

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2011-KA-1090**  
**VERSUS** \*  
**JAMES DAVIS** \* **COURT OF APPEAL**  
\* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**

\* \* \* \* \*

APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 489-600, SECTION "C"  
Honorable Benedict J. Willard, Judge

\* \* \* \* \*

**Judge Dennis R. Bagneris, Sr.**

\* \* \* \* \*

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Max N. Tobias, Jr.,  
Judge Madeleine M. Landrieu)

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**MAY 16, 2012**

**CONVICTION AFFIRMED**

James Davis appeals his conviction for one count of distribution of cocaine, a violation of La. R.S. 40:967(A)(1). Because the evidence supports his conviction, we hereby affirm.

#### **STATEMENT OF CASE**

On August 24, 2009, the State charged James Davis with one count of distribution of cocaine, a violation of La. R.S. 40:967(A)(1).<sup>1</sup> Following a jury trial, he was found guilty as charged. After the trial court denied Davis' motion for a new trial and motion for post-verdict judgment of acquittal, he was sentenced to fifteen years at hard labor. That sentence was vacated upon his adjudication as a multiple offender and he was resentenced to forty years at hard labor. This appeal followed.

#### **STATEMENT OF FACT**

Officer Chris Lasley testified that on June 23, 2009, Sergeant Castellon was conducting surveillance in the 2300 block of Washington Avenue, while Officer

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<sup>1</sup> On the same date, the State also charged: (1) Willie Davis, James Davis' brother, with one count of possession with the intent to distribute cocaine, and one count of possession with intent to distribute heroin; and (2) Jennifer H. Arnouville with one count of simple possession of cocaine.

Lasley, Officer Hunter, and Officer Black stood-by as the “take-down unit.” Officer Lasley and the other officers were in a marked police car, somewhere near the location where Sgt. Castellon was conducting his surveillance. He explained that the “take-down unit” meant simply that if Sgt. Castellon observed any activity that he believed to be illegal and/or involved narcotics, he would notify the “take-down unit” officers of what he saw.

At some point in the evening, Sgt. Castellon alerted Officer Lasley and the other officers of a possible narcotics transaction he witnessed. Sgt. Castellon gave the officers a description of the perpetrators. The officers then proceeded northbound on Washington Avenue, stopping their vehicle in front of the apartment complex where Sgt. Castellon witnessed the possible narcotics transaction. Officer Lasley observed one of the subjects in question, a white female who was wearing a white shirt and pink shorts. The female, identified as Jennifer Arnouville, was walking away from the complex towards the street. Officer Lasley proceeded to stop her. As he approached Ms. Arnouville, she discarded an object by throwing it on the ground. At the time of the approach, he said that a spotlight from the police unit illuminated the area, where the outside lighting was “in [] transition from...day to night.” In addition, Officer Lasley testified that Ms. Arnouville was “maybe one to two car lengths” away from him where he observed her discard the object.

After Officer Lasley witnessed Ms. Arnouville discard the object, he was able to secure her without losing sight of the discarded object. He then picked up

the object and observed it to be crack cocaine.<sup>2</sup> At that point, he advised Officer Hunter and Officer Black about the crack cocaine he retrieved. Officer Lasley stayed with Ms. Arnouville, and Officer Hunter and Officer Black took two other subjects, one of whom was the defendant, to the area where Officer Lasley and Ms. Arnouville were situated. Officer Lasley then read all three subjects their Miranda rights.

Officer Lasley testified he was aware that \$16 was recovered from the defendant by Officer Hunter and Officer Black. Officer Lasley did not remember where the defendant was located when he and the other officers first arrived in front of the apartment complex. However, he did remember the defendant was wearing a white shirt, blue jeans, and a blue hat at the time of the incident.

On cross-examination, Officer Lasley testified that he never saw the defendant engage in any activity with Ms. Arnouville nor did he see the defendant in possession of any narcotics. Officer Lasley also stated that when he arrived at the apartment complex, his attention was focused on Ms. Arnouville and he therefore did not see the defendant. Officer Lasley first saw the defendant when the other officers took him to the area where Officer Lasley and Ms. Arnouville were situated. Officer Lasley believed that either Officer Hunter or he retrieved the \$16 from the defendant, although he was not sure. Upon reviewing the police report, Officer Lasley conceded that the report omitted any mention of or reference to the \$16 retrieved from the defendant.

On re-direct, Officer Lasley testified that although the police report did not mention the \$16 retrieved from the defendant, the property and evidence receipt

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<sup>2</sup> The parties stipulated that the discarded object tested positive for crack cocaine.

attached to the police report revealed that the \$16 was retrieved from the defendant.

