IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs December 6, 2022

# STATE OF TENNESSEE v. TEDRICK DAWNE[1] HUGHES

**Appeal from the Circuit Court for Madison County**
**No. 20-77-B Roy B. Morgan, Jr., Judge**

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**No. W2022-00571-CCA-R3-CD**

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The Defendant, Tedrick Dawne Hughes, was convicted of possession of more than one-half gram of marijuana with intent to sell, possession of more than one-half gram of marijuana with intent to deliver, tampering with evidence, and simple possession of methamphetamine, for which he received an effective five-year sentence of confinement. On appeal, the Defendant contends that the evidence was insufficient to sustain his convictions for possession of more than one-half gram of marijuana with intent to sell, possession of more than one-half gram of marijuana with intent to deliver, and tampering with evidence. We affirm the trial court's judgments.

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

KYLE A. HIXSON, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and JOHN W. CAMPBELL, SR., JJ., joined.

Steven Luther West (on appeal), Huntingdon, Tennessee, and Bill Milam (at trial), Jackson, Tennessee, for the appellant, Tedrick Dawne Hughes.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Lee R. Sparks and Michelle Shirley, Assistant District Attorneys General, for the appellee, State of Tennessee.

## OPINION

### I. FACTUAL AND PROCEDURAL HISTORY

On February 3, 2020, a Madison County grand jury indicted the Defendant and the codefendant, Savannah Benson, with multiple counts of drug-related charges. The

[1] We note that the Defendant's middle name is spelled as "Sawne" on various documents in the record. However, the Defendant's middle name is spelled "Dawne" on the indictment.

Defendant was indicted with one count of possession of more than one-half gram of marijuana with intent to sell, one count of possession of more than one-half gram of marijuana with intent to deliver, one count of tampering with evidence, two counts of possession of a firearm during the commission of a dangerous felony, one count of being a felon in possession of a firearm, and one count of simple possession of methamphetamine. *See* Tenn. Code Ann. §§ 39-16-503(a)(1); -17-408; -17-415; -17-417; -17-434; -17-1307(b)(1)(B); -17-1324(a).

At the trial, Tennessee Highway Patrol Trooper Adam Cash testified that on February 28, 2019, he was on patrol duty on Interstate 40. He sat in his parked patrol car and observed a gray or silver Porsche Boxster traveling approximately sixty miles per hour in a seventy miles per hour speed zone. He explained that this was unusually slow and that after the car passed him, he observed the car swerve off the road onto the emergency shoulder. Trooper Cash drove his patrol car onto the interstate and followed the car so that he could further observe it. Trooper Cash saw the car's tag and checked the license plate number, which matched a Ford vehicle, not the Porsche. Trooper Cash activated his patrol lights and siren and attempted to conduct a traffic stop of the Porsche.

Trooper Cash testified that after he turned on his car's lights and siren, the Porsche continued traveling in the right lane for a short distance. After Trooper Cash activated his siren a few more times, the driver of the Porsche moved the car over into the emergency lane and slowed to approximately fifty miles per hour before abruptly re-entering the right traffic lane and speeding up to eighty or ninety miles per hour. Trooper Cash saw movement in the front passenger seat of the Porsche and observed a person dump a large amount of suspected marijuana out the front passenger window. The suspected marijuana hit the road and then bounced off the front of Trooper Cash's car. Trooper Cash could smell the substance through the air vents of his car. The driver of the Porsche then pulled over and stopped in the emergency lane. Trooper Cash called for additional trooper backup.

Trooper Cash testified that the dashboard camera recorded the incident with the Defendant and the codefendant, and the video recording was played for the jury and entered as an exhibit. In the video, the driver of the Porsche initially slowed the vehicle and pulled into the emergency lane before abruptly speeding up and driving back into the right traffic lane. After a short time, the driver of the Porsche pulled the car over and stopped in the emergency lane. We note that the incident occurred in the dark and that it was unclear from the video that the Defendant threw a substance out of the Porsche's front passenger side window.

Trooper Cash testified that, upon searching the Defendant, he removed a marijuana "butt" that had been tucked into the Defendant's belt and placed it on the hood of his patrol car. Trooper Cash found $3,235 in cash in the Defendant's pants and suspected cocaine in the Defendant's jacket pocket. During the traffic stop, the Defendant denied throwing any

items out of the Porsche's front passenger window. Trooper Cash explained that when the Defendant threw the suspected marijuana out of the window, some of the substance blew back into the Porsche and "all over" the Defendant and the codefendant. Trooper Cash arrested the Defendant and placed him in his patrol car. The codefendant was arrested and placed in a separate patrol car.

Trooper Cash testified that following the Defendant's and the codefendant's arrests, he conducted a search of the Porsche. Trooper Cash said he found a large amount of marijuana outside of the car, in the car's tail pipes, on the front passenger side car door, on the dashboard, on the seats, on the floorboard, and in the cupholders. Inside the car, Trooper Cash located a clear vacuum-sealed bag containing a small amount of marijuana. He found a loaded Sig Sauer handgun under the driver's seat. He also found a purse containing additional ammunition for the gun. Photographs of the inside of the car and the collected evidence were entered as exhibits.

