

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 08-278

JULIAN RUEDA

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered FEBRUARY 25, 2009

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT,
[NO. CR-06-1526-2]

HONORABLE DAVID CLINGER,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Julian Rueda was tried before a jury in Benton County Circuit Court and found guilty of delivery of a controlled substance (methamphetamine), possession of drug paraphernalia (a glass pipe), and possession of a controlled substance with intent to deliver (methamphetamine). Appellant was sentenced to an effective term of fifty years in prison. The charges arose from a controlled drug buy using an informant, marked drug-buy money, and audio-taping equipment. Appellant raises several points on appeal: (1) that the trial court violated his sixth amendment and due process rights by failing to provide a certified Spanish interpreter at all stages of the proceedings, to include a state-certified translation for the audiotape; (2) that appellant suffered ineffective assistance of counsel; and (3) that there was insufficient evidence upon which to convict him of these crimes. After review of these points

under the proper standards, we affirm because point three does not support reversal, and points one and two are not preserved for appellate review.

First, we examine the sufficiency of the evidence, as we must. *See Eastin v. State*, 370 Ark. 10, 257 S.W.3d 58 (2007). On appeal of a challenge to the sufficiency, our court does not weigh the evidence on one side against the other; rather, we simply decide whether the evidence in support of the convictions is substantial. *McClure v. State*, 314 Ark. 35, 858 S.W.2d 103 (1993). We view all the evidence in the light most favorable to the State, leaving credibility determinations to the finder of fact. *See id.* Viewing the evidence under the proper standards, we hold that sufficient evidence supports the jury's findings of guilt.

The State presented evidence that on July 24, 2006, the Rogers Police Department made arrangements with an informant, Augustine Garcia, to set up a drug purchase. The police department provided Garcia with \$800, which bills had been photocopied, and wired Garcia to tape their conversation. Garcia and his vehicle were searched prior to the drug purchase. Garcia met with appellant at a Sonic in Bella Vista that day, they moved to a Movie Gallery location in Bentonville at appellant's urging, and Garcia paid appellant \$600 for methamphetamine. Officers maintained distant visual observation on Garcia and appellant as they moved place to place. Garcia returned to the police officers where he produced over six grams of methamphetamine. Although Garcia tried to keep \$200 in drug-buy money for himself, the police recovered that money from him.

Appellant was soon thereafter pulled over by the police, and he was observed reaching near the center console of the truck. Upon exiting his truck, a glass bottle fell out and broke.

It appeared to be fashioned into a smoking device. Another glass pipe was located in the driver's side door, and that pipe was still smoking. A black pouch was found in between the driver's seat and console. It held two bags of methamphetamine totaling over nine grams, other drugs, and another glass smoking pipe. The photocopied drug-buy money was found in the black pouch. A Rogers police officer who spoke both Spanish and English fluently was recruited to translate the conversation recorded on tape, and this translation was admitted into evidence without objection.

Garcia testified at trial that the translation was accurate, that he had known appellant for a long time, and that they used code terms "medallion" for money and "oranges" for meth. Appellant testified that he accepted \$600 from Garcia only because Garcia owed him for an old debt unrelated to drugs. Appellant agreed that he spoke with Garcia that day, but appellant complained that the translation was poor and there was no mention of methamphetamine in it. Appellant denied seeing any glass pipes in or falling out of his truck. He said that he was a successful self-employed painter who did not need to earn money selling drugs.

This court's test is whether there is substantial evidence to support the verdict. *Britt v. State*, 83 Ark. App. 117, 118 S.W.3d 140 (2003). Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another. *Id.* In determining whether the evidence is substantial, evidence is viewed in the light most favorable to the State, considering only the evidence that supports the verdict. *Id.*

Appellant cites to the well-settled principles of our review on sufficiency questions, yet argues that we should weigh factors in his favor. This we cannot and will not do. Appellant's challenge focuses on his attack of the informant's credibility, reliability, and motive to set appellant up for arrest. Appellant attacks the effectiveness of his trial counsel. In addition, appellant argues that the prosecutor improperly implied that appellant was a seasoned drug dealer, when appellant had no criminal record prior to this incident, and asserts that this affects the sufficiency of the evidence. Appellant states that the trial judge improperly admitted a translation of the recorded drug deal, but he did not object to the admission of this evidence at trial. All of these arguments are misplaced. Those questions are all relevant to the weight that the jury might give to the State's evidence, but not to the sufficiency. We affirm the trial court's denial of appellant's motions for directed verdict because the evidence was sufficient to support the convictions.