Sergeant Manuel Castellon, an officer with twelve years of experience investigating narcotics transactions, testified that on June 23, 2009, he set up surveillance in front of the Metrowide Apartments apartment complex located at 2316 Washington Avenue. Sgt. Castellon witnessed the defendant standing in front of the complex. As the defendant stood in front of the complex, an older blue van, driven by a Hispanic male, pulled up to the area. A white female, Ms. Arnouville, exited the van. Sgt. Castellon testified that he recognized Ms. Arnouville and knew her name, as he had “dealt with her previously.” Ms. Arnouville approached the defendant; the two conversed and then started to go up the stairs to the complex. Once they reached the top of the stairs, they again conversed. At that point, Sgt. Castellon observed the defendant reach down towards the stairs and then hand Ms. Arnouville an object. Upon receiving the object from the defendant, Ms. Arnouville handed the defendant currency. After this exchange was made, they both began to walk back down the stairs. The defendant stood in the same area where he previously stood and Ms. Arnouville began walking back to the van. Sgt. Castellon then instructed the other officers to conduct a take-down. Shortly thereafter, the take-down officers arrived.

Upon the arrival of the take-down officers, Ms. Arnouville, who had been walking towards the van before the officers arrived at the scene, changed her direction of travel and started walking away from the van. At that point, Officer Lasley was on the scene and began interacting with Ms. Arnouville. Another officer, Officer Black, began interacting with the defendant, but then started to step away. Once Officer Black stepped away from the defendant, the defendant ran up

the stairs to the apartment complex, while Officer Lasley remained at the scene with Ms. Arnouville. Officer Hunter ran up the stairs behind Officer Black. Sgt. Castellon then terminated his surveillance of the area in order to get back to his police unit to assist the other officers.

On cross-examination, Sgt. Castellon clarified that he first initiated his surveillance of the area at around 7:30 p.m., and he first saw the blue van pull up in front of the complex about fifteen or twenty minutes later. In order to maintain the integrity of future investigations, Sgt. Castellon would not divulge the exact location from which he conducted his surveillance, nor would he pinpoint exactly how far away he was situated from the apartment complex during his investigation. Without revealing any specific facts regarding his location during his surveillance, Sgt. Castellon testified only that he could see, through his binoculars, the activities that transpired in front of the complex “clearly.”

Sgt. Castellon conceded that when he saw the defendant reach down to the ground to grab something that he later handed to Ms. Arnouville, he didn't see what the defendant grabbed, nor did he see the color, size, or packaging of the object the defendant grabbed. After the defendant grabbed the object from the ground, Sgt. Castellon was positive that “[t]here was an obvious exchange” between the defendant and Ms. Arnouville. Sgt. Castellon was also positive that during the exchange between the defendant and Ms. Arnouville, Ms. Arnouville handed the defendant money. Sgt. Castellon radioed his observations to the other officers as he witnessed the interactions between the defendant and Ms. Arnouville. Officers Lasley, Hunter, and Black arrived at the scene in their police unit. Officer Lasley, the driver of the car, jumped out of the car once they arrived at the scene. Sgt. Castellon did not observe Ms. Arnouville throw anything on the

ground, but he was also not focusing his attention on her directly once the other officers arrived. Sgt. Castellon testified that he did not believe any other drugs were found in or around the defendant's stash spot on the stairs.

On re-direct, Sgt. Castellon testified that Ms. Arnouville and the defendant were both corralled by the officers "within a minute" of the officers' arrival at the scene.

Officer Troy Black, an officer with three and one-half years of experience working for the New Orleans Police Department, testified that on June 23, 2009, he participated in a narcotics investigation in the 2300 block of Washington Avenue. Officer Black pulled up in front of the apartment complex at 2316 Washington Avenue and saw the defendant, a black male dressed in a white shirt, blue jeans, and a blue baseball cap, standing approximately twenty feet away from the police vehicle, in front of the bottom steps to the complex. Officer Black ordered the defendant to the police vehicle, and the defendant "began to walk backwards slowly towards the stairs," ignoring Off. Black's order. Once he reached the bottom of the stairwell, the defendant turned and fled up the stairs. At that point, Officer Black, who was "[n]ot more than a few steps" away from the defendant, chased the defendant. The defendant ran into apartment 203, which is where his brother, Luther Davis, was, and where Officer Black was able to finally apprehend the defendant and place him in handcuffs. After Officer Black handcuffed the defendant, he took the defendant to the police vehicle and continued with the investigation.

