

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR11-994

JOE McKINLEY JONES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 24, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT [NO. CR-2010-
546(A)]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant was charged as a habitual offender with committing the offense of delivery of cocaine. After a jury trial, he was convicted of that offense and sentenced to a ninety-year term of imprisonment.¹ On appeal, he argues that the evidence was insufficient to support his conviction. We affirm.

In determining the sufficiency of the evidence to support a criminal conviction, we view the evidence in the light most favorable to the State and affirm if there is substantial evidence to support the finding of guilt. *Slade v. State*, 2010 Ark. App. 406. Viewed in that light, the evidence shows that narcotics detectives of the Fort Smith Police Department obtained information that an apartment complex at 1323 Carthage Avenue was being used

¹This sentence was ordered to be served concurrently with appellant's 100-year sentence for possession of cocaine with intent to deliver and 30-year sentence for possession of drug paraphernalia. See *Jones v. State*, 2011 Ark. App. 683, and *Jones v. State*, 2011 Ark. App. 543.



for drug dealing. They began making controlled buys of narcotics from people in one of the apartments, learning that the drugs were not stored in the apartment, but were instead delivered by a drug supplier who was telephoned by a person inside the apartment when a person seeking to buy drugs arrived. The detectives planned to arrest the supplier by making a traffic stop of his vehicle when he left the apartment following a delivery.

On March 30, 2010, Detective Napier conducted a controlled buy in which a confidential informant was to purchase drugs from Latisha Longnecker at the apartment. After equipping the informant with a microphone and ensuring that he had no money or drugs in his possession, Detective Napier gave the informant \$40 in currency with prerecorded serial numbers. Because the informant had no vehicle, Detective Napier drove the informant to the apartment complex. While en route, the informant became excited and shouted, "That's the guy!" while pointing out a white Mitsubishi Gallant headed north down the street in front of them. The license-plate number of the Mitsubishi was recorded and, after it was out of the area, the informant felt comfortable enough to get out of the car. Detective Napier followed him to the apartment complex, parked directly across the street facing the targeted apartment, and watched the informant go inside. A short time later, Latisha Longnecker arrived at the apartment complex, exited her vehicle, and walked into the apartment where the informant was waiting. After approximately thirty minutes had passed, the same Mitsubishi Gallant that had been observed previously drove up and stopped directly in front of the target apartment. Seconds later, Latisha Longnecker came out of the apartment, opened the passenger door of the Mitsubishi, and sat in the passenger seat with the



door open for five to ten seconds before getting out and returning to the apartment. After Longnecker shut the door, the Mitsubishi turned around and drove away.

Within a few minutes, the informant left the apartment, walked across the street, and got in the back seat of Detective Napier's car, handing Napier a small plastic bag containing crack cocaine. Detective Napier then radioed for a K-9 officer in a marked police car to stop the Mitsubishi.

Officer Brian Rice, a K-9 officer for the Fort Smith Police Department, stopped the Mitsubishi about one and one-half blocks from the apartment complex. Appellant was the driver and sole occupant of the Mitsubishi. A wad of cash was removed from appellant's pocket and, while other officers secured appellant, Officer Rice had his dog perform an exterior sniff of the Mitsubishi. After the dog alerted on the passenger-side door, narcotics officers began searching the car. A small plastic container resembling a film canister was found in a cubbyhole in front of the gearshift. The canister contained fourteen bags of crack cocaine that were packaged identically to the one obtained by Detective Napier from the informant. The officers recovered \$420 in cash in the search of appellant's person and the Mitsubishi, including the \$40 in prerecorded buy money given to the informant by Detective Napier.

Appellant argues that the evidence was insufficient because there was no testimony from any witness who actually saw or heard appellant make a delivery of cocaine. We do not agree. Although the evidence of delivery in this case was circumstantial, circumstantial evidence alone may be substantial evidence to support a verdict if the evidence excludes every other reasonable hypothesis but the guilt of the accused. *See generally Missildine v. State*, 314



Cite as 2012 Ark. App. 581

Ark. 500, 863 S.W.2d 813 (1993); *Henderson v. State*, 255 Ark. 870, 503 S.W.2d 889 (1974).

Whether the evidence excludes every other reasonable hypothesis is for the jury to decide; on review, we must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *Porter v. State*, 2012 Ark. App. 139. Under all of the circumstances of this case, including appellant's possession of the buy money that had been provided to the informant and possession of cocaine packaged identically to that received by the informant, we cannot say that the jury was required to speculate in reaching its verdict.

Affirmed.

ABRAMSON and MARTIN, JJ., agree.

David L. Dunagin, for appellant.

Dustin McDaniel, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.