as provided in Schedule II (A)(4) of La. R.S. 40:964. State v. Major, 2003-3522, p. 7 (La. 12/1/04), 888 So.2d 798, 802; La. R.S. 40:967(F)(1)(c). Guilty knowledge is an essential element of the crime of possession of cocaine. However, since knowledge is a state of mind, it need not be proven as fact, but rather may be inferred from the circumstances. Major, 2003-3522 at 8-9, 888 So.2d at 803. Herein, the defendants do not contest their possession of the cocaine or that it exceeded 400 grams. However, the defendants do contest the knowledge element of the offense.

An attempt is defined in La. R.S. 14:27, which, in pertinent part, provides:

> A. Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.
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> C. An attempt is a separate but lesser grade of the intended crime; and any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was actually perpetrated by such person in pursuance of such attempt.

Specific criminal intent exists "when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act." La. R.S. 14:10(1). Specific intent may be inferred from the circumstances surrounding the offense and the conduct of the defendant.

According to Officer Liner's testimony, the defendants were traveling in the Four Island Bayou and Bayou Plott area when the officers observed them. Officer Liner noted the presence of two occupants in the Carolina Skiff, but suspected that a third occupant was obscured. Officer Liner's boat was marked with lights and stars and equipped with a blue police light and siren. The officers wore uniforms. The Carolina Skiff was traveling at a high speed. Officer Liner activated his blue lights as he pursued the defendants. The Carolina Skiff continued traveling and ultimately turned off of Bayou Plott into a canal. As it entered approximately fifty feet into the canal, Officer Liner observed a sudden splash in the adjacent water. The boat maintained its speed. Officer Liner traveled approximately forty to forty-five miles per hour in pursuit. The Carolina Skiff came to a stop after entering a shallow area of the canal. Thereafter, the officers questioned the defendants. The defendants provided their names and addresses. The defendants stated that they were planning to skim for shrimp. The defendants did not have vessel registration aboard. The boat was equipped with a net and net framing for shrimp skimming.

The netting was not attached to the frame at the time and there was no ice to refrigerate shrimp. Officer Liner did not see a salt barrel or scrapers, equipment used to separate small fish and other by-product from shrimp, or a container for shrimp. Officer Liner noted the presence of a small ice chest merely for drinks.[3]

During cross-examination, Officer Liner confirmed that he did not search beneath the netting for items such as scrapers. The defendants stated that they did not throw anything overboard. The defense introduced photographic evidence to show that fisherman typically skim for shrimp without ice.

The officers planned to further question the defendants. However, the defendants left the area as the officers repositioned their boats out of the shallow water. Thereafter, the officers located the black garbage bag abandoned by the defendant against the bank in the water. Officer Liner struggled to pull the heavily weighted bag onto his boat. The officers transported the evidence to the Falgout Canal Marina. The evidence was released to the narcotics agents along with the defendants' names. The narcotics agents took over the investigation at that point.

Agent Calvin Rodrigue of the Terrebonne Parish Sheriff's Office Narcotics Division was the case agent for this particular case. During a two-week period from late May 2004 to early June 2004, there were several discoveries of cocaine on the beaches and in the marshes of Terrebonne Parish. An approximate total of six hundred kilos of cocaine were recovered during that time period. The recoveries were publicized in the local newspapers and broadcasts. Several of the packages contained a total of thirty kilos of cocaine, as in this case. According to Agent Rodrigue, the packages were not in garbage bags at the time of recovery. The outer shell was a burlap sack in those instances. During cross-examination,

[3] Lieutenant Theriot saw the defendants earlier that day, around 2:30 p.m. At that time the defendants were traveling south in Pelican Lake.

Agent Rodrigue was uncertain whether the other packages were in a garbage bag at some point prior to their recovery by the police.

After the defendants' names and addresses were collected from Officer Liner and Lieutenant Theriot and photographic lineups wherein the defendants were identified were conducted, the defendants were interviewed by the Sheriff's Office. The recorded interviews took place in the early morning hours of June 11, 2004. On August 2, Agent Rodrigue examined the boat used by the defendants on the date in question. Agent Rodrigue testified that he was also a commercial fisherman (when not on duty as a Sheriff's deputy). Agent Rodrigue routinely skimmed for shrimp. He concluded that the defendants did not have the proper pulley system to raise the net from the boat to the net frames.

During the interview of Trahan, he stated that Michelle Marcel, Verdin's girlfriend, owned the Carolina Skiff. He stated that he and Verdin were looking for shrimp, specifically brownies, when they found a black bag near or in Pelican Lake. Trahan picked up the bag and put it on the boat. The contents of the bag were unbeknownst to Trahan. Trahan stated that they became afraid when the police began pursuing them and they decided to throw the bag overboard. They stopped the boat about "a couple of hundred yards" from the point of the abandonment of the bag. According to Trahan, he had no "intentions," did not know what was in the bag, and did not open it.

During the interview of Verdin, he stated that he and Trahan were skimming in Pelican Lake, specifically for white shrimp, on the date in question. They turned around as the water was too rough and began checking for calmer water. All of a sudden, water patrol officers approached and they stopped. They followed instructions to position their boat against the bank. Verdin stated that the officers briefly questioned them, searched the boat, and then released them. Verdin stated that they did not throw anything off of the boat.

Defense witness James Trosclair, a dock manager in purchasing seafood, was familiar with the defendants. Trosclair occasionally observed the defendants go out to shrimp without ice. Trosclair also unloaded shrimp that was not iced off of their vessel. Trosclair confirmed that the boat would not go out with the rigging on the frames because the boat could flip over if the wind caught the frames. He testified that the defendants were generally truthful. Trosclair testified that the defendants often caught Sea Bob, brownies, and white shrimp at the same time. The defense introduced several photographs of shrimp spread among a box, fantail and deck of the boat without ice.

Lolita Trosclair Neil testified regarding her inadvertent discovery of drugs in the late 1980's. The drugs were discovered in the sand when Neil and others were walking along an island. They turned the drugs over to the police and their good deed was highly publicized. Neil testified that the defendants lived near her home and would often visit her son. The incident was discussed in front of the children on several occasions. The defendants did not have a reputation for being untruthful to her knowledge. During cross-examination, Neil confirmed that the drugs were not discovered in their possession; they had the opportunity to report and turn over the drugs to authorities. After the fact, they had fearful thoughts of consequences they may have suffered had the drugs been discovered in their possession before having an opportunity to report the finding.

Rhonda Trahan, defendant Trahan's wife, testified that the defendant is the sole provider of income for their household. She further stated that Trahan is a commercial fisherman in the summer and a captain on tugboats in the winter. She kept records of the Trahan's income tax returns from 1995 to 2004. It was noted that Trahan's gross income from commercial fishing doubled from 2003 to 2004. She stated that she never saw the defendant use a large garbage bag like the one the evidence was enclosed in.

During cross-examination, Mrs. Trahan confirmed that the defendant earned several thousand dollars of unreported income from cash retail sales. In 2004, the defendant reported a loss of $5,351.11. His total net earnings for 2003 were $1,336.00. During re-direct examination, she confirmed that they borrowed $18,000.00 from a bank in 2003.

Michelle Marcel, defendant Verdin's girlfriend, lived with Verdin for six years. The defendant routinely operated two boats. Marcel reported the income from the Carolina Skiff and Verdin reported the income from the other boat. Marcel provided documentation of income tax returns. Marcel stated that the defendant earned approximately $1,000.00 per month during trolling season that was unreported. Marcel had never seen a bag on the Carolina Skiff like the one the evidence was enclosed in. Marcel received a small business loan in 2002 for $18,000.00.

During cross-examination, Marcel explained that she claimed the income earned from Verdin's operation of the Carolina Skiff because the defendant does not have a trolling license while she does. Neither Marcel nor Verdin have a license to retail shrimp but they did so for cash sales.

Joseph Verdin (defendant Verdin's cousin) testified that the defendants routinely go skimming for shrimp without ice. Joseph Verdin routinely operates the Carolina Skiff. He stated that he did not run the boat with the netting out when not pulling or trolling for shrimp. He stated that he would sometimes see garbage bags, presumably filled with garbage, floating in the water while he was trolling but would not pick them up unless they were caught in the skimmer.

