IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
JANUARY SESSION, 1999

STATE OF TENNESSEE,	)	
	)	**No. 02C01-9806-CC-00187**
Appellee	)	
	)	**CARROLL COUNTY**
vs.	)	
	)	**Hon. Julian P. Guinn, Judge**
MAURICE PIERRE TEAGUE,	)	
	)	**(Possession of Cocaine in excess of .5**
Appellant	)	**grams with intent to sell)**

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Maurice Pierre Teague, was convicted by a Carroll County jury of possession of cocaine in excess of .5 grams with intent to sell, a Class B felony. At sentencing, the trial court imposed a ten year sentence in the Department of Correction. The appellant's sole challenge on appeal is the sufficiency of the evidence to sustain his conviction.

Following a review of the record, the judgment of the trial court is affirmed.

I. FACTUAL BACKGROUND

On the afternoon of October 16, 1997, Sergeant Johnny Hill of the Huntingdon Police Department received information regarding drug activity at a mobile home on Highway 22 South in Huntingdon. As a result of this information, the officer believed LaVeta King and Maurice Pierre Teague were in possession of drugs and their names were listed on a search warrant. Officer Hill had observed the appellant at this residence upon previous occasions. Thereafter, the officers observed the home for four hours before executing a search warrant upon the residence of LaVeta King. During this four hour period, the officers maintained surveillance of the only access road leading to her residence. They observed no vehicles traveling the road. Upon executing the warrant, Officer Kevin Brown of the Carroll County Sheriff's Office entered the residence first. Sergeant Hill followed closely behind.

Upon entering the residence, the officers discovered three people in the living room including LaVeta King. Officer Brown proceeded to process those individuals. Officer Hill immediately went toward the bedroom to the right. The appellant was standing in the door of the bedroom just three feet away from the bed. Two other

men, Lawrence Sherrill and Danny Ellis, were in the same room. Officer Hill observed money totaling $330 and two pagers on the bed. Three other pagers, a loaded pistol, ammunition, and several items of male clothing were also found elsewhere in the residence. All of these items remain unclaimed. The three men, including the appellant were searched. The officer removed a rock of crack cocaine weighing approximately one-tenth of a gram from the hand of the appellant and also removed money from his pockets. After searching the room, "immediately under the bed by where Mr. Teague [appellant] was standing there was a plate. . .[containing] approximately twenty-two grams of crack cocaine." The plate contained one large rock of cocaine and several smaller rocks. It appeared to the officer to have been pushed under the bed hurriedly because other smaller rocks were recovered from the floor beside the plate. The appellant was the only person in the residence with cocaine found on his person. Officer Hill estimated the street value of the cocaine to be between four and six thousand dollars. Following the proper procedures for chain of custody, a forensic scientist with the TBI identified the substances turned over to her as cocaine.

The defense called Aaron Dudley, Jr., the uncle of the appellant. Dudley stated that on the date of the offense that the appellant lived with him in McKenzie. Upon cross-examination, Dudley testified that the appellant stayed with him "off and on." The appellant spent a considerable amount of nights away from his uncle's home. He was aware that the appellant and King had maintained a relationship with each other prior to this incident. Dudley was impeached with a prior conviction of sale of cocaine.

LaVeta King testified that she and the appellant were no longer romantically involved on the date of this occurrence. She stated that the appellant was at her residence "every now and then." When the police arrived, she was sitting on the couch in the living room. The appellant was in the bedroom located adjacent to the

living room. King never saw the appellant selling any drugs. Upon cross-examination, King stated that Casey Scott was living with her at the time. She acknowledged that men's clothing was found in her residence, however, she did not know to whom it belonged. She stated that the appellant had only been at her mobile home five or ten minutes when the police arrived with the warrant. She did not know how he arrived at her home. She had no idea what the men were doing in her bedroom for thirty minutes nor did she know anything about the large amount of crack cocaine, pagers, or money found therein. She admitted that she had previously pled guilty to a charge in this case.

