

KA 04-1250
STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

STATE OF LOUISIANA

VERSUS

JOHN R. TURNER

SAUNDERS, J. dissenting.

An analysis of the record reveals that the state's only evidence was the officer's testimony and specifically the statement by the Defendant to the officer. The direct evidence does not contain any information to suggest that the Defendant had an intent to possess, rather it merely reveals that, at some point, the Defendant became aware of the fact that the cigarette pack contained pills. Accordingly, the direct evidence alone is insufficient to establish the Defendant's guilt, and there must be an analysis of the circumstantial evidence.

“Circumstantial or indirect evidence is evidence which, if believed, proves a fact and from that fact you may logically and reasonably conclude that another fact exists.” *Independent Fire Insurance Co. v. Sunbeam Corp.*, 99-2181, p.18 (La. 2/29/00) 755 So.2d 226, 237. “The rule of circumstantial evidence is 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. ALO*, 04-62 (La.App. 5 Cir. 10/12/04) 886 So.2d 1130, 1132. One critical and uncontradicted hypothesis in the present case is that made by the defense, i.e., that the medication belonged to the sister and brother-in-law of the Defendant and was

accidentally left in the vehicle.

For the defense, Clarence Strother testified that on the date in question, Strother and his wife used the Defendant's truck to get prescriptions filled and get groceries. Later that day, the Defendant picked up the truck. Strother testified that neither he nor his wife carry their prescription medicine in the pharmacy bottle because they do not want to have that much with them on the street. He stated they would just carry what they needed for the day and that he normally places them in a cigarette pack. Strother testified that on the day the Defendant was arrested, he had placed the pills in the cigarette box and left them in the truck by accident. He denied giving the medication to the Defendant. Strother testified that the pills in the truck belonged to him and his wife.

In addition, Frosty McClumb, Thrifty City's pharmacist and a disinterested witness, testified that the printout for Clarence Strother's prescriptions shows that on the date in question, September 17, 2002, he filled a prescription for hydrocodone. McClumb testified that the printout for Pearl Strother revealed that she had a prescription filled on the same date for alprazolam.

The defense presented evidence of a plausible and uncontradicted scenario of events and a valid reason why the drugs may have been in the Defendant's vehicle. The State failed to establish at trial that the Defendant knowingly possessed illegal drugs. Although the Defendant told the officer about the pills in his truck before the search began, there was no evidence presented to establish that the Defendant knew or should have known that the six pills in the cigarette pack were controlled dangerous substances. Therefore, the evidence failed to show that

the Defendant had the criminal intent to possess the drugs. There was no evidence that the Defendant had converted the drugs to his personal use. The circumstantial evidence rule requires that circumstantial evidence must negate “every reasonable hypothesis of innocence.” It thus appears that the state failed to negate the hypothesis presented by the defense.

I respectfully dissent.