Defendant Tracy Trahan testified that he has a Hundred Ton Masters, Coast Guard license. Trahan is a self-employed shrimper during shrimp season and a tugboat worker after Christmas. In October of 2002, he received a small business loan for $25,600.00. In May of 2004, he borrowed $18,201.50 to build a boat.

Trahan also has a wholesale/retail license and reported a portion of his income from special order retail shrimp sales. Defendant Shawn Verdin is also a commercial fisherman. Verdin operates the Carolina Skiff involved in the instant case. On the date in question, the defendants were seeking to fill a retail order. Trahan testified that they left around noontime. They proceeded without ice and it was typical for them to do so. They had scrapers under their net. They traveled south in Pelican Lake for approximately forty-five minutes. While in route, they saw Lieutenant Theriot. After determining that the waters of Pelican Lake were too rough, they proceeded further south in search of calmer water. They approached the south end near Bay Round and decided to skim near a group of islands. They noticed a bag that seemed suspicious. The buoyancy of the bag was irregular, as it was positioned low on the water. Verdin testified they suspected the bag contained drugs because of the way it was packaged, "it was like just in a square, like a block." Trahan picked up the bag and placed it on the boat. They abandoned their intent to shrimp and decided to bring the bag to the dock. They suspected cocaine was in the bag and wanted witnesses before opening it. They proceeded back the way they came in.

As they traveled northbound in Bayou Plott, Verdin looked back to see if his motor was pumping and noticed the water-patrol officers. Verdin informed Trahan that water-patrol officers were approaching them at a high rate of speed. Trahan did not look back as he was afraid to do so. Verdin also became afraid. According to Verdin, the water-patrol officers did not have police lights activated. Trahan estimated that Verdin was traveling at 40 miles-per-hour and maintained that speed. They turned into a canal off of Bayou Plott and Trahan tossed the bag overboard. Trahan was concerned that the officers would "misunderstand" if drugs were in the bag. Verdin specifically stated, "we was scared of it, scared of the bag . . . because if it was drugs we didn't want them, you know, to mistake us what we

was doing with it." Verdin later added, "Well, it felt like, you know, we was like doing something wrong, you know, and we got scared." After disposing of the bag, they traveled for "maybe less than 200 yards" before stopping in the bay. After the officers questioned them and searched the boat, they were instructed to go home and retrieve the proper registration papers for the boat and identification. They exited the area the same way they entered and proceeded east. During cross-examination, Trahan confirmed that the order they planned to fill on the date in question was never filled. Verdin confirmed that he saw water-patrol lights when Officer Liner positioned his boat next to theirs. Verdin also testified that, prior to the incident, he had been told about a recent increase of law-enforcement officers patrolling the Coon Point area. He indicated that he was not told that the officers were looking for drugs.

After re-direct examination, the trial court questioned Verdin regarding the four-hour interval from the time he testified they left to go skimming, noon, until the time the officers stopped their boat, approximately 4:00 p.m. Verdin explained that they left around noon and it takes about twenty minutes to drive to the Bayou. He added that they did not immediately leave the dock. It took them about forty to forty-five minutes to drive the boat to Bay Round.

The trier of fact is free to 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. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. State v. Taylor, 97-2261, pp. 5-6 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932.

As stated in its oral reasons for judgment, the trial court believed that the defendants did go out with the intent to skim for shrimp but committed a "crime of opportunity." They discovered the drugs and instead of giving them to the police when they had the opportunity, they evaded the police. The trial court also stated that the defendants suspected and "perhaps even hoped" that the bag contained cocaine. Nonetheless, in determining that the defendants attempted to commit the charged offense, the trial court considered the following three factors: (1) the defendants did not immediately stop when the police officers were pursuing them (they took evasive action); (2) the defendants disposed of the evidence; and (3) both defendants lied at the scene and Verdin lied during his interview with the police thirty-six hours after the offense. The trial court concluded that these circumstances were sufficient to infer guilty knowledge. We agree. While the trial court briefly mentioned testimony regarding the packaging of other evidence recovered in the area in separate incidents, the trial court's ultimate findings were not in reliance of this testimony. When a case involves circumstantial evidence and the trier of fact 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. See State v. Captville, 448 So.2d 676, 680 (La. 1984). Based on the evidence before us, it was entirely reasonable for the trial court to conclude the defendants had the requisite guilty knowledge in the commission of the instant offense. We find that the trial court carefully considered all of the evidence. We further conclude that a rational fact finder, viewing the evidence in the light most favorable to the prosecution, could find that the evidence presented by the State established all of the elements of attempted possession of over 400 grams of cocaine. The trial court did not err in denying the motion for post-verdict judgment of acquittal and motion for new trial

on the grounds asserted in this assignment of error. This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER TWO

