

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
August 6, 2013 Session

**STATE OF TENNESSEE v. BENNY LEE TAYLOR, JR.**

**Direct Appeal from the Circuit Court for Tipton County  
No. 7207 Joseph H. Walker, Judge**

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**No. W2012-02444-CCA-R3-CD - Filed November 1, 2013**

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A Tipton County Grand Jury returned an indictment against Defendant, Benny Lee Taylor, Jr. In Count 1, he was charged with possession of a schedule II drug, cocaine, less than .5 grams with intent to deliver, and in Count 2, he was charged with introduction of contraband (the cocaine) into a penal facility. After a jury trial, Defendant was found guilty of the lesser included offense of simple possession in Count 1 and guilty as charged in Count 2. Count 1 was merged into Count 2. He was sentenced to six years, with 180 days to serve before serving the remainder of his sentence on community corrections, to be served consecutively to a previous sentence for which he was on parole at the time of the offense which is the subject of this appeal. Defendant argues that the evidence was insufficient to support his conviction for introduction of contraband into a penal facility. After a thorough review, we affirm the judgment of the trial court.

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

THOMAS T. WOODALL, J., delivered the opinion of the Court, in which JOHN EVERETT WILLIAMS and CAMILLE R. MCMULLEN, JJ., joined.

Gary F. Antrican, District Public Defender; David S. Stockton, Assistant Public Defender, Somerville, Tennessee, for the appellant, Benny Lee Taylor, Jr.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; D. Michael Dunavant, District Attorney General; and Jason Poyner, Assistant District Attorney General, for the appellee, the State of Tennessee.

## OPINION

### I. Background

On February 14, 2011, Deputy Sheriff Demario Avery, with the Tipton County Sheriff's Office, was on patrol. He saw Defendant driving a maroon vehicle and noticed that Defendant was not wearing a seatbelt. Deputy Avery stopped Defendant based on the seatbelt violation and checked his driver's license. The dispatcher informed Deputy Avery that there was an outstanding warrant for Defendant's arrest. Deputy Avery placed Defendant under arrest. Deputy Avery conducted a pat down of Defendant's person and asked Defendant if he had any illegal contraband. Defendant denied having anything illegal. Deputy Avery also searched Defendant's vehicle and found no illegal substances. Deputy Avery transported Defendant to jail.

Deputy Avery testified that when an individual arrives at the jail, there are two large signs at the fence and on the actual building informing defendants that illegal contraband is not allowed inside the facility. Corporal Russell Butler, who worked as an officer at the jail, corroborated the fact that the signs were present in the two locations and that they expressly stated that illegal contraband including drugs, were prohibited in the jail. In addition, Deputy Avery stated that he repeatedly asked Defendant if he was in possession of illegal contraband on the way to the jail. Defendant continually denied having illegal contraband.

Defendant was taken to be booked in the jail by Corporal Butler. Corporal Butler noticed Defendant "messing with the elastic in his pants." When he asked Defendant about it, Defendant replied that the elastic was "messed up." Corporal Butler began to inventory Defendant's property. As he was completing the inventory, he noticed Defendant stick his hand over a milk crate nearby and drop something. Corporal Butler retrieved the object which turned out to be a plastic bag containing what appeared to be two crack cocaine rocks. These rocks were later tested by the Tennessee Bureau of Investigation ("TBI"). The outcome of the testing was that the two rocks contained cocaine and weighed .39 grams.

### II. Analysis

#### *A. Untimely Notice of Appeal*

Before we address the merits of the case, we must determine whether to hear Defendant's appeal as he did not timely file his notice of appeal. The trial court entered its judgment of conviction on September 11, 2012. On November 1, 2012, the Defendant filed a "Motion to Allow Late Filed Motion for New Trial. *See* Tenn. R. Crim. P. 33(b) (providing that "[a] motion for a new trial shall be in writing . . . within thirty days of the date the order

of sentence is entered”). The trial court filed an order denying the motion for new trial on November 5, 2012. However, the trial court had no jurisdiction to hear Defendant’s untimely motion for a new trial, and the order issued denying a new trial was a nullity. *State v. Martin*, 940 S.W.2d 567, 569 (Tenn. 1997); *State v. Stephens*, 264 S.W.3d 719, 728 (Tenn. Crim. App. 2007).

