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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-966

KENNETH LEE SLADE APPELLANT	**Opinion Delivered** May 12, 2010 APPEAL FROM THE SALINE COUNTY CIRCUIT COURT [NO. CR-2008-528-3]
V.	HONORABLE GRISHAM PHILLIPS, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant was tried by a jury and convicted of manufacturing marijuana. As a repeat drug offender, he was fined $50,000 and sentenced to sixteen years' imprisonment. On appeal, he argues that the trial court erred in denying his motion for a directed verdict of acquittal. We find no error, and we affirm.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Nelson v. State*, 365 Ark. 314, 229 S.W.3d 35 (2006). In reviewing the sufficiency of the evidence on appeal, we view the evidence in the light most favorable to the State, considering only the evidence that supports the verdict, and affirm if the verdict is supported by substantial evidence. *Id.* Substantial evidence is that which is forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* Credibility of the witnesses is a matter within the sole province of the jury. *Sanford v. State*, 331 Ark. 334, 962 S.W.2d 335

(1998).

Appellant was convicted of a Class C felony violation of Ark. Code Ann. § 5-64-401(a) (Supp. 2007), which prohibits unauthorized manufacture of a controlled substance. Propagation of marijuana constitutes manufacture. Ark. Code Ann. § 5-64-101(16)(A) (Supp. 2007). Marijuana is a Schedule VI controlled substance. Ark. Code Ann. § 5-64-215(a)(1) (Supp. 2007). Manufacture of less than ten pounds of marijuana subjects the offender to a maximum sentence of ten years' imprisonment and a maximum fine of $25,000. Ark. Code Ann. § 5-64-401(a)(4)(A) (Supp. 2007). The authorized term of imprisonment and fine may be doubled for persons, such as appellant, who are convicted of a second or subsequent offense. Ark. Code Ann. § 5-64-408 (Repl. 2005).

Appellant asserts that there is no substantial evidence to support his conviction because there was inconsistent testimony regarding the amount of marijuana found growing on his property and whether plastic bags containing marijuana were found. He argues that the jury could have reached two equally reasonable conclusions based on the disputed testimony and that the evidence, therefore, was not substantial according to *Gregory v. State*, 341 Ark. 243, 15 S.W.3d 690 (2000). We do not agree.

The rule that substantial evidence must exclude every reasonable hypothesis other than the guilt of the accused applies only to convictions based wholly on circumstantial evidence. *Ayers v. State*, 247 Ark. 174, 176–77, 444 S.W.2d 695, 696–97 (1969). When the State's case is made up entirely of circumstantial evidence, our review of evidentiary sufficiency requires

us to consider whether the record—viewed in the light most favorable to the State—presents two equally reasonable conclusions about what happened; if so, the evidence has raised only a suspicion of guilt and thus the fact finder was required to speculate in order to convict the defendant. *King v. State*, 100 Ark. App. 208, 266 S.W.3d 205 (2007) (supp. op. on denial of reh'g). Viewing the evidence "in the light most favorable to the State" means, *inter alia*, that we do not consider any proof that supported the defendant's innocence. *See id.*

Appellant's argument ignores that the rule he invokes—that substantial evidence must exclude every reasonable hypothesis other than the guilt of the accused—applies only to situations where the State's case is based entirely on circumstantial evidence. Circumstantial evidence is evidence of circumstances from which a fact may be inferred. Direct evidence is evidence that proves a fact without resort to inference, *e.g.*, when it is proved by witnesses who testify to what they saw, heard, or experienced. *Jackson v. State*, 363 Ark. 311, 214 S.W.3d 232 (2005). There is a plethora of direct evidence supporting appellant's conviction in this case, notably including appellant's own testimony at trial admitting that there were three dozen potted marijuana plants on his property, his reference to the plants as "my plants," his detailed description of his methods of cultivation, and his comparison of his 2008 crop to yields obtained by him in previous years. There was, in addition, testimony that police officers searched appellant's property and found marijuana plants growing there in pots, just as they had during raids on appellant's property in previous years; that appellant was found asleep in his truck on the property during the raid; and that samples of the plants seized were

tested by a forensic chemist who confirmed that they were in fact marijuana. We hold that there was substantial evidence to show that appellant manufactured marijuana. *See Craig v. State*, 314 Ark. 585, 863 S.W.2d 825 (1993).

Affirmed.

HART and BAKER, JJ., agree.