In the second assignment of error, the defendants cite La. C.Cr. P. art. 851(3) in arguing that the trial court erred in denying their motion for new trial on the grounds that the State failed to produce exculpatory evidence regarding prejudicial testimony. Specifically, the defendants note Agent Rodrigue's testimony concerning cocaine recoveries during a two-week period before and after the instant offense. Agent Rodrigue stated that the evidence recovered in those instances was not contained in a large black garbage bag as in the instant case. Citing Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the defendants argue that the State was required to produce documents or physical evidence relative to this "surprise" testimony. The defendants contend that the unanticipated introduction by the State of testimony regarding alleged high volume cocaine recovered in the same area, but not enclosed in a garbage bag as in this case, was prejudicial to the defendants. The defendants also note that they were unable to impeach Agent Rodrigue's testimony. The defendants argue that whether the State or the federal government could link the defendants or others to a drug-smuggling operation was relevant and exculpatory information.

In Brady the United States Supreme Court held that the suppression by the prosecution of evidence favorable to the accused after receiving a request for it violates a defendant's due process rights where the evidence is material either to guilt or punishment, without regard to the good or bad faith of the prosecution. Brady, 373 U.S. at 87, 83 S.Ct. at 1196-97. The Brady rule encompasses evidence, which impeaches the testimony of a witness when the reliability or credibility of that witness may determine guilt or innocence. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481 (1985); Giglio v. United States,

405 U.S. 150, 153-155, 92 S.Ct. 763, 765-766, 31 L.Ed.2d 104 (1972). Still, Brady and its progeny do not establish a general rule of discoverability. A prosecutor does not breach his constitutional duty to disclose favorable evidence "unless his omission is of sufficient significance to result in the denial of the defendant's right to a fair trial." United States v. Agurs, 427 U.S. 97, 108, 96 S.Ct. 2392, 2400, 49 L.Ed.2d 342 (1976). For purposes of Brady's due process rule, a reviewing court determining materiality must ascertain not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. Kyles v. Whitley, 514 U.S. 419, 434, 115 S.Ct. 1555, 1566, 131 L.Ed.2d 490 (1995). Thus, the reviewing court does not put the material to an outcome-determinative test in which it weighs the probabilities that the petitioner would have obtained an acquittal at trial or might do so at a second trial. Instead, a Brady violation occurs when the "evidentiary suppression 'undermines confidence in the outcome of the trial.' " Kyles, 514 U.S. at 434, 115 S.Ct. at 1566 (quoting Bagley, 473 U.S. at 678, 105 S.Ct. at 3381).

As detailed above, under Brady, the due process clause of the Fourteenth Amendment to the United States Constitution requires the disclosure upon request of evidence, which is favorable to the accused when the evidence is material to guilt or punishment. In the instant case, the defendants have not established how the documents or physical evidence described by the defendants would have been favorable such that it would constitute Brady evidence. Furthermore, we find that the omission of documentation or physical evidence as to whether drugs found in the area during separate incidents were similarly packaged to the drugs possessed in the instant case did not deprive the defendants of a fair trial. The defendants conceded their possession of the drugs in question and the circumstances were sufficient to infer guilty knowledge. This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER FOUR

In their fourth and final assignment of error, the defendants argue that the trial court erred in denying their motion to reconsider the sentences imposed herein. The defendants note that they are youthful, have no prior felonies or substantial criminal history, the trial court considered the offense a crime of opportunity, and that their actions were based on fear as opposed to criminal culpability.

Article I, section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. The Louisiana Supreme Court in State v. Sepulvado, 367 So.2d 762, 767 (La. 1979), held that a sentence that is within the statutory limits may still be excessive. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. State v. Hurst, 99-2868, p. 10 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. Hurst, 99-2868 at 10-11, 797 So.2d at 83.