Trooper Cash testified that he and two other troopers collected only some of the marijuana that the Defendant threw out of the Porsche's front passenger window. He explained that the marijuana was "smashed and scattered" and that they gathered marijuana from the road, the median, the shoulder, and the nearby woods for approximately an hour and a half. Despite their "meticulous" efforts, Trooper Cash and the others were unable to retrieve all of the scattered marijuana. An evidence bag containing the collected roadside marijuana was entered as an exhibit. During cross-examination, Trooper Cash said that, based on his training and experience, he believed the substance was marijuana.

Trooper Cash testified that at the scene, the Defendant told him that the marijuana was his, that the codefendant was "not the criminal," and that he would "take all" of the charges. Trooper Cash later interviewed the Defendant at the police station, and the Defendant told him that "the weed" was the Defendant's and that the Defendant smoked marijuana. During the interview, the Defendant said that he traveled "to Memphis once a week to pick up weed." The Defendant also said that he told the codefendant to drive away after Trooper Cash initiated a traffic stop.

Tennessee Bureau of Investigation (TBI) Special Agent Forensic Scientist Carter Depew testified that she analyzed the substances collected in this case. She identified the plant substance as 191.99 grams of marijuana and the crystalline substance as .023 grams of methamphetamine. A copy of her report was entered as an exhibit. On cross-examination, Agent Depew said that she performed her analysis on July 19, 2019, and that at that time, she did not perform a quantitative test to determine the THC levels in the plant substance. She explained that quantitative testing was not part of TBI's policy and that the analysis had to be requested by the district attorney's office.

The codefendant testified that on February 28, 2019, she and the Defendant traveled to Memphis. As she was driving back to Paris, Tennessee, Trooper Cash began following

them in his patrol car. The codefendant explained that she had owned the Porsche for one month and that she was unaware the license plates did not match the car. The codefendant awoke the Defendant when Trooper Cash activated the lights on his car. The Defendant yelled at the codefendant, "Go, go, go." The codefendant drove the car back into the right traffic lane, and the Defendant pulled a bag of marijuana from under his seat and threw it out of the front passenger window. The codefendant said that she did not know the bag was in the car and that the first time she saw it was when the Defendant took it from under his seat. She explained that there were moments during their trip to Memphis when the Defendant was alone and had the opportunity to place the bag in her car without her knowing. The gun found under the driver's seat belonged to the codefendant, and she knew it was in the car.

At the conclusion of the trial, the jury convicted the Defendant of one count each of possession of more than one-half gram of marijuana with intent to sell, possession of more than one-half gram of marijuana with intent to deliver, tampering with evidence, and simple possession of methamphetamine. The jury acquitted the Defendant of two counts of possession of a firearm with intent to go armed during the commission of a dangerous felony, and based on this verdict, the State chose to dismiss the count for being a felon in possession of a firearm. Following a sentencing hearing, the trial court sentenced the Defendant to an effective sentence of five years' confinement. The Defendant filed a motion for new trial challenging the sufficiency of the evidence, and the court denied the motion after a hearing. This appeal followed.

## II. ANALYSIS

The Defendant contends that the evidence was insufficient to support his convictions for possession of more than one-half gram of marijuana with intent to sell and deliver and tampering with evidence. The State responds that the evidence is sufficient to support the Defendant's convictions.

The United States Constitution prohibits the states from depriving "any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1. A state shall not deprive a criminal defendant of his liberty "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). In determining whether a state has met this burden following a finding of guilt, "the relevant question 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 beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). Because a guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, the defendant has the burden on appeal of illustrating why the evidence is insufficient to support the jury's verdict. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). If a convicted defendant makes this showing, the finding of guilt shall be set aside. Tenn. R. App. P. 13(e).

"Questions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). Appellate courts do not "reweigh or reevaluate the evidence." *Id.* (citing *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978)). "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). Therefore, on appellate review, "the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom." *Cabbage*, 571 S.W.2d at 835.

A. Possession of Marijuana with Intent to Sell and Deliver

The Defendant argues that the evidence is insufficient to support his convictions for possession of marijuana with intent to sell and deliver because the State failed to prove beyond a reasonable doubt that the green leafy plant substance was not hemp and contained more than .03 percent THC as required by Tennessee Code Annotated section 39-17-402(16)(C), to qualify as marijuana. The State responds that the evidence is sufficient to support his convictions because the evidence showed the Defendant possessed almost 200 grams of marijuana.

Tennessee Code Annotated section 39-17-417(a)(4) provides that it is an offense for a defendant to knowingly "possess a controlled substance with intent to . . . deliver or sell the controlled substance." *See* Tenn. Code Ann. § 39-17-415 (providing marijuana is a Schedule VI controlled substance). At the time of the February 28, 2019 offense, marijuana was defined as "all parts of the plant cannabis" but did not include industrial hemp, as defined in Tennessee Code Annotated section 43-26-102. *Id.* § 39-17-402(16)(C) (2018). On April 4, 2019, the possession of all hemp, both industrial and non-industrial, as defined in Code section 43-27-101, was legalized in Tennessee. 2019 Tenn. Pub. Acts, ch. 87, § 1; Tenn. Code Ann. § 39-17-402(16) (Supp. 2019).

Viewed in the light most favorable to the State, there is sufficient evidence to support the Defendant's convictions for possession of more than one-half gram of marijuana with intent to sell and deliver. Trooper Cash testified that the Defendant threw a bag of suspected marijuana out of the Porsche's front passenger window before the codefendant stopped the car. Trooper Cash said that based on his training and experience, he believed the substance was marijuana, and TBI Special Agent Depew analyzed and identified the substance as marijuana. The Defendant admitted that the substance was marijuana, claimed ownership of the marijuana, asserted the codefendant's innocence regarding the marijuana, explained that he smoked marijuana, and said that he traveled to Memphis weekly to obtain marijuana. Trooper Cash collected $3,235 in cash from the Defendant's pocket, a gun from the Porsche, a portion of marijuana in a vacuum-sealed bag, and 191.99 grams of marijuana. *See* Tenn. Code Ann. § 39-17-419 ("It may be inferred from the amount of a controlled substance or substances possessed by an offender,

along with other relevant facts surrounding the arrest, that the controlled substance or substances were possessed with the purpose of selling or otherwise dispensing."); *see also State v. Belew*, 348 S.W.3d 186, 191-92 (Tenn. Crim. App. 2005) (holding other relevant facts that may give rise to the inference include absence of drug paraphernalia, presence of a large amount of cash, and the packaging of the drugs) (citations omitted).

We note that at the time of the Defendant's offenses, there was no legal distinction between marijuana and non-industrial hemp, and possession of either substance was unlawful. *See State v. Daniels*, 656 S.W.3d 378, 393 (Tenn. Crim. App. 2022) (holding same) (citing *State v. John Bradford Underwood*, No. E2020-01080-CCA-R3-CD, 2021 WL 6013938, at *4 (Tenn. Crim. App. Dec. 16, 2021), *perm. app. denied* (May 20, 2022)). We conclude that the evidence was sufficient for a rational trier of fact to conclude that the Defendant possessed marijuana. *Id.* (citing *State v. Kentrel Ne'Air Siner*, No. W2020-01719-CCA-R3-CD, 2022 WL 252354, at *8 (Tenn. Crim. App. Jan. 27, 2022) (finding sufficient evidence that the defendant was in constructive possession of marijuana when the substance was not forensically tested), *no perm. app. filed*). Thus, the Defendant is not entitled to relief regarding this issue.

B. Evidence Tampering

The Defendant argues that the evidence is insufficient to support his conviction for tampering with evidence because the Defendant's action of throwing the substance out of the window did not impair the troopers' ability to collect the evidence, and the troopers were able to retrieve most of the substance. The State responds that the evidence was sufficient to support the Defendant's conviction because the Defendant prevented troopers from recovering that marijuana by dumping it out of a moving car.

Tennessee Code Annotated section 39-16-503(a)(1) provides that it "is unlawful for any person, knowing that an investigation or official proceeding is pending or in progress," to "[a]lter, destroy, or conceal any record, document or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding[.]" "The State must prove beyond a reasonable doubt that the defendant altered, destroyed, or concealed a piece of evidence in the form of a record, document or thing" "with intent to impair its verity, legibility, or availability as evidence." *State v. Hawkins*, 406 S.W.3d 121, 132 (Tenn. 2013) (internal quotations omitted). In *Hawkins*, our supreme court held that the defendant's throwing a gun over a fence did not constitute evidence tampering because the evidence "was not altered or destroyed," "its discovery was delayed minimally, if at all[,]" and it "retained its full evidentiary value." *Id*. at 138. Our supreme court has noted a "consensus" that "when a person who is committing a possessory offense drops evidence in the presence of police officers, and the officers are able to recover the evidence with minimal effort, discarding the evidence amounts to 'mere abandonment,' not tampering." *Id.* at 134.

In the light most favorable to the State, the evidence is sufficient to support the Defendant's conviction for tampering with evidence. The evidence shows that Trooper Cash attempted to initiate a traffic stop and that the Defendant threw the bag containing marijuana out of the Porsche, which was traveling at a high rate of speed. The contents of the bag spread out over the highway, the side of the road, and into the nearby woods. Trooper Cash testified that it took him and two other troopers an hour and a half to recover a portion of the marijuana. The Defendant relies on *State v. Patton*, 898 S.W.2d 732, 736 (Tenn. Crim. App. 1994), which held "that the [d]efendant's act of tossing aside a bag of marijuana during the course of flight from law enforcement officials did not fall within the definition of evidence tampering." However, in this case, the Defendant's throwing the bag from the car window resulted in the marijuana's being strewn about a great distance along an interstate, in troopers spending significant time retrieving the marijuana under dangerous conditions, and in preventing the troopers from collecting all of the evidence. Accordingly, the Defendant's actions were more than "mere abandonment." *See Hawkins*, 406 S.W.3d at 134. The Defendant is not entitled to relief regarding this issue.

## III. CONCLUSION

Based upon the foregoing and the record as a whole, we affirm the judgments of the trial court.

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KYLE A. HIXSON, JUDGE