



## OPINION

The appellant, James Edward Tharpe, was convicted of possession of marijuana, a Class A misdemeanor, and possession of cocaine with intent to sell, a Class B felony, by a jury of his peers. The trial court found that the appellant was a standard offender and imposed the following sentences:

(a) possession of marijuana, a fine of \$250 and confinement for eleven months and twenty-nine days in the Henry County Jail; and

(b) possession of cocaine with intent to sell, a fine of \$2,500 and confinement for eight (8) years in the Department of Correction.

The trial court ordered that these sentences are to be served concurrently, but both sentences are to be served consecutively to sentences imposed for previous convictions.

One issue is presented for review. The appellant contends that the evidence is insufficient, as a matter of law, to support a finding by a rational trier of fact that he was guilty of possessing marijuana and possessing cocaine with intent to sell beyond a reasonable doubt.

The judgment of the trial court is affirmed.

On March 4, 1994, at approximately 6:00 p.m., officers assigned to the Drug Task Force went to the residence at 722 Calidonia Street in Paris to serve a search warrant. As the officers exited their vehicles, two people ran from the porch and proceeded around the south side of the residence. Deputy Ron Eaker pursued the individuals. When he reached the rear of the residence, he saw the appellant. He told the appellant to "freeze" and ordered him to raise his hands. Deputy Eaker noticed that the appellant had what appeared to be cellophane in one of his hands.

The appellant ran behind a shed in the rear of the residence, reappeared, and raised his hands. Deputy Damon Lowe, who had run around the north side of the residence saw the appellant make a "toss motion" behind the shed. Once the appellant was taken into custody, Deputies Eaker and Lowe conducted a search behind the shed. They found two "baggies" containing illicit narcotics. One bag contained 5.3 grams of crack cocaine and the other bag contained 5.2 grams of marijuana. A forensic chemist

tested the substances. The material in the "baggies" tested positive for marijuana and cocaine.

A deputy familiar with the price of illicit drugs in the community testified that a rock of cocaine sold for approximately \$40. However, it depended upon the demand and who was selling the substance. He stated that the value of the cocaine in this case was between \$750 and \$2,000.

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. Jackson, 814 S.W.2d 740, 742 (Tenn. Crim. App.), per. app. denied (Tenn. 1991); 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 evaluate the evidence. State v. Matthews, 805 S.W.2d at 776, 779 (Tenn. Crim. App.), per. app. denied (Tenn. 1980). 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."

A criminal offense may be established exclusively by circumstantial evidence. Duchac v. State, 505 S.W.2d 237, 241 (Tenn. 1973), cert. denied sub nom., Robinson v.

Tennessee, 419 U.S. 877, 95 S.Ct. 141, 42 L.Ed.2d 117 (1974); State v. Lequire, 634 S.W.2d 608, 614 (Tenn. Crim. App. 1981), per. app. denied (Tenn. 1982); see Marable v. State, 203 Tenn. 440, 452-55, 313 S.W.2d 451, 457-58 (1958). However, before an accused may be convicted of a criminal offense based upon circumstantial evidence alone, the facts and circumstances "must be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant." State v. Crawford, 225 Tenn. 478, 482, 470 S.W.2d 610, 612 (1971). In other words, "[a] web of guilt must be woven around the defendant from which he cannot escape and from which facts and circumstances the jury could draw no other reasonable inference save the guilt of the defendant beyond a reasonable doubt." Crawford, 225 Tenn. at 484, 470 S.W.2d at 613.

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 verdicts 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.

There is sufficient evidence contained in the record to support a finding by a rational trier of fact that the appellant is guilty of the possession of marijuana and the possession of cocaine with intent to sell beyond a reasonable doubt. Tenn. R. App. P. 13(e). In State v. Matthews, 805 S.W.2d at 779, the accused ran when he saw the police. The police followed the accused. When they arrived at the rear of the dwelling, they saw the accused "kneeling on the ground adjacent to an opening in the foundation of the house." Matthews, 805 S.W.2d at 779. The accused arose, turned around, and walked toward the police. The officers found a package containing a large quantity of cocaine just inside the opening where the accused had been kneeling. This Court held that the evidence was sufficient to sustain a conviction for the possession of cocaine with the intent to sell. Matthews, 805

S.W.2d at 780.

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JOE B. JONES, JUDGE

CONCUR:

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PAUL G. SUMMERS, JUDGE

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WILLIAM M. BARKER, JUDGE