The Louisiana Code of Criminal Procedure sets forth items, which must be considered by the trial court before imposing sentence. La. C.Cr. P. art. 894.1. The judge is not required to list every aggravating or mitigating factor as long as the record shows ample considerations of the guidelines. State v. Herrin, 562 So.2d 1, 11 (La. App. 1st Cir.), writ denied, 565 So.2d 942 (La. 1990). The articulation of the factual basis for a sentence is the goal of Article 894.1, not to force a rigid or mechanical recitation of the factors. In light of the criteria

expressed by Article 894.1, a review for individual excessiveness should consider the circumstances of the crime and the trial court's stated reasons and factual basis for its sentencing decision. State v. Mickey, 604 So.2d 675, 678 (La. App. 1st Cir. 1992), writ denied, 610 So.2d 795 (La. 1993). Thus, even without full compliance with Article 894.1, remand is unnecessary when the record clearly reflects an adequate basis for the sentence. State v. Lanclos, 419 So.2d 475, 478 (La. 1982); State v. Milstead, 95-1983, p. 8 (La. App. 1st Cir. 9/27/96), 681 So.2d 1274, 1279, writ denied, 96-2601 (La. 3/27/97), 692 So.2d 392; State v. Greer, 572 So.2d 1166, 1171 (La. App. 1st Cir. 1990).

The sentencing range statutorily prescribed for the completed offense of possession of 400 grams or more of cocaine is fifteen to thirty years at hard labor, and a fine of not less than $250,000 nor more than $600,000. La. R.S. 40:967(F)(1)(c). The defendants were convicted of the responsive offense of attempted possession of 400 grams or more of cocaine. Thus, the defendants shall be fined or imprisoned or both, in the same manner as for the offense attempted. Moreover, such fine or imprisonment shall not exceed one-half of the largest fine or one-half of the longest term of imprisonment prescribed for the offense so attempted. La. R.S. 14:27(D)(3); La. R.S. 40:979(A). Herein, the defendants were each sentenced to eight years imprisonment at hard labor. The trial court suspended the sentences with five years supervised probation to follow one year of imprisonment at hard labor.

In sentencing the defendants, the trial court noted its belief that the instant offenses were crimes of opportunity and not premeditated. The trial court noted that the defendants are relatively young and have no substantial past criminal record (limited to misdemeanors). The trial court imposed mid-range sentences herein that are not near the maximum imprisonment term of fifteen years at hard labor. The trial court also suspended the sentences upon the service of only one-

year imprisonment at hard labor. After a thorough review of the record, we conclude that the sentences imposed are not excessive. This assignment of error lacks merit.

STATE'S CROSS APPEAL ASSIGNMENT OF ERROR

In the sole assignment of error raised in its appeal, the State argues that the sentences imposed herein are illegally lenient. The State argues that under La. R.S. 40:967(G), the trial court was prohibited from suspending the sentences imposed herein. Further, the State argues that the trial court failed to impose mandatory fines. The State asks that we remand for resentencing.

Louisiana Revised Statutes 40:967(G) provides that a person sentenced under Subsection F shall not be eligible for probation or parole prior to serving the minimum sentence provided by Subsection F. However, the defendants herein were convicted of an attempt of the charged offense. Louisiana Revised Statutes 14:27(D)(3) provides that a person convicted of an attempt shall be fined or imprisoned or both in the same manner as for the offense attempted, with such fine or imprisonment shall not exceed one-half of the largest fine or one-half of the longest term of imprisonment prescribed for the offense so attempted or both. See also La. R.S. 40:979(A). There effectively is no minimum sentence for a person convicted of attempted possession of four hundred grams or more of cocaine. See State v. Brown, 2000-2120, p. 2 (La. App. 4th Cir. 12/19/01), 804 So.2d 863, 864, writ denied, 2002-0308 (La. 2/7/03), 836 So.2d 85. We find no merit in the State's cross appeal assignment of error.

CONVICTION AND SENTENCE AS TO TRACY LEE TRAHAN AFFIRMED; CONVICTION AND SENTENCE AS TO SHAWN DAVID VERDIN AFFIRMED.