

May 1, 2000

SUPREME COURT OF LOUISIANA

No. 99-K-1794

STATE OF LOUISIANA

Versus

JOSEPH BUTLER

**JOHNSON, J., dissenting**

The amount of cocaine recovered from the defendant's person consisted of one single rock, weighing .07 grams. Possession of such a small amount clearly supports a finding of simple possession; however, it does not support a finding of possession with intent to distribute.

In *State v. Fisher*, 628 So.2d 1136 (La.App. 1 Cir. 1993); *writ denied*, 637 So.2d 474 (La. 1993), twenty (20) rocks of cocaine was found in the defendant's possession. The court held that there was insufficient evidence of the defendant's intent to distribute crack cocaine. The defendant in *State v. Porter*, 547 So.2d 736 (La.App. 3 Cir. 1989) possessed 0.6 grams of cocaine. That court held that possession of such a small amount indicated that it may have been intended for personal use and did not support an inference of the intent to distribute.

Furthermore, as the majority stated, an accused cannot be convicted of possession of a drug with intent to distribute based on proof that the accused intends to distribute other drugs not yet in his or her possession. *State v. Butler*, 99-1794, slip op. at 2. In this case, the defendant admitted to police officers that he was on his way to obtain "a three hundred dollar package" when he was stopped. However, the "package" was not in his possession at the time of his arrest, and therefore, it should not be used as a factor to support the defendant's conviction.

For the foregoing reasons, I would vacate defendant's conviction for possession with intent to distribute, enter a judgment of guilty of simple of simple possession, and remand the case to the district court for re-sentencing.