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ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR 09-155

ROBERT GREEN, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 16,
2009

APPEAL FROM THE DESHA
COUNTY CIRCUIT COURT,
ARKANSAS CITY DISTRICT
[NO. CR-07-121-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Robert Green, Jr., appeals his conviction for delivery of cocaine, entered after a jury trial in Desha County Circuit Court. On appeal, appellant argues that the trial court erred in denying his motions for directed verdict, which is a challenge to the sufficiency of the evidence to convict him. After reviewing this appeal under the proper standards, we affirm.

The test for determining sufficiency of the evidence is whether substantial evidence, either direct or circumstantial, supports the verdict. *Brunson v. State*, 368 Ark. 313, 245 S.W.3d 132 (2006). Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another and pass beyond mere suspicion or conjecture. *Id.* On appeal, we review evidence in the light most favorable to the appellee and consider only

the evidence that supports the verdict. *Id.* The duty of resolving conflicting testimony and determining the credibility of witnesses is left to the discretion of the jury. *Boyd v. State*, 369 Ark. 259, 253 S.W.3d 456 (2007). This court will not pass upon the credibility of a witness and has no right to disregard the testimony of any witness after the jury has given it full credence, unless the testimony is inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon. *Wyles v. State*, 368 Ark. 646, 249 S.W.3d 782 (2007).

Appellant asserts, as he did to the jury, that he was “framed” by the informant or the officer who arranged this controlled drug purchase. In addition, appellant argues that the officer and the informant’s testimonies were inconsistent, and therefore the jury had to resort to speculation and conjecture in reaching its verdict of guilt. We disagree.

The evidence presented to the jury, viewed in the light most favorable to the State, revealed the following. Appellant was accused of selling a small quantity of crack cocaine in a controlled buy with an informant, Norma Jean Bush, who was given cash by Drug Task Force Officer Steven Carter. The transaction took place mid-day on June 26, 2007, just outside Ms. Bush’s house in McGehee, Arkansas. Officer Carter waited inside Ms. Bush’s house. Ms. Bush called appellant to set up a purchase; appellant arrived in a car; Ms. Bush went outside where she presented the controlled-drug-buy money to appellant and was given small off-white rocks enclosed in a paper towel by appellant. Ms. Bush was fitted with a concealed camera, which took still photographs of the transaction with appellant.

Ms. Bush testified that she was a former crack-cocaine user, that she had been “clean” for about seven months, and that she wanted to help rid her community of drugs because she was raising her children in that town. Ms. Bush said that she was certain it was appellant who sold her the crack cocaine. Ms. Bush was inconsistent in her recollection of how much crack cocaine she purchased—whether it was twenty or forty dollars worth of the drug—but she was sure appellant sold her the drug that day. She said she emptied her pockets for the officers to show that she was not carrying drugs before the transaction with appellant, although there was no pat-down search conducted by the officers. Ms. Bush said she was paid fifty dollars for each controlled drug buy she did for the Drug Task Force. Still photographs entered into evidence from the concealed camera on Ms. Bush’s person showed a black male in the driver’s seat of a vehicle and money exchanging hands.

Officer Carter testified that he was certain he searched Ms. Bush before and after the controlled buy and that he gave her the drug-buy money, which he thought was forty dollars. Carter said he thought she was wearing shorts that day and that he provided her a shirt to wear. Carter said that after Ms. Bush made the phone call to arrange the purchase, he observed Ms. Bush through the window as she went outside to meet appellant. Carter said that he could identify appellant in the driver’s seat of the vehicle, and that within thirty seconds, Ms. Bush walked back in the house and handed him the white rock-like substance. The substance later proved to contain a cocaine base.

Appellant presented Johnny Polite as a defense witness, who stated that he worked as

a mechanic and was riding in the vehicle that came to Ms. Bush's house that day. While Mr. Polite could not recall the name of the man driving the car, he swore it was not appellant. Mr. Polite admitted that he had a felony conviction for receiving stolen property.

Appellant's attorney moved for directed verdict at the appropriate times during trial, asserting that Officer Carter and Ms. Bush were not consistent in their stories of whether she was searched prior to the transaction, in their belief in how much she paid for the drugs, or in their opinions of whether Ms. Bush was given payment for her assistance. In short, appellant challenged the veracity of each of the State's witnesses. This, however, was a question for the jury to resolve as the sole fact-finder and determiner of credibility. *Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000). The trier of fact is free to believe all or part of a witness's testimony. *Freeman v. State*, 331 Ark. 130, 959 S.W.2d 400 (1998); *Patterson v. State*, 326 Ark. 1004, 935 S.W.2d 266 (1996). Moreover, inconsistent testimony does not render proof insufficient as a matter of law. *Rawls v. State*, 327 Ark. 34, 937 S.W.2d 637 (1997). Most importantly, the two State's witnesses uniformly and positively identified appellant as the man who sold Ms. Bush crack cocaine that day. Accordingly, we hold that appellant's conviction is supported by substantial evidence.

We affirm.

MARSHALL and BAKER, JJ., agree.