

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs September 3, 2014

STATE OF TENNESSEE v. THOMAS IVY

Appeal from the Circuit Court for Madison County
No. 13-253 Donald H. Allen, Judge

No. W2013-02655-CCA-R3-CD - Filed November 10, 2014

The defendant, Thomas Ivy, was convicted of possession of drug paraphernalia, a Class A misdemeanor, and sentenced to eleven months, twenty-nine days, suspended to probation. On appeal, he argues that the evidence is insufficient to support his conviction. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the Court, in which ROBERT W. WEDEMEYER and ROBERT L. HOLLOWAY, JR., JJ., joined.

Gregory D. Gookin, Assistant Public Defender, for the appellant, Thomas Ivy.

Herbert H. Slatery, III, Attorney General and Reporter; Rachel E. Willis, Senior Counsel; James G. Woodall, District Attorney General; and Shaun Brown, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

On April 1, 2013, the defendant and a co-defendant, Nicholas Sinclair, were indicted for possession of cocaine, possession of marijuana, and possession of drug paraphernalia. Following Sinclair's guilty plea to the possession of marijuana charge, the trial court entered an order of nolle prosequi as to that count, and the defendant proceeded to trial on the two remaining counts. He was convicted of the drug paraphernalia charge, but the jury could not reach a verdict on the possession of cocaine charge, and the trial court declared a mistrial. The cocaine charge was subsequently dismissed.

At trial, Investigator Tikal Greer of the Jackson Police Department Metro Narcotics Unit testified that he and other officers executed a search warrant at 160 Leland Lane on October 5, 2012. The tactical unit forced entry into the residence after no one responded to their “knock and announce” at the door. Officers found the defendant in the bathroom that was connected to the south bedroom and the co-defendant and two other men in the north end of the home. After the four men were searched and secured outside, the canine unit was sent in to make a sweep of the residence. The canine alerted on certain areas of the home, and a search was then conducted. Inside the bedroom where the defendant was located, officers recovered a digital scale containing marijuana residue on top of a television and a gold grinder containing approximately one gram of marijuana on the floor beside the television. Clothes, mail, and other property belonging to the defendant were also found in the same bedroom. Investigator Greer acknowledged that no contraband was found on the defendant’s person.

Officers also searched a tan-colored Cadillac parked in the driveway of the residence, after the canine alerted to the vehicle. Investigator Greer found a white powdery substance inside a small pocket behind the driver’s seat and a plastic baggie containing a white powdery substance on the floor. He was unable to determine the owner of the car because when he ran the tags and VIN number, it came back as unregistered. The keys to the vehicle were found in the bedroom where the defendant had been located. The defendant said the vehicle belonged to his sister. The vehicle was seized and, at a subsequent seizure hearing, the defendant paid \$1500 to get the vehicle back.

Special Agent Forensic Scientist Brock Sain of the Tennessee Bureau of Investigation (“TBI”) testified that he analyzed the two substances submitted to him in the case. The white powdery substance in the plastic baggie tested positive for cocaine and weighed .05 grams, but the second substance did not contain cocaine.

Testifying for the defendant, Nickey Manning, the co-defendant’s sister and the defendant’s girlfriend, said that she lived at the residence where the search warrant was executed but denied that the defendant lived there, saying he “was in and out” of the house while she and her husband were “on a break.” She said that in 2012 her seventeen-year-old son was charged with possession of marijuana in juvenile court. A couple of months after that but before the search warrant was executed at her home, she took a scale and a grinder away from her son and placed them on the dresser beside her television. Asked why she did not throw the items away, Manning replied, “I don’t know. . . . I just left it there.”

On cross-examination, Manning denied that the defendant kept his clothes in her bedroom, saying that the men’s clothing in her closet belonged to her son. She acknowledged that the defendant stayed at her home the night before the search warrant was

executed and was still there when she left for work early the next morning.

ANALYSIS

The defendant challenges the sufficiency of the convicting evidence, arguing that he “was merely present at a location where illegal drug paraphernalia was found.” In considering this issue, we apply the rule that where sufficiency of the convicting evidence is challenged, the relevant question of the reviewing court is “whether, after viewing the evidence in the light most favorable to the prosecution, *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 (1979); see also Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “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 .” State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)). “A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

To sustain the conviction for possession of drug paraphernalia, the State had to prove beyond a reasonable doubt that the defendant possessed with intent to use drug paraphernalia “to plant, propagate, . . . test, analyze, pack, repack, store, contain, . . . or otherwise introduce

into the human body a controlled substance[.]” Tenn. Code Ann. § 39-17-425(a)(1). Possession may be constructive as well as actual. State v. Shaw, 37 S.W.3d 900, 903 (Tenn. 2001). “Constructive possession requires that a person knowingly have the power and the intention at a given time to exercise dominion and control over an object, either directly or through others. In essence, constructive possession is the ability to reduce an object to actual possession.” State v. Copeland, 677 S.W.2d 471, 476 (Tenn. Crim. App. 1984).

In the light most favorable to the State, the proof established that when the police executed the search warrant, the defendant was located in the bathroom connected to the bedroom where a digital scale containing marijuana residue and a grinder containing approximately one gram of marijuana were found. Investigator Greer testified that clothes, mail, and other property belonging to the defendant were also found in the same bedroom. Nickey Manning, the defendant’s girlfriend, testified that the defendant was “in and out” of her home and had stayed at her home the night before the search warrant was executed. From this evidence, we conclude that a jury could reasonably determine that the defendant was in constructive possession of the drug paraphernalia and not merely present at a location where contraband was found.

CONCLUSION

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

ALAN E. GLENN, JUDGE