

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-91

RODