Cite as 2010 Ark. App. 186

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-932

	Opinion Delivered FEBRUARY 24, 2010
CORNELIUS DALE EARL APPELLANT	APPEAL FROM THE WHITE COUNTY CIRCUIT COURT [NO. CR-08-224]
V.	HONORABLE ROBERT EDWARDS, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

M. MICHAEL KINARD, Judge

Appellant, Cornelius Dale Earl, appeals from his conviction by a White County jury on three counts of delivery of a controlled substance, cocaine. Appellant argues that the Arkansas appellate courts use a standard of review that is not in line with precedent from the Supreme Court of the United States and that if the Arkansas appellate courts reviewed the evidence under the standard he submits is proper, there was insufficient evidence to support his conviction. We affirm.

On May 7, 2009, the State filed an amended felony information charging appellant as a habitual offender with three counts of delivery of a controlled substance, cocaine. At trial, Hal Britt, formerly a detective with the Beebe Police Department, testified that he made contact with a confidential informant who agreed to set up a meeting to purchase narcotics

from appellant. Britt stated that on April 2, 2008, the informant bought crack cocaine from appellant at a gas station. A second transaction between the informant and appellant took place on April 9, 2008. The informant bought crack cocaine from appellant for a third time on April 23, 2008. Audio recordings of two of the transactions were played for the jury. A video recording of the other transaction was also played for the jury. Britt testified that the phone calls between the informant and appellant during which the transactions were arranged were not recorded.

Freida Callahan, who was formerly employed with the Beebe Police Department, testified that she searched the informant for controlled substances hidden on her person prior to each of the transactions. The searches were pat-down searches; they were not body-cavity searches. Callahan testified that when the informant turned over the drugs from the transactions, they did not appear as they would have if they had been hidden in a body cavity. Eddie Cullum, a detective with the Beebe Police Department, testified that he took photographs of appellant at the location of all three of the transactions.

The informant testified that she purchased crack cocaine from appellant on April 2, 2008, April 9, 2008, and April 23, 2008. The informant denied having any drugs concealed on her person at the time of the transactions. The informant testified that she never received any monetary remuneration for her cooperation with the police; she did, however, receive consideration on unrelated charges pending against her. The informant stated that she was

never promised anything in return for her participation in the transactions.

At the close of the State's evidence, appellant moved for a directed verdict. The trial court denied the motion. At the close of all of the evidence, appellant renewed his motion for a directed verdict, which was again denied. The jury returned a verdict of guilty on all three counts. In a judgment and commitment order dated May 13, 2009, the trial court sentenced appellant to 960 months' imprisonment in the Arkansas Department of Correction. Appellant filed a timely notice of appeal on May 21, 2009.

Appellant argues on appeal that Arkansas appellate courts utilize an improper standard of review for challenges to the sufficiency of the evidence produced by the State at a criminal trial and that the utilization of what he argues is the proper standard would result in a reversal of his conviction. Under Arkansas law, the test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, either direct or circumstantial. *Graham v. State*, 365 Ark. 274, 229 S.W.3d 30 (2006). Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond speculation and conjecture. *Id.* When we review a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State, and only evidence supporting the verdict will be considered. *Holt v. State*, 2009 Ark. 482, 348 S.W.3d 562.

Appellant concedes in his brief that under the standard of review, as stated above,

there would likely be sufficient evidence to support his conviction. However, appellant argues that the case law stating that we review only the evidence supporting the verdict is in conflict with the decision of the Supreme Court of the United States in *Jackson v. Virginia*, 443 U.S. 307 (1979). Appellant argues that, under *Jackson*, Arkansas appellate courts are required to consider *all* of the evidence in the light most favorable to the prosecution, not just that evidence that supports the verdict. The Arkansas Supreme Court has stated on numerous occasions since the decision in *Jackson* that only the evidence that supports the verdict is to be considered when reviewing a challenge to the sufficiency of the evidence produced at a criminal trial. *See, e.g.*, *Davis v. State*, 365 Ark. 634, 232 S.W.3d 476 (2006); *Pickens v. State*, 347 Ark. 904, 69 S.W.3d 10 (2002). We are bound to follow the decisions of our supreme court. *Benjamin v. State*, 102 Ark. App. 309, 285 S.W.3d 264 (2008). Therefore, we will utilize the standard of review mandated by our supreme court.

Appellant was charged with and convicted of three counts of delivery of a controlled substance, cocaine. Pursuant to Arkansas Code Annotated section 5-64-401(a) (Supp. 2009), it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. The State produced evidence that appellant sold crack cocaine to the informant on three separate occasions in the form of testimony from the officers involved, testimony from the informant, and recordings of the transactions. The State produced substantial evidence to support the jury's verdict of guilty on three counts of

delivery of a controlled substance.

Affirmed.

VAUGHT, C.J., and GRUBER, J., agree.