

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-503

MICHAEL ANTHONY GREEN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 17, 2010

APPEAL FROM THE DREW
COUNTY CIRCUIT COURT,
[NO. CR-2006-172-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Michael Anthony Green was found guilty in a Drew County jury trial of possession of crack cocaine with the intent to deliver. He received a sentence of sixty years in the Arkansas Department of Correction. On appeal, he challenges both the sufficiency of the evidence and the denial of his motion to dismiss for want of a speedy trial. We affirm.

We first consider Green’s challenge to the sufficiency of the evidence. He conceded at trial that he possessed more than five grams of crack cocaine, which was sufficient to invoke the statutory possession-with-intent presumption.¹ He asserted at trial, however, as he does now on appeal, that the State failed to prove his intent to deliver. Green urges this court to credit his testimony at trial that the drugs were solely for use by him and a friend. He asserts that his testimony was corroborated by Drug Task Force Agent Trent Vollmer, who testified

¹Pursuant to Arkansas Code Annotated section 5-64-401(d)(3)(A)(i) (Repl. 2005), possession of more than one gram of cocaine raises a rebuttable presumption of intent to deliver.



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that the “high involved with smoking crack cocaine was very short lived.” Further, Green notes that in searches of his car and his residence, police discovered no other evidence supporting the intent-to-deliver element. We find this argument unpersuasive.

When we review a challenge to the sufficiency of the evidence, we affirm the conviction if there is substantial evidence to support it, when viewed in the light most favorable to the State. *Dodson v. State*, 341 Ark. 41, 14 S.W.3d 489 (2000). 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 resort to speculation or conjecture. *Id.* Viewing the evidence in the light most favorable to the State means that we consider only the evidence that supports the verdict. *Morgan v. State*, 2009 Ark. 257, 308 S.W.3d 147.

Under our standard of review, we do not even consider the evidence that Green urges us to find dispositive, in that it does not support the verdict. The jury was not obligated to believe Green’s testimony that the drugs were for his personal use. *Blockman v. State*, 69 Ark. App. 192, 11 S.W.3d 562 (2000). Accordingly, we affirm on this point.

For his second argument, Green asserts that the trial court erred in denying his motion to dismiss for want of a speedy trial. We will briefly recount the time from Green’s arrest until his trial. Green was arrested on October 6, 2006, and not tried until January 27, 2009. Those dates encompassed a period of 843 days. However, the time from his arrest until his first scheduled trial, which was set for May 25, 2007, is a period of 231 days. Green failed to appear for that trial. Subsequently, he was arrested for his failure to appear. From the date



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of his first scheduled trial until he returned to Arkansas on November 14, 2007, is a period of 84 days. From his return to the state until his second scheduled trial on February 7, 2008, is 140 days. On the day of his second scheduled trial Green fled from the courthouse. He was finally arrested on September 9, 2008. The time from his second scheduled trial until his arrest is 215 days. The time from this arrest until his third scheduled trial on January 27, 2009, the trial in which he was convicted, is 355 days.

Green concedes that two periods of time, from when he absconded until he was brought back to the state, should be charged to him. However, he urges this court to not charge against him the time that accrued after he returned to the “court’s jurisdiction.” We find this argument unpersuasive.

On appeal, we conduct a *de novo* review to determine whether specific periods of time are excludable under our speedy-trial rules. *Yarbrough v. State*, 370 Ark. 31, 257 S.W.3d 50 (2007). Under Rule 28.1 of the Arkansas Rules of Criminal Procedure, a defendant must be brought to trial within twelve months unless there are periods of delay that are excluded under Rule 28.3. Ark. R. Crim. P. 28.1(c) (2006).

Arkansas Rule of Criminal Procedure 28.3(h) provides that “other periods of delay for good cause” shall be excluded in computing the time for trial. In *Yarbrough*, the supreme court held that the “good cause” exclusion shall apply to the time from when a court appearance is postponed because of the defendant’s failure to appear until the next scheduled setting. We conclude that the instant case is controlled by *Yarbrough*, in that Green was clearly



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responsible for twice failing to appear for scheduled trials. There is no evidence, nor does Green assert that there is any, that Green's subsequent trials were not scheduled in a reasonable time.

Affirmed.

GLADWIN and BROWN, JJ., agree.

Daren J. Nelson, for appellant.

Dustin McDaniel, Att'y Gen., by: *Christian Harris*, Ass't Att'y Gen., and *Elizabeth Castleman*, Law Student Admitted to Practice Pursuant to Rule XV of the Rules Governing Admission to the Bar of the Supreme Court under the Supervision of *Darnisa Johnson*, for appellee.