Defendant filed his notice of appeal on November 14, 2012. Defendant’s notice of appeal was untimely because the untimely motion for a new trial did not toll the thirty-day filing period for a notice of appeal. *See* Tenn. R. App. P. 4(c). The thirty-day period specified in Rule 4(a) of the Tennessee Rules of Appellate Procedure for filing a notice of appeal began to run on September 11, 2012, when the trial court entered Defendant’s judgment of conviction, and the period ended on October 10, 2012. Tenn. R. App. P. 4(a). If a motion for new trial is not timely filed following a jury trial, all issues predicated upon error as a result of “action committed or occurring during the trial of the case, or other ground upon which a new trial is sought” are waived. Tenn. R. App. P. 3(e).

Unlike the untimely filing of Defendant’s motion for new trial, however, this Court does have authority to waive the untimely filing of Defendant’s notice of appeal “in the interest of justice.” In this case, we waive the timely filing of the notice of appeal in the interest of justice since the only issue raised by Defendant in this case is the sufficiency of the evidence, which is an issue that does not need to be presented in a motion for new trial in order to be heard on appeal. *See State v. Boxley*, 76 S.W.3d 381, 390 (Tenn. Crim. App. 2001).

#### *A. Sufficiency of the Evidence*

Defendant argues that the evidence presented at trial was insufficient to support his conviction for felony evading arrest. We disagree.

When an accused challenges the sufficiency of the convicting evidence, our standard of review is whether, after reviewing the evidence in a 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). The trier of fact, not this Court, resolves questions concerning the credibility of the witnesses, and the weight and value to be given the evidence as well as all factual issues raised by the evidence. *State v. Tuttle*, 914 S.W.2d 926, 932 (Tenn. Crim. App. 1995). Nor may this Court reweigh or reevaluate the evidence. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). On appeal, the State is entitled to the strongest legitimate view of the evidence and all inferences therefrom. *Id.* Because a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused 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). “[D]irect and circumstantial evidence should be treated the same when weighing the sufficiency of [the] evidence.” *State v. Dorantes*, 331 S.W.3d 370, 381 (Tenn. 2011).

Defendant was indicted for the offense of introduction of contraband into a penal facility, found at Tennessee Code Annotated section 39-16-201(b)(1), which states the following:

(b) It is unlawful for any person to:

(1) Knowingly and with unlawful intent take, send or otherwise cause to be taken into any penal institution where prisoners are quartered or under custodial supervision any weapons, ammunition, explosives, intoxicants, legend drugs, or any controlled substances or controlled substance analogues found in chapter 17, part 4 of this title . . . .

Defendant argues that he did not knowingly introduce the cocaine into the jail because “he had little choice but to enter the premise” and that “[h]is intent did not come into play at all with regard to his entry upon the grounds.” In other words, Defendant argues that because he did not intend to willingly enter the jail and bring the contraband into the jail, he did not act “knowingly” and with “unlawful intent.”

We disagree. Under Tennessee Code Annotated section 39-11-106(a)(20), the term “knowing” is defined as:

“Knowing” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result . . . .

The evidence, as viewed in a light most favorable to the State, shows that Deputy Avery repeatedly asked Defendant if he had any illegal contraband on his person. As Defendant and Deputy Avery arrived at the jail, there were two plainly visible signs which stated that contraband, including drugs, was prohibited in the Tipton County jail. Corporal Butler testified that he noticed Defendant “messing with” his pants and saw Defendant drop the plastic bag containing cocaine into a milk crate. It is clear that Defendant knew that he was in possession of cocaine, he knew that he was being transported to the jail, he had an opportunity to turn it over to Deputy Avery prior to entering the jail but did not, and he

attempted to hide it at the time he was being processed at the jail. Furthermore, he was driven past two large signs that specifically stated that illegal drugs were not allowed in the jail. There is ample evidence to show that he “knowingly” introduced contraband into the jail. The jury could rationally infer from the evidence that Defendant did not want to surrender the cocaine prior to entering the jail because he did not want to be charged with any cocaine offense. Therefore, it could be inferred that Defendant took the cocaine inside the jail with the intent to dispose of it there without ever being detected in possession of the drug. The evidence, therefore, was sufficient to support the conviction for introduction of contraband into a penal facility. Defendant is not entitled to relief on this issue.

Accordingly, we affirm the judgment of the trial court.

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THOMAS T. WOODALL, JUDGE