

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TIMOTHY DAMPEER

APPELLANT

VS.

FILED

NO. 2007-KA-1901-COA

MAR 14 2008

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JUDICIAL COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of Simpson County indicted Timothy Dampeer for possession of cocaine, as a habitual offender in violation of *Miss. Code Ann.* §§ 41-29-139 & 99-19-81. (R.2) After a trial by jury, Judge Robert Evans presiding, the jury found Dampeer guilty. (R.42) Subsequently, the State put on proof and the trial court found Dampeer to be a habitual offender within the meaning of the statute. The court sentenced Dampeer to four years in the custody of the Mississippi Department of Corrections. (R.43). After denial of a motion for judgment notwithstanding the verdict, Dampeer filed this appeal raising the following issue.

**WHETHER THE TRIAL COURT SHOULD HAVE DIRECTED A VERDICT
OF ACQUITTAL OR JNOV?**

Seghini testified no other people were in Dampeer's vicinity other than the people in the vehicle. " The other people were further down the street. Drugs were found in different areas." (T. 49).

Dorothy Norwood, Dampeer's cousin, testified she was in her car when the police rushed in from all directions and the people ran. Norwood further testified she had no knowledge of Dampeer having any drugs on him that night. On cross examination, Norwood admitted that Dampeer was unemployed at the time of his arrest. (T. 83). Officer Seghini testified he found approximately \$1280 in Dampeer's pocket after his arrest. (T. 47).

SUMMARY OF ARGUMENT

THE TRIAL COURT DID NOT ERR IN REFUSING DAMPEER'S MOTION FOR A DIRECTED VERDICT AND JUDGMENT NOTWITHSTANDING THE VERDICT.

Dampeer's claim that the evidence was insufficient to support a conviction for possession of cocaine is without merit. The record was sufficient to support a finding of guilt and the trial court properly denied Dampeer's motion for a directed verdict and judgement notwithstanding the verdict.

ARGUMENT

The trial court was correct in denying Dampeer's motion for directed verdict and motion for judgment notwithstanding the verdict (JNOV). A motion for a directed verdict or JNOV tests the legal sufficiency of the State's evidence and the standard of review of each is essentially the same. *Ellis v. State*, 778 So.2d 114, 117 (¶2) (Miss.2000) *Mosley v. State*, 832 So.2d 589, 592 (Miss. App. 2002).

When considering whether the evidence is sufficient to sustain a conviction in the face of a directed verdict, the relevant question is "whether, after viewing the evidence in the light most favorable to the State; any rational jury could have found the essential elements of the crime beyond a reasonable doubt." *Bush v. State*, 895 So.2d 836, 843 (Miss. 2005) (citing *Jackson v. Virginia*, 443 US 307, 315 (1979)).

On review, all evidence supporting the verdict must be accepted as true, and the State must be given the benefit of all reasonable inferences that could be drawn from the evidence. *Bell v. State*, 910 So.2d 640, 646 (Miss. App. 2005). If under this standard, sufficient evidence to support the jury's verdict of guilty exists, the motion for a directed verdict or JNOV should be overruled. *Brown v. State*, 556 So.2d 338 (Miss. 1990), *Davis v. State*, 530 So.2d 694 (Miss. 1988). A finding that evidence is insufficient results in a discharge of the defendant. *May v. State*, 460 So.2d 778, 781

(Miss. 1984).

Where a defendant has made post-trial motions assailing the sufficiency of the evidence, "...the trial court must consider all of the evidence - not just the evidence which supports the State's case - in the light most favorable to the State." *Winters v. State*, 473 So.2d 452, 459 (Miss.1985). See also *McClain v. State*, 623 So.2d 744 (Miss. 1993). This includes the defendant's evidence, if any, which must be construed in a light most favorable to the prosecution's theory of the case. The standard of review for denial of a JNOV which challenges the sufficiency and weight of the evidence supporting the verdict is abuse of discretion by the trial court. All evidence favorable to the State is accepted as true. *Tran v. State*, 785 So2d 1112, 1116(¶8) (Miss. Ct. App.2001). The State's evidence was sufficient to find Dampeer guilty beyond a reasonable doubt.

Timothy Dampeer was charged with possession of a controlled substance under Mississippi Code Annotated § 41-29-139. The jury was required to examine all of the evidence and determine whether the pill bottle containing cocaine was, in fact, in Dampeer's possession. The evidence produced at trial was plainly sufficient to convict Timothy Dampeer of possession of cocaine, and a rational juror could have been convinced beyond a reasonable doubt that he was guilty.

