

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-1329

KENNETH TUCKER, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 16, 2010

APPEAL FROM THE ASHLEY
COUNTY CIRCUIT COURT
[NO. CR-2009-36-1]

HONORABLE SAMUEL POPE,
JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Kenneth Tucker, Jr., was found guilty in an Ashley County jury trial of two counts of delivery of crack cocaine. He received concurrent sentences of thirty years in the Arkansas Department of Correction. On appeal, Tucker challenges the sufficiency of the evidence. We affirm.

At Tucker's trial, Crossett Police Department Investigator Shelby Hughes testified that she recruited Mark Bridges as a confidential informant after he was arrested outside Tucker's residence. A week later, she set up Bridges to make a controlled buy of twenty dollars' worth of crack cocaine. Investigator Harold Wayne Pennington assisted her in the operation. Hughes stated that they first searched Bridges and his vehicle for contraband and money, and found none. After searching Bridges, they fitted him with audio- and video-recording equipment. The recording equipment was turned off after the controlled buy. Hughes

testified that they followed the same procedure for a controlled buy the next day when Bridges made another twenty-dollar controlled buy. Each day, Bridges returned with crack cocaine: 0.032 grams the first day and 0.174 grams the second day. Hughes stated that they recognized Tucker and Tucker's residence on the video.

Bridges confirmed that he became a confidential informant after having been arrested after leaving Tucker's residence. He stated that he had been to Tucker's residence previously to buy crack cocaine. He claimed that he agreed to become a confidential informant in exchange for police assistance in getting him into drug rehab. Bridges further confirmed the search procedure testified to by Hughes. Bridges confirmed that on consecutive days, he received crack cocaine from Tucker in exchange for the twenty dollars in buy money. He admitted that he had smoked crack twenty to thirty times previously at Tucker's residence and that Tucker knew him by name because of his previous patronage. Bridges also admitted that he was charged with theft of property when he was arrested after leaving Tucker's house because he was using a company truck without permission.

Crossett Police Department Investigator Pennington also testified. His testimony corroborated the testimony given by Hughes and Bridges regarding the controlled-buy process. He further confirmed that Bridges left with twenty dollars in buy money and returned with a small quantity of crack cocaine.

At the close of the State's case, Tucker's trial counsel moved for a directed verdict. He stated:

I move for a directed verdict specifically, that they haven't proven their case against Mr. Tucker, specifically that they've not gone through and proved each element of delivery of cocaine. Neither, neither tape—especially the tapes, neither tape you could see either a delivery of the drug or a transaction between the CI and the, and the suspect, the Defendant in this case. We have as, his testimony, but the tape does not show anything. And for that reason, I would move for a directed verdict.

Tucker then testified. While he admitted smoking crack with Bridges on numerous occasions, he denied ever selling crack to him. At the close of his case, his trial counsel renewed the previously stated motion.

On appeal, Tucker argues that the trial court erred in denying his directed-verdict motion because the State failed to prove that he actually delivered the crack cocaine. He contends that the State concedes that the video evidence did not show the alleged exchange of drugs for money between him and Bridges. Accordingly, the case hinges on the testimony of Bridges, whose reliability is suspect because he is a crack addict and was facing felony theft-of-property charges just one week before the controlled buys took place. Tucker further discounts the remaining evidence—testimony by the two police investigators—because they were not actual eyewitnesses. 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. In addition, the credibility of witnesses is an issue for the jury, not the appellate court. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). The fact-finder is free to believe all or part of a witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.*

To the extent that Tucker argues that his conviction is not supported by substantial evidence because Bridges's credibility was suspect, this argument is not cognizable on appeal because when we review the sufficiency of the evidence, we consider the testimony in the light most favorable to the State. *Id.* Likewise, while it may be true that the video does not show the actual hand-to-hand transaction, a claim that we cannot verify due to Tucker's failure to provide copies of the video in his addendum, this assertion is of no moment because we do not consider evidence that does not support the verdict. *Morgan, supra.* That said, we note that Bridges unequivocally testified that Tucker sold him crack cocaine on consecutive days. It is settled law that unequivocal testimony identifying an accused as the offender is sufficient to sustain a jury's verdict. *Gray v. State*, 318 Ark. 601, 888 S.W.2d 302 (1994).

Affirmed.

VAUGHT, C.J., and ROBBINS, J., agree.