On cross-examination, Officer Black testified that when he was heading towards the apartment complex in the police vehicle, he observed Ms. Arnouville; however, he did not see any drugs in her hands, nor did he see her discard any

drugs on the ground. Officer Black said that the officers had their vehicle's spotlight on, although he did not remember whether the officers had their spotlight shining on the area. He did not think that they did. Officer Black conceded that the defendant was not charged with either resisting a police officer or fleeing from a police officer. Officer Black did not perform a search of the defendant, but he knew money had been found on the defendant. All three officers arrived at the scene and exited the vehicle at the same time. Officer Lasley immediately went to Ms. Arnouville and Officer Black dealt with the defendant. As Officer Black was attempting to order the defendant over to the police vehicle, Officer Lasley said something to the other officers, indicating that he found drugs.

The State then rested its case. The defense rested without calling any witnesses.

### **ERRORS PATENT**

A review of the record reveals no patent errors.

### **DISCUSSION**

In his sole assignment of error, the defendant argues that the State did not introduce evidence to prove beyond a reasonable doubt that he was guilty of distribution of cocaine. In particular, the defendant argues that because: (1) the officers did not find any other drugs at or around the defendant's suspected stash spot on the stairs; and (2) no officer could give firsthand knowledge as to the source of the \$16 allegedly found on the defendant, the circumstances of the case do not permit a reasonable inference that the defendant distributed cocaine to Ms. Arnouville.

In reviewing a claim of insufficiency of evidence, courts must apply the standard set forth in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979): the court must determine whether the evidence, viewed in the light most favorable to the prosecution, “was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt.” State v. Captville, 448 So.2d 676, 678 (La. 1984). In addition, when the State uses circumstantial evidence to prove the elements of the offense, “La. R.S. 15:438 requires that ‘assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence.’” State v. Neal, 2000-0674, p. 9 (La. 6/29/01), 796 So.2d 649, 657. This is not a purely separate test from the Jackson standard to be applied instead of a sufficiency of the evidence test whenever circumstantial evidence forms the basis of the conviction. State v. Cummings, 95-1377, p. 3 (La. 2/28/96), 668 So.2d 1132, 1135. Ultimately, all evidence, both direct and circumstantial, must be sufficient under Jackson to prove guilt beyond a reasonable doubt to a rational jury. State v. Scott, 2009-0138, p. 6 (La. App. 4 Cir. 11/18/09), 26 So.3d 283, 288.

In order to prove distribution of cocaine, the State must prove that the defendant transferred possession or control of the rocks of cocaine to his intended recipient. Cummings, 95-1377, p. 4, 668 So.2d at 1135. A defendant’s flight from an officer presents a circumstance from which guilt can be inferred. State v. Smith, 98-2546, p. 5 (La. App. 4 Cir. 1/26/2000), 752 So.2d 314, 317.

Turning to the facts of the present case, the State established that Sgt. Castellon set up surveillance of the apartment complex at 2316 Washington Avenue, with a take-down unit situated nearby. Sgt. Castellon, an officer with twelve years of experience investigating narcotics transactions, testified that on the

date in question, he was able to clearly witness a blue van pull up to the front of the complex. He then saw Ms. Arnouville get out of the van and approach the defendant. He witnessed the defendant converse with Ms. Arnouville before the two subjects proceeded to walk up the stairs to the complex. He then saw the defendant reach down to the ground and retrieve a small object. He witnessed the defendant and Ms. Arnouville engage in “an obvious exchange,” and he alerted the take-down unit of what he saw.

Upon the take-down unit’s arrival at the scene, Officer Lasley witnessed Ms. Arnouville throw an object on the ground. Officer Lasley was able to retrieve the object, which later tested positive for crack cocaine, and apprehend Ms. Arnouville.

While Officer Lasley was recovering the discarded object and apprehending Ms. Arnouville, Officer Black ordered the defendant to the police unit. Instead of complying with Officer’s Black’s order, the defendant fled up the stairs to the complex and into an apartment where his brother was situated. After the defendant was apprehended, \$16 was found on his person, as was evidenced by the property and evidence receipt attached to the police report.

Under the circumstances presented, the State met its burden of proof, that is, in viewing the evidence in the light most favorable to the prosecution, a rational fact-finder could have found, beyond a reasonable doubt, that the defendant transferred possession or control of the rocks of cocaine to his intended recipient, Ms. Arnouville.

Based on the foregoing reasons, we affirm the defendant’s conviction.

**CONVICTION AFFIRMED**

