

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR09-1136

MELVIN MARLTON BROWN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered April 7, 2010

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT,
[NO. CR-08-188-3]

HONORABLE EDWIN A. KEATON,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Melvin Brown was convicted by a Ouachita County jury of four offenses: (1) possession of a controlled substance, crack cocaine, with the intent to deliver, (2) maintaining a drug premises, (3) simultaneous possession of drugs and firearm, and (4) possession of firearm by certain persons. He was sentenced to sixty years in the Arkansas Department of Correction. On appeal, Brown contends that the trial court erred in denying his motion for a directed verdict.¹ We affirm.

Brown's jury trial took place on June 25, 2009. Agent Spells of the 13th District Drug Task Force, testified that on August 1, 2008, he obtained a search warrant to search Brown's

¹Brown only appeals his conviction for possession of a controlled substance, crack cocaine, with intent to deliver.

home. The officers entered Brown's home and found Brown in the northwest bedroom. In the bedroom with Brown, the officers found crack cocaine and a firearm. According to the crime lab analysis the total weight of the crack cocaine was 6.8653 grams. The crack cocaine was inside a white pill bottle packaged in two small baggies.

Patricia Brown, Brown's wife, testified that she was familiar with the firearm that was in the house. She said that it was there for her protection because Brown was always away for work. Patricia testified that she was present at the time of the search but was not living in the home. She and Brown were having problems and were separated at the time. Patricia stated that part of the reason they were separated was because of Brown's addiction to crack cocaine. She said that Brown has had a drug problem for fifteen years.

Natoyia Green, Brown's step-daughter, testified that she has known Brown for about fifteen years. Green stated that she has seen Brown use crack cocaine only once in the fifteen years that she has known him.

At the close of the evidence, the defense moved for a directed verdict on the basis that the State failed to prove Brown possessed cocaine with the intent to deliver. The court denied the motion and Brown was sentenced to sixty years in the Arkansas Department of Correction. Brown filed a timely appeal.

On appeal, Brown argues that the State's evidence does not support his conviction of possession of cocaine with the intent to deliver. He further argues that the testimony of his wife and step-daughter established that he had an addiction to crack cocaine and possessed the cocaine for his personal use.

When a defendant makes a challenge to the sufficiency of the evidence on appeal, we view the evidence in the light most favorable to the State.² The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial.³ Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture.⁴ Only evidence supporting the verdict will be considered, and the conviction will be affirmed if there is substantial evidence to support it.⁵ Circumstantial evidence may constitute sufficient evidence to support a conviction, but it must exclude every other reasonable hypothesis other than the guilt of the accused.⁶ The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the jury to decide.⁷

Arkansas Code Annotated § 5-64-401(d) (Supp. 2009) creates a statutory presumption that the possession of more than one gram of cocaine demonstrates an intent to deliver. In the present case, Agent Spells testified that over six grams of cocaine were found at Brown's residence inside a white pill bottle packaged in two small baggies. Brown possessed an amount of crack cocaine in excess of the presumptive one gram, and he failed to rebut that presumption at the trial court level.

Patricia Brown testified that the appellant had a strong addiction to crack cocaine and

²*Baughman v. State*, 353 Ark. 1, 4, 110 S.W.3d 740, 742 (2003).

³*Id.*

⁴*Id.*

⁵*Id.*

⁶*Whitt v. State*, 365 Ark. 580, 581, 232 S.W.3d 459, 461 (2006).

⁷*Id.*

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that is why it was in his possession. However, Agent Spells testified that officers found no crack pipes or any other drug paraphernalia at Brown's house. Additionally, Brown's step-daughter testified that in fifteen years she has only seen Brown use crack cocaine once.

The State presented substantial evidence that Brown possessed the crack cocaine with the intent to deliver. Although Brown presented the testimony of his wife and step-daughter, he failed to rebut the statutory presumption. Substantial evidence supports Brown's conviction and we affirm.

Affirmed.

VAUGHT, C.J., agrees.

PITTMAN, J., concurs.