IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

OCTOBER 1995 SESSION

FILED

November 15,1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	
APPELLEE,	)	
	)	No. 02-C-01-9503-CC-00093
	)	
	)	Gibson County
v.	)	
	)	Dick Jerman, Jr., Judge
	)	
	)	(Delivery of Cocaine)
MITCH DODD,	)	
	)	
APPELLANT.	)	

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OPINION FILED:_____

AFFIRMED

Joe B. Jones, Judge

O P I N I O N

The appellant, Mitch Dodd, was convicted of the unlawful delivery of cocaine, a Class C felony, by a jury of his peers. The trial court found that the appellant was a standard offender and imposed a Range I sentence consisting of a $2,500 fine and confinement for five (5) years and six (6) months in the Department of Correction.

Two issues are presented for review. The appellant states the issues in the following manner:

> I. Whether the trial court committed prejudicial error in allowing the testimony of the Tennessee Highway Patrol Officer Gary Azbill who was conducting an undercover investigation outside the authority granted by T.C.A. §§ 4-7-104 through 4-7-107?
>
> II. Whether the weight of the evidence was insufficient to convict the defendant of unlawful delivery of cocaine?

The judgment of the trial court is affirmed.

The Department of Safety has a criminal investigation division which assists other law enforcement agencies in detecting criminal activity. Gary Azbill was assigned by the criminal investigation division to assist the Trenton Police Department in detecting drug trafficking. Trenton police officers put Azbill in touch with Thomas Patterson, a confidential informant.

On the afternoon of April 22, 1994, Azbill and Patterson encountered the appellant. They asked the appellant if he had two rocks of crack cocaine. The appellant left to obtain the cocaine. However, the appellant returned empty handed. Since the appellant had to return the vehicle he was driving to the owner, Azbill and Patterson followed him to the residence. Thereafter the appellant got into Azbill's vehicle and they drove to another location. Azbill gave the appellant $40. The appellant went inside a residence and subsequently returned with the two rocks of crack cocaine.

Both Azbill and Patterson identified the appellant as the person who sold them the crack cocaine. The appellant admitted that Patterson had known him for approximately twenty years. A forensic chemist testified that the substance the appellant obtained for

Azbill and Patterson was crack cocaine.

The conversation between Azbill, Patterson, and the appellant was recorded. The audio tape was played for the jury.

The appellant testified in support of his defense. He denied selling the cocaine to Azbill and Patterson. He denied that the voice on the audio tape was his voice.

I.

The appellant vigorously argues that Azbill, an employee of the Department of Safety, was not authorized to conduct undercover investigations of drug trafficking. He refers to the statutes creating the Highway Patrol and defining the scope of its authority. He argues that the trial court should have granted his motion to strike Azbill's testimony.

Whether Azbill, as an employee of the Department of Safety, was authorized by law to engage in undercover investigations of drug trafficking in Gibson County is irrelevant to this inquiry. Assuming arguendo that Azbill was not authorized by law to conduct the investigation, he was, as a private citizen, permitted to testify about the crime he witnessed. Moreover, Patterson's testimony established the criminal offense.

Defense counsel had the opportunity to confront Azbill on cross-examination. Defense counsel in effect limited the cross-examination to Azbill's right to conduct the investigation.

This issue is without merit.

II.

A.

As previously stated, the appellant frames this issue in terms of the "weight of the evidence." This statement of the issue poses an improper question. Moreover, it does not represent the standard of review in criminal cases. Neither this Court nor the Court of Appeals "is empowered to weigh the evidence, when, as here, a jury has returned and the

trial [court] has approved the challenged verdict." State v. Matthews, 805 S.W.2d 776, 778 (Tenn. Crim. App.), per. app. denied (Tenn. 1990); see Given v. Low, 661 S.W.2d 687, 688 (Tenn. App.), per. app. denied (Tenn. 1983).

The standard of review applicable in criminal cases may be found in Rule 13(e), Tenn. R. App. P. This rule is predicated upon the United States Supreme Court's decision in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The question this Court must resolve is: whether the evidence contained in the record is sufficient to support a finding by a rational trier of fact that the appellant is guilty of the offense of which he stands convicted beyond a reasonable doubt. Matthews, 805 S.W.2d at 778. This is the issue that this Court will address in determining the sufficiency of the evidence.

B.

When an accused challenges the sufficiency of the convicting evidence, this Court must review the record to determine if the evidence adduced at trial is sufficient "to support the finding by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). This rule is applicable to findings based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Dykes, 803 S.W.2d 250, 253 (Tenn. Crim. App.), per. app. denied (Tenn. 1990).

In determining the sufficiency of the convicting evidence, this Court does not reweigh or reevaluate the evidence. Matthews, 805 S.W.2d at 779. Nor may this Court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859, cert. denied, 352 U.S. 845, 77 S.Ct. 39, 1 L.Ed.2d 49 (1956). To the contrary, this Court is required to afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d at 835. In State v. Grace, 493 S.W.2d

474, 476 (Tenn. 1973), our Supreme Court said: "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State."

Since a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused, as the appellant, has the burden in this Court of illustrating why the evidence is insufficient to support the verdict returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court will not disturb a verdict of guilt due to the sufficiency of the evidence unless the facts contained in the record are insufficient, as a matter of law, for a rational trier of fact to find that the accused is guilty beyond a reasonable doubt. Tuggle, 639 S.W.2d at 914.

The evidence of the appellant's guilt is overwhelming. In other words, the evidence is clearly sufficient to support a finding by a rational trier of fact that the appellant was guilty of the delivery of cocaine beyond a reasonable doubt. Tenn. R. App. P. 13(e); Jackson v. Virginia, supra.

This entire controversy was reduced to one question of fact, namely, the credibility of Azbill and Patterson versus the appellant. The jury, as the trier of fact, believed the testimony given by Azbill and Patterson and rejected the appellant's testimony.

This issue is without merit.

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JOE B. JONES, JUDGE

CONCUR:

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PAUL G. SUMMERS, JUDGE

_____
WILLIAM M. BARKER, JUDGE