IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL 1996 SESSION

FILED

May 24, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)
	) C.C.A. No. 02C01-9505-CC-00125
Appellee,	)
	) Madison County
V.	)
	) Hon. Lloyd Tatum, Judge
	)
GREGORY LYNN MCFADDEN,	) (Felonious Possession of Cocaine;
	) Possession of Marijuana; & Possession
Appellant.	) of Drug Paraphernalia)
	)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

O P I N I O N

The appellant, Gregory Lynn McFadden, was convicted by a jury of two counts of felonious possession of cocaine and one count each of possession of marijuana and drug paraphernalia. In this appeal, he raises two issues for review: (1) whether the evidence is sufficient to support the verdict, and (2) whether the trial court should have granted a mistrial due to the state's alleged failure to furnish exculpatory evidence to the defense. We affirm the convictions.

The testimony at trial revealed that Captain Coleman, Lieutenant Caldwell and Investigator Holland of the 26th Drug Task Force were working the day shift in the Parkview Courts area of Jackson. This area of town was patrolled frequently due to numerous complaints of "open-air" drug sales and the number of violent crimes occurring in that area. Coleman and the other officers, watching from an unmarked vehicle, saw a man standing beside a Toyota Tercel. The subject was extending his hand and holding what appeared to be money. Someone inside the Tercel extended his hand toward the subject as if to make an exchange.

As the officers edged closer, the subject standing beside the Tercel spotted them, looked back into the car and said something to the men in the car. He immediately straightened up and tried to hide the money in his hand. He then walked back towards his own vehicle. The officers accelerated and stopped the Tercel.

Lt. Caldwell pursued the subject who had walked away. He conducted a patdown search which revealed a twenty dollar bill but no drugs. The subject was interviewed while a warrant check was run on him. Caldwell asked him if he was there to buy or sell dope. At a jury-out hearing, Caldwell said that the subject responded that he did not know what Caldwell was talking about. Finding no reason to hold him, Officer Caldwell allowed him to leave. No record

or statement was taken of the conversation between Caldwell and the subject. Caldwell testified at trial that he did not remember the subject's name.

Captain Coleman approached the vehicle and asked the driver, Herman James, to step out. Coleman said there had been a lot of movement in the vehicle as he approached. The other occupants were John James, who was seated in the front passenger's side and the appellant, who occupied the back seat. When the car door opened, Coleman immediately saw two baggies and a crack pipe situated beside the passenger's seat. Coleman also saw a larger bag containing a chunky white substance and a bag of plant material. Both bags were tied. None of the subjects had drugs on them.

After placing the three individuals under arrest, Coleman looked further in the back floorboard near where the appellant had been sitting. There he found the torn corner of a baggie containing two smaller chunks of crack cocaine. A crack pipe was found on appellant's person following a patdown search. Approximately thirty dollars was also found inside the vehicle, including a twenty dollar bill on Herman James and another ten dollars on the dash board. Both field and laboratory tests confirmed that the substances were crack cocaine and marijuana.

John James testified that he and co-defendant Herman James were going to town to purchase kerosene. James said that at some point along the way they had stopped and picked up the appellant, who was walking down the street. He said appellant wanted a ride out into the country to his mother's home. They had stopped in Parkview Courts to visit their niece's house, though none of them knew the apartment number. None of the Tercel's occupants lived in Parkview Courts. James said that they had just pulled into Parkview Courts when they were approached by a guy they called Peewee. Peewee said something to Herman James, the driver, and walked back to his vehicle. At that time the

undercover officers pulled in behind them. James said that he did not know how the drugs got there and that he "didn't see no dope."

I

In appellant's first issue, he claims that the evidence was insufficient to support his convictions. In a sufficiency of the evidence challenge, the relevant question on appellate review 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 or crimes beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979); State v. Duncan, 698 S.W.2d 63 (Tenn. 1985); T.R.A.P. 13(e).

In Tennessee, great weight is given to the result reached by the jury in a criminal trial. A jury verdict accredits the testimony of the state's witnesses and resolves all conflicts in favor of the state. State v. Williams, 657 S.W.2d 405 (Tenn. 1983). Moreover, a guilty verdict replaces the presumption of innocence enjoyed at trial with the presumption of guilt on appeal. State v. Grace, 493 S.W.2d 474 (Tenn. 1973). The appellant has the burden of overcoming the presumption of guilt. Id. On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832 (Tenn. 1978).

Though the appellant makes a general sufficiency claim, his only specific attack is to the conviction for possession of cocaine with intent to sell. He argues that the proof established, at most, simple possession rather than an intent to sell. We disagree. The testimony indicated that a bag of cocaine and marijuana were found between the seats closest to the passenger's side of the car. However, in the backseat floorboard, on the side occupied by the appellant, Captain Coleman found the corner of a baggie containing two small rocks of crack cocaine. Further, the officers observed an apparent attempted exchange

of something with a man called Peewee. Although the officers' arrival likely interrupted the exchange, it was reasonable for the jury to infer that Peewee was attempting to make a purchase. Further, because the small baggie portion was found in the backseat floorboard, it was reasonable for the jury to conclude that appellant was going to make a sale to Peewee. This issue is without merit.

II

Appellant's final issue is that the trial court should have granted a mistrial due to the state's alleged failure to produce exculpatory evidence. This issue was not raised in the motion for a new trial. The appellant argues that this Court should review it as plain error pursuant to Tenn. R. Crim. P. 52(b). The alleged error, however, does not give rise to plain error review because a clear and unequivocal rule of law has not been breached. See State v. Adkisson, 899 S.W.2d 626 (Tenn. Crim. App. 1994). Furthermore, the proof does not support the appellant's claim that the evidence in question was exculpatory.

The appellant complains that the name of the subject and his comments to Lieutenant Caldwell were exculpatory evidence. He insists that because this information was not turned over to him, the trial judge should have granted a mistrial. The motion for a mistrial followed Caldwell's testimony during a jury-out hearing. Caldwell indicated that he had asked the subject, Peewee, if he was attempting to buy or sell drugs. Peewee responded that he did not know what Caldwell was talking about. The trial judge overruled the motion for a mistrial.

The appellant argues that the motion should have been granted because this information was exculpatory. We disagree. It is well established that the prosecutor has the duty to furnish exculpatory evidence to the defendant. Brady v. Maryland, 373 U.S. 83 (1963). However, "[t]he duty does not extend to information that the defense already possesses or is able to obtain...." Wooden v. State, 898 S.W.2d 752, 755 (Tenn. Crim. App. 1994). Lieutenant Caldwell

could not recall the subject's name. He had made no record of the discussion between the subject and himself because the records check was clean. Obviously, nothing in the conversation was deemed useful by Caldwell. At the joint trial of the three codefendants, codefendant John James testified that the man's name was "Peewee." Because the identity was known to the appellant, the state did not suppress this information. Had the appellant felt that Peewee would have been an important witness, he, better than the state, knew where to contact Peewee. This claim has no merit.

The judgment of the trial court is affirmed.

PAUL G. SUMMERS, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

JERRY L. SMITH, Judge