Kenneth Sherrill, a friend of the appellant, testified that he was one of the six people arrested at King's home that evening.[1] He had also previously pled guilty to charges arising from this occurrence. He reiterated that the appellant lived with his uncle. He never saw the appellant sell any drugs. He stated that he had only been at King's residence for three minutes when the police arrived. When the police entered he was in the living room visiting with King. He was unaware that his brother Lawrence Sherrill was there until the police brought him out of the bedroom.

The appellant testified that he had never lived with King. At the time of the arrest, he and King were "broken up." He stated that would visit her once or twice a week and spent the night there "sometimes." He provided that he never kept any clothing or personal effects at her residence. He testified that Ellis was returning King's car and he went along for the ride to see Lawrence Sherrill. He admitted to buying a rock of crack cocaine for $15 while in the bedroom. While he admitted to misdemeanor possession of cocaine, he denied selling cocaine or any knowledge of the large rock of cocaine under the bed. He denied that the money and pagers on the bed belonged to him.

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[1]The five codefendants in this case, Kenneth Sherrill, Lawrence Sherrill, Danny Ellis, LaVeta King, and Casey Scott all entered guilty pleas on March 17, 1998. Lawrence Sherrill and Ellis pled guilty to possession of cocaine with intent to sell while the other three defendants pled guilty to simple possession.

The State impeached the appellant with two prior convictions including a theft of property and an aggravated burglary. The appellant admitted to driving King's car after their relationship had ended. Furthermore, he admitted that he had several girlfriends and would stay with each of them. He stated that he worked for Republic Doors from August until September, however, he was unemployed during the month of October. He related that his mother, uncle, and girlfriends provided financial support for him throughout this period. The appellant stated that he bought the rock of crack cocaine from Lawrence Sherrill and that he and Ellis were going to share it.

After hearing all the evidence, the jury returned a verdict of guilty for possession of cocaine with the intent to sell and fixed appellant's fine at $10,000.

II. SUFFICIENCY OF THE EVIDENCE

The appellant's only challenge on this appeal is the sufficiency of the evidence to sustain a conviction for possession of cocaine greater than .5 grams with the intent to sell. Following a jury conviction, the initial presumption of innocence is removed from the defendant and exchanged for one of guilt, so that on appeal, the defendant has the burden of demonstrating the insufficiency of the evidence. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). It is the duty of this court to affirm the conviction unless the evidence adduced at trial was so deficient that no rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 317, 99 S.Ct. 2781, 2789 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); Tenn. R. App. P. 13(e). In State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1990), this court held this rule is applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence.

This court does not reweigh or reevaluate the evidence, nor may we replace our inferences for those drawn by the trier of fact. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Furthermore, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992), cert. denied, 507 U.S. 954, 113 S.Ct. 1368 (1993).

The appellant argues that the State did not prove that he resided or had any possessory interest in the mobile home of King. Moreover, he contends that the proof was undisputed that he lived with his uncle. He argues that this case is analogous to State v. Cooper, 736 S.W.2d 125 (Tenn. Crim. App. 1987), where the evidence was insufficient to convict the defendant for possession of cocaine with intent to sell when the defendant was only a visitor in the home in which she had a few blouses and a "carryall" bag. Although he does not dispute that he possessed the smaller amount of cocaine in his hand, he argues that his mere association with persons selling drugs does not constitute his guilt of possession with intent to sell. See Cooper, 736 S.W.2d at 128-129.

In order to convict a defendant of possession with intent to sell, the State is required to prove (1) the defendant knowingly possessed cocaine in excess of .5 grams and (2) the defendant's possession was for the purpose of sale. Tenn. Code Ann. § 39-17-417 (a) (4) and (c) (1) (1997). Possession of a controlled substance can be based on either actual or constructive possession. State v. Brown, 823 S.W.2d 576, 579 (Tenn. Crim. App. 1991); Cooper, 736 S.W.2d at 129. To constructively possess a drug, that person must have "the power and intention at a given time to exercise dominion and control over the drugs either directly or through others." Cooper, 736 S.W.2d at 129 (quoting State v. Williams, 623 S.W.2d 121, 125 (Tenn. Crim. App. 1981)). Moreover, possession may be actual or constructive, either alone or jointly with others. State v. Copeland, 677 S.W.2d 471, 476 (Tenn.

Crim. App.), perm. to appeal denied, (Tenn. 1984); Armstrong v. State, 548 S.W.2d 334, 337 (Tenn. Crim. App. 1976), cert. denied, (Tenn. 1977). If one person alone has actual or constructive possession of a thing, possession is sole. State v. Hill, No. 01C01-9707-CC-00444 (Tenn. Crim. App. Sept. 30, 1998). If two or more persons share actual or constructive possession of a thing, possession is joint. Id. A person's mere presence in the area where drugs are discovered does not show possession, and neither will association with the one who is in control of drugs. Cooper, 736 S.W.2d at 129. Pursuant to Tenn. Code Ann. § 39-17-419 (1997), inferences may be drawn of possession with intent to sale from the amount of the controlled substance along with other relevant facts surrounding the arrest.

The record reflects from the appellant's own testimony and his witnesses that he stayed at King's mobile home and that he visited there once or twice a week thereby making him more than the casual "visitor" indicated in *Cooper*. King could not recall whether the men's clothing belonged to the appellant, however, she stated that it was possible. Although the appellant and his witnesses testified that they only arrived there minutes before the police raid, the surveillance of the residence by the officers for four hours prior to the raid revealed no vehicles traveling the access road to King's residence. Therefore, the jury accredited the testimony of the State's witnesses. The record shows that the appellant and King had an ongoing relationship even though they had "broken up." The officer had observed the appellant at King's residence on prior occasions. Although hearsay, the jury heard testimony from the arresting officer that the informant had advised him that he had purchased drugs from the appellant earlier that day at King's residence. Moreover, when the officers executed the warrant, the appellant was the only person in possession of crack cocaine or any money. He was only three feet away from the bed and the closest person to the plate under the bed containing the 22 grams of cocaine. The officer testified that the plate appeared to have been quickly pushed under the bed because some smaller rocks had fallen onto the floor. Additionally,

on the bed near the appellant were several pagers and money scattered about.

Although the evidence in this case is circumstantial, a conviction may rest entirely upon circumstantial evidence. See Duhac v. State, 505 S.W.2d 237, 241 (Tenn. 1974), cert. denied, 419 U.S. 877, 95 S.Ct. 141 (1974); State v. Hailey, 658 S.W.2d 547, 552 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1983). In order for a conviction to stand based on circumstantial evidence alone, the facts must be "so clearly interwoven and connected that the finger of guilt is pointed unerringly at the defendant and the defendant alone." State v. Black, 815 S.W.2d 166, 175 (Tenn. 1991) (citing State v. Duncan, 698 S.W.2d 63 (Tenn. 1985)). The weight to be given circumstantial evidence and "the inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury." Marable v. State, 203 Tenn. 440, 313 S.W.2d 451, 456-57 (1958).

In the case *sub judice*, the evidence points unerringly at the appellant. The jury deservedly accredited him and his witnesses' testimony little weight because the prosecution properly impeached them all with prior convictions. These combined factors and the close proximity of the discovered cocaine to the appellant

constitute sufficient proof to permit a rational juror to infer beyond a reasonable doubt that the appellant possessed the cocaine with intent to sell.

Based upon the foregoing, the judgment of the trial court is affirmed.

DAVID G. HAYES, Judge

CONCUR:

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JOE G. RILEY, Judge

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JOHN EVERETT WILLIAMS, Judge