Dampeer claims the prosecution did not present sufficient evidence to support his conviction beyond a reasonable doubt. In support of his argument, Dampeer cites a line of cases where the defendant was acquitted due to insufficient evidence of the defendant's exclusive possession and control of the illegal narcotics. When the premises upon which contraband is found is not in the exclusive possession of the defendant, the prosecution must provide evidence connecting him with the contraband. See *Sisk v. State*, 290 So2d 608 (Miss.1974). In the case *sub judice*, the evidence was provided by the testimony of Officer Seghini that he saw where Dampeer threw down the pill bottle in the yard and retrieved it from the same location. No evidence was submitted that other

drugs were recovered at that specific location. Seghini testified “ that the other drugs found were in different parts of the area.” (T. 51). Hall testified the “officers was all over the ditch collecting...drugs and stuff that people supposedly had thrown.” (T. 80).

Dampeer relies heavily on *Griffin v. State*, 859So.2d 1032, which is very similar in facts to the case before us and actually is more favorable to the State. In *Griffin*, this court held there was sufficient evidence to support a conviction for possession of cocaine. The police officer who chased Griffin and saw him drop something, testified that he did not lose sight of Griffin during a chase. The officer saw the exact location where Griffin dropped something, and returned to that site, which had been recently mowed. He found a matchbox that Griffin had thrown. The officer found no other items on the ground near the matchbox. There was also testimony to prove that substance in the matchbox was cocaine.

Dampeer asserts that there is nothing to “actually and specifically connect Dampeer to the cocaine found in the ditch.” However, Officer Seghini was quite sure he saw Dampeer throw the subject pill bottle down at the edge of the street in a lighted yard of a house, not a dark ditch, and testified as follows:

“... asked him to stop. At that time, I noticed him throw a pill bottle down. I looked where the pill bottle was and proceeded after him. When we got to a drainage ditch, he ran down the drainage ditch and I followed after him, telling him to stop. He finally stopped. I put him in handcuffs, brought him back to my patrol car, and then went back to where I knew he threw the pill bottle down and retrieved the pill bottle that contained what I believed to be crack cocaine rocks in a pill bottle.” (T 47).

Again, Dampeer submitted no evidence that places any other drugs at or in close proximity to the pill bottle in the yard.. On cross examination, Officer Seghini further testified:

- Q. Okay. Did you find any drugs on him?
- A. No sir, I did not.
- Q. Okay. Was there any drugs found in the yard wherever you were at?
- A. Yes, sir.
- Q. Now, you chased him and you think you saw him throw a pill bottle down.

- A. No, sir. **I know I saw him throw a pill bottle down.**
Q. Was it dark down this alley?
A. Yes, sir, the alley was. The house was not.
Q. So you're saying that he threw this pill bottle down. And you came back, what 10, 15 minutes later to get it?
A. No, sir. Long enough for me to catch him, put him in handcuffs, bring him to my patrol car and come back to where I'd already seen him throw it down.
Q. How far ahead of you was he?
A. He wasn't – from me to you ahead of me. (T.50).

Shanda Hall, Dampeer's girlfriend, testified "And the other officers was all over the ditch collecting, they said evidence, drugs and stuff that people supposedly had thrown. I don't know who threw any drugs. I know I didn't have any. I didn't throw any and I didn't see anybody with any drugs or throw any drugs." (T. 80).

Officer Seghini's testimony was sufficient to prove that Dampeer had the pill bottle containing cocaine in his possession as he ran away. His testimony was also sufficient to prove that as Dampeer ran away, he threw the pill bottle in a yard at the edge of the street not the ditch. Further, Seghini gave sufficient evidence to support the finding that he picked up the pill bottle at the same location he saw Dampeer throw it down. Officer Seghini testified that no other drugs were recovered in the location where the pill bottle was thrown down, but "In different parts of the area." (T. 51). No evidence was submitted that any other drugs were recovered at the location of the pill bottle.

Finally, the testimony of the Mississippi Crime Laboratory forensic analyst was sufficient to prove that the substance in the pill bottle was cocaine.

Judging these facts most favorable to the State, a reasonable juror could infer that Dampeer was guilty beyond a reasonable doubt. The weight of the evidence against Dampeer demonstrates that sufficient proof was offered by the State for the jury to find Dampeer guilty of possession of cocaine pursuant to Mississippi Code Annotated § 41-29-139.

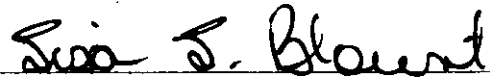
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the jury verdict and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lisa L. Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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