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ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-893

DAVID EUGENE LEWIS APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** SEPTEMBER 29, 2010 APPEAL FROM THE ARKANSAS COUNTY CIRCUIT COURT, NORTHERN DISTRICT [CR-04-250] HONORABLE DAVID G. HENRY, JUDGE AFFIRMED

RITA W. GRUBER, Judge

We reversed and remanded this case to the circuit court in *Lewis v. State*, 101 Ark. App. 176, 272 S.W.3d 113 (2008), holding that the court had erred by denying David Lewis's motion to withdraw his guilty plea.[1] Lewis brings the present appeal from the jury trial that took place subsequent to our first decision. He contends that the evidence was insufficient to support his convictions for possessing cocaine with intent to deliver and possessing marijuana with intent to deliver. We find that the evidence was sufficient, and we affirm.

[1]The circuit court had accepted Lewis's negotiated guilty plea; had agreed to impose sentences totaling 360 months' imprisonment, according to the plea agreement; and had warned him that failure to appear at his scheduled sentencing hearing would free the court to sentence him to a different sentence. Lewis did not appear at the sentencing hearing, and he was arrested. At a subsequent sentencing hearing, the court informed him that it was not bound by the sentencing recommendation because of his failure to appear. Lewis objected and moved to withdraw his guilty plea, and the State announced its readiness for trial. The circuit court denied the motion to withdraw the plea and pronounced sentence of 864 months.

It is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. Ark. Code Ann. § 5-64-401(a) (Repl. 2005). If a person possesses a quantity of cocaine in excess of one gram or marijuana in excess of one ounce, a rebuttable presumption exists that the person possessed the controlled substance with intent to deliver. Ark. Code Ann. § 5-64-401(d) (Supp. 2007).

At trial the circuit court denied Lewis's motions for a directed verdict, in which he argued that the State had not proven the element of intent to deliver the controlled substances. The court followed the jury's sentencing recommendation to pronounce consecutive sentences of twenty years' imprisonment for the marijuana conviction and seventy years for the cocaine conviction, enhanced by ten years for committing the crimes near a church or park, also to run consecutively.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Davis v. State*, 362 Ark. 34, 207 S.W.3d 474 (2005). In reviewing a challenge to the sufficiency of the evidence, the appellate court views evidence in the light most favorable to the State and considers only the evidence that supports the verdict, and affirms if the verdict is supported by substantial evidence. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.*

The evidence viewed in the light most favorable to the verdict is as follows. Lewis was arrested on a felony warrant on August 13, 2004, while standing on a street corner in an area

known to police officers for its high drug traffic. He resisted the arrest, and ten minutes were needed to handcuff him. A search of his person incident to arrest revealed $155 cash, a cellular telephone, and seven baggies; two of the baggies contained powder cocaine, one contained crack cocaine, and four contained marijuana. The cocaine's total weight was 16.5 grams, and the marijuana weighed 18.5 grams. Officer David Chastain estimated a street value of $1100 to $1200 for the powder cocaine and $450 for the crack cocaine. He described the marijuana packaging as two "dime bags," each containing enough to make a marijuana cigarette, and four "quarter bags" with larger amounts.

Lewis contends that the evidence was insufficient to sustain convictions for anything other than simple possession of marijuana and cocaine. He relies upon cases of this court and our supreme court where factors in addition to the presumptive amount supported convictions of possession with intent to deliver.

Possession of Cocaine with Intent to Deliver

The amount of cocaine Lewis possessed was over sixteen times the weight giving rise to the statutory presumption of intent to deliver. Lewis directs our attention to appellate decisions in which evidence of intent was not limited to the unrebutted presumptive amount. The State responds that none of these cases held that the statutory presumption alone was insufficient to find substantial evidence of intent to deliver, and that a contrary interpretation would render the presumption of Ark. Code Ann. § 5-64-401(d) meaningless. We agree. At trial Lewis presented no case for the defense; thus, there was no evidence rebutting the

presumption that he possessed cocaine with intent to deliver. We need look at no additional evidence to affirm the cocaine conviction.

Possession of Marijuana with Intent to Deliver

Because the amount of marijuana Lewis possessed was less than an ounce, Ark. Code Ann. § 5-64-401(d)'s presumption of intent to deliver did not come into play. In cases where intent to commit a crime is not susceptible of direct proof, the intent may be inferred from surrounding circumstances. *E.g.*, *Hurvey v. State*, 298 Ark. 289, 766 S.W.2d 926 (1989). In some instances when the contraband's weight is less than the presumptive amount, a conviction for possession with intent to deliver may be sustained if narcotics are packaged for individual sale. *Thomason v. State*, 91 Ark. App. 128, 208 S.W.3d 830 (2005) (citing *Hurvey*, *supra*).

Circumstances showing intent to deliver in *Hurvey* included small individual packets of cocaine and the fact that appellant had sold cocaine on prior occasions. 298 Ark. at 291, 766 S.W.2d at 927. In *Thomason*, intent to deliver was shown where appellant had individual "nickel" packages of marijuana and was in possession of firearms. 91 Ark. App. at 132, 208 S.W.3d at 832. Sufficient evidence of intent was also found in *Blockman v. State*, 69 Ark. App. 192, 11 S.W.3d 562 (2000), where appellant was in an area known for street sales of crack cocaine, refused to tell officers his name, matched a description given by a confidential informant, and possessed twenty-five individually wrapped rocks of crack cocaine.

Here, we do not agree with Lewis's argument that there was no additional evidence beyond the 18.5 grams of marijuana sufficient to sustain the conviction of intent to deliver.

There was evidence that he was standing on a corner in an area of high drug traffic, he resisted arrest, he possessed marijuana in packaging conducive to selling, he possessed a considerable quantity of cocaine, and he had no drug paraphernalia with which to ingest the drugs for personal use. Together, these circumstances constitute substantial evidence of an intent to deliver both the marijuana and the cocaine.

Affirmed.

HENRY and BAKER, JJ., agree.