Cite as 2011 Ark. App. 418

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 11-105

	Opinion Delivered June 1, 2011
CHARLES E. LOVETT APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. CR2007-154-5]
V.	HONORABLE JODI RAINES DENNIS, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

DOUG MARTIN, Judge

Following the execution of a search warrant at his home in Pine Bluff, appellant Charles Lovett was charged with one count of possession of a controlled substance (cocaine) with intent to deliver, one count of possession of marijuana, and one count of possession of drug paraphernalia. A Jefferson County jury acquitted Lovett of the charges of possession of marijuana and possession of drug paraphernalia; he was convicted, however, of possession of cocaine with intent to deliver[1] and sentenced to twenty years' imprisonment. Lovett filed a timely notice of appeal and argues as his sole point on appeal that the evidence was insufficient to convict him of possession of cocaine with intent to deliver. We affirm.

[1] The verdict form reflected that the jury found that Lovett possessed at least 28 grams but less than 200 grams of cocaine.

The test for determining sufficiency of the evidence is whether substantial evidence supports the verdict. *Cherry v. State*, 80 Ark. App. 222, 226, 95 S.W.3d 5, 8 (2003); *Hatley v. State*, 68 Ark. App. 209, 213, 5 S.W.3d 86, 88 (1999). Evidence is substantial when it is forceful enough to compel a conclusion and goes beyond mere speculation or conjecture. *Wortham v. State*, 65 Ark. App. 81, 82, 985 S.W.2d 329, 329 (1999). Circumstantial evidence can be sufficient to sustain a conviction when it excludes every other reasonable hypothesis consistent with innocence. *Mace v. State*, 328 Ark. 536, 539, 944 S.W.2d 830, 832 (1997). The question of whether the circumstantial evidence excludes every hypothesis consistent with innocence is for the jury to decide. *Ross v. State*, 346 Ark. 225, 230, 57 S.W.3d 152, 156 (2001).

Arkansas Code Annotated section 5-64-401 (Repl. 2006) provides that it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. Although intent can seldom be proved by direct evidence and must be inferred from facts and circumstances, a jury may consider possession, along with any other pertinent fact, in determining whether a defendant possessed the specific intent to sell or deliver a controlled substance. *Thomason v. State*, 91 Ark. App. 120, 130–31, 208 S.W.3d 830, 832 (2005).

On January 26, 2007, officers from the Pine Bluff Police Department executed a search warrant at Lovett's home at 1406 Boston Drive.[2] Sergeant John Zuber assisted in executing the warrant. During the course of the search, Zuber discovered a laundry basket in a hall closet. In the laundry basket, along with some documents bearing Lovett's name, Zuber found a plastic bag that contained two smaller plastic bags. One of the smaller bags contained an off-white rock substance that was later determined to be crack cocaine, and the other smaller bag contained a white powdery substance that subsequent testing showed to be powder cocaine. The total weight of the drugs was approximately 43.9 gross grams.

Major Lafayette Woods of the Tri-County Drug Task Force testified that he was the case agent responsible for the organization of the Lovett case and the execution of the search warrant. After the house was secured and Lovett was taken into custody, Woods conducted an interview with Lovett. Woods testified without objection that, during the interview, Lovett admitted ownership of the items found in the residence. Lovett told Woods that he had not had a job since the late 1980s after suffering a work-related injury. When his benefits were cut off, Lovett said that he started selling cocaine and crack cocaine to supplement his income. Lovett told Woods that he had a supplier in Texas and had just purchased the drugs

[2] The State introduced a substantial amount of evidence showing that Lovett resided at this address, including utility bills and rent statements. Lovett does not argue on appeal that the State failed to prove that the house that was the subject of the search warrant was his residence.

that were found in his house. Lovett also explained that he usually did not sell from his house but would instead meet people interested in buying from him in a grocery store parking lot.

Lovett argues on appeal that the evidence failed to prove that he possessed the cocaine found in the laundry basket, focusing entirely on whether he constructively possessed the drugs. He notes that there was testimony that at least three other people lived in the same house, and he thus contends that there was no proof that he ever exercised dominion or control over the contraband, as is required to prove a case of constructive possession. *See, e.g.*, *Johns v. State*, 2011 Ark. App. 217, ___ S.W.3d ___.

The evidence in this case, however, was clear that Lovett was in *actual* possession of the cocaine, rendering his discussion of constructive possession irrelevant. Although Lovett complains that his confession was never entered into evidence and its "veracity . . . is highly questionable because [Woods testified that the audiotape of the confession] was inaudible" and impossible to transcribe, the supreme court has held that, when an officer testifies without objection as to what a defendant has told the police, the testimony is properly admitted. *Gamble v. State*, 351 Ark. 541, 551, 95 S.W.3d 755, 761–62 (2003). Woods's testimony that Lovett confessed to him that the cocaine was his and that he intended to sell it is direct evidence of Lovett's guilt of the offense of possession of cocaine with intent to deliver. *See id*. at 546, 95 S.W.3d at 758 (holding that "direct evidence is evidence that proves a fact without resort to inference, when for example, it is proved by witnesses who testify to what they saw, heard, or experienced"). Accordingly, the circuit court did not err

in denying Lovett's motion for directed verdict, and his conviction and sentence are thus affirmed.

Affirmed.

ROBBINS and BROWN, JJ., agree.