**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE**

**AT JACKSON**

**DECEMBER 1995 SESSION**

FILED

**February 21, 1996**

**Cecil Crowson, Jr.**
**Appellate Court Clerk**

| | | |
|---|---|---|
| **STATE OF TENNESSEE,** | ) | |
| | ) | **C.C.A. NO. 02C01-9505-CC-00124** |
| Appellee, | ) | |
| | ) | **GIBSON COUNTY** |
| VS. | ) | |
| | ) | **HON. DICK JERMAN, JR. ,** |
| **FREDERICK JEFFERSON,** | ) | **JUDGE** |
| | ) | |
| Appellant. | ) | (Possession of Controlled Substance |
| | ) | in a Penal Institution) |

FOR THE APPELLANT:

**GREGORY D. SMITH**
One Public Square
Suite 321
Clarksville, TN 37040
(Appeal)

**TOM CRIDER**
Public Defender
107 South Court Square
Trenton, TN 38382
(Trial and Appeal)

FOR THE APPELLEE:

**CHARLES W. BURSON**
Attorney General & Reporter

**MICHELLE L. LEHMANN**
Attorney for the State
450 James Robertson Pkwy.
Nashville, TN 37243-0493

**CLAYBURN L. PEEPLES**
District Attorney General

**GARRY BROWN**
Asst. District Attorney General
109 East First St.
Trenton, TN 38382

OPINION FILED:_____

**AFFIRMED**

**JOHN H. PEAY,**
Judge

## O P I N I O N

The defendant was indicted and convicted at a jury trial of the offense of possession of marijuana, a controlled substance, while incarcerated in the Gibson County jail. For this conviction he was sentenced to five years as a Range I standard offender and assessed a fine of one thousand dollars ($1000).

In this appeal as of right, the defendant presents only one issue for review. He contends that the proof was insufficient to support his conviction. Specifically he contends that the State failed to prove, as an element of the offense, that he did not have the express written consent from the chief administrator of the jail to possess this controlled substance. After a review of the evidence in this cause, we find the defendant's issue to be without merit and affirm the action of the trial court.

Proof offered by the State included the testimony of a deputy jailer who testified that he observed the defendant walking across the floor of the day area when he saw what he thought to be a marijuana cigarette fall from a carton of cigarettes carried by the defendant. He, along with another jailer, went immediately to the defendant and confronted the defendant who requested they move to an isolated area to discuss the matter. When they had moved to another area, the defendant handed the deputy jailer two marijuana cigarettes. A search of the defendant's person revealed a third marijuana cigarette concealed in the defendant's underwear. A second deputy jailer testified to the same basic facts.

The defendant offered proof from three inmates who refuted the officer's testimony that the defendant possessed contraband. The jury convicted the defendant

after hearing all the proof.

A defendant challenging the sufficiency of the proof has the burden of illustrating to this Court why the evidence is insufficient to support the verdict returned by the trier of fact in his or her case. This Court will not disturb a verdict of guilt for lack of sufficient evidence unless the facts contained in the record and any inferences which may be drawn from the facts are insufficient, as a matter of law, for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

When an accused challenges the sufficiency of the convicting evidence, we must review the evidence in the light most favorable to the prosecution in determining whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). We do not reweigh or re-evaluate the evidence and are required to afford the State the strongest legitimate view of the proof contained in the record as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of witnesses, the weight and value to be given to the evidence, as well as factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d 832, 835. A guilty verdict rendered by the jury and approved by the trial judge accredits the testimony of the witnesses for the State, and a presumption of guilt replaces the presumption of innocence. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973).

The defendant's complaint in this appeal is that the State failed to introduce any proof as to one essential element of the offense, that is, that the defendant lacked the written consent of the chief administrator of the jail to possess the contraband. We agree with the defendant that this is an essential element of the crime. T.C.A. § 39-16-201(a)(2) provides as follows: "It is unlawful for any person to: [k]nowingly have in his or her possession any of the materials prohibited in subdivision (a)(1) while present in any state, county or municipal institution where prisoners are quartered or under custodial supervision without the express written consent of the chief administrator of the institution." The materials set out in subsection (a)(1) include weapons, ammunition, explosives, intoxicants, legend drugs, or any controlled substances listed in the controlled substance statutes.

Although we agree with the defendant that the State is required to prove that the defendant failed to have the express written consent of the chief administrator of the jail and that the State failed to prove this element by direct evidence, we do not agree that it requires reversal of this conviction. We hold that this element was proved by circumstantial evidence. Circumstantial evidence is proof of collateral facts and circumstances which do not directly prove the fact in issue but from which that fact may be logically inferred. See State v. Thompson, 519 S.W.2d 789, 792 (Tenn. 1975).

Circumstances that prove this essential element consist of the fact that the jailers went immediately to the defendant when they observed what they thought to be an illegal controlled substance, and that the defendant had concealed one marijuana cigarette in his underwear. These acts in and of themselves give rise to a very strong inference that the defendant did not have written permission to possess this contraband. Additionally, we are not aware of any statute that would give the sheriff or chief

administrator of the jail the authority to give legal consent for an inmate to possess a substance that is illegal per se. This "express written consent" provision would in most instances apply to items such as prescription drugs and other items which are not illegal per se. We find that the illegal per se nature of the substance possessed by the defendant, coupled with his and the jailers' words and actions, raise a strong inference that no express written consent existed.

We think the evidence in this case supports the jury verdict and we therefore find no error in the judgment of the trial court.

_____
JOHN H. PEAY, Judge

CONCUR:

_____
GARY R. WADE, Judge

_____
DAVID H. WELLES, Judge