Appellant also challenges whether his constitutional rights were violated because his trial counsel was ineffective. Specifically, appellant complains that his trial attorney did not object to any of the crime laboratory findings, did not ensure appellant was provided an interpreter at all relevant stages, did not challenge the translation of the audio recording, did not advocate zealously for his client during voir dire or closing arguments, and did not present appropriate defense witnesses or fight the admission of other incriminating evidence. Appellant notes that he asked for a new attorney and a continuance shortly before trial but was denied that request.

The State argues that the issue of ineffective assistance of counsel is not preserved for our review because appellant failed to raise it to the trial court. We agree with the State. Rule 37 of the Arkansas Rules of Criminal Procedure provides the primary vehicle for post-conviction relief due to ineffective assistance of counsel, although “such relief may be awarded a defendant on direct appeal in limited circumstances” based on a motion for a new trial. *See, e.g., Missildine v. State*, 314 Ark. 500, 507, 863 S.W.2d 813, 818 (1993). A direct appeal is only appropriate, however, when the facts surrounding the claim were fully developed during the trial or during hearings conducted by the trial court. *See Ratchford v. State*, 357 Ark. 27, 31, 159 S.W.3d 304, 307 (2004). This is because “the trial court is in a better position to assess the quality of legal representation than we are on appeal.” *Ratchford*, 357 Ark. at 32, 159 S.W.3d at 307. *See also Dodson v. State*, 326 Ark. 637, 934 S.W.2d 198 (1996). This argument is not preserved for appellate review because no ineffective-assistance claim was made to the trial court. *See Willis v. State*, 334 Ark. 412, 977 S.W.2d 890 (1998).

This brings us to appellant’s argument that the trial court erred by not ensuring that appellant was provided a state-certified interpreter at all stages of these criminal proceedings. Appellant adds to this argument by asserting that it was the trial court’s duty to provide a state-certified “neutral” translation of the audio tape, instead of permitting the police department’s own employee to translate the tape. We disagree that reversible error has occurred.

Appellant concedes that he was provided a state-certified interpreter during the jury trial. The record bears out that a state-certified interpreter was present at some other pre-trial

proceedings, although not at all of them. To the extent that appellant was not provided a state-certified interpreter at other proceedings, appellant has failed to preserve this issue for review because there was no objection or motion filed to the trial court by his counsel seeking such relief. Indeed, it appears that appellant was himself able to communicate with the trial judge in English from time to time, and furthermore, appellant's counsel affirmatively stated to the judge that he could communicate with his client for purposes of hearings but not sufficiently for trial. Thus, appellant received all the relief requested and can formulate no basis upon which to establish reversible error on this point.

Neither does appellant show how he was prejudiced by not having an interpreter at the other hearings. Those other hearings concerned the entry of a not-guilty plea, setting dates for pretrial and trial, and notifying the court of potential plea agreements that resulted in continuing the case. We do not reverse in the absence of a showing of prejudice. See *Berna v. State*, 282 Ark. 563, 670 S.W.2d 434 (1984).

We finally address appellant's contention that the trial court was duty-bound to provide a state-certified "neutral" translation of the audiotape. First, appellant failed to ask the trial court for a state-certified translation, and he failed to object to the admission of the translation at trial, thus failing to preserve the issue for review.

We recognize that our supreme court has recently adopted a new Rule of Evidence 1009, effective January 1, 2009, as set forth in a per curiam, *In re: Arkansas District Court Rules; Rules of Civil Procedure; Rules of Evidence; Rules of the Supreme Court and Court of Appeals; and Rules of Appellate Procedure—Civil*, 374 Ark. Appx. ___, ___ S.W.3d ___ (Oct. 9, 2008). This new

Rule 1009, which governs the translation of foreign language documents and recordings to ensure accuracy for evidentiary purposes, was not in existence or in effect at the time of appellant's trial.

It was up to appellant to challenge the accuracy of the tape's translation or seek the trial court's intervention to ensure accuracy. He did neither. Instead, appellant himself testified that the tape's contents were poorly translated, but even so, their conversation was not about drugs. To the extent the conversation was incriminating, it was cumulative to other compelling State's evidence. Because appellant cannot demonstrate that this falls within a plain-error exception, or that appellant suffered prejudice from not being provided a court-certified "neutral" translation, we affirm this point.

For the foregoing reasons, we affirm appellant's convictions.

MARSHALL and BROWN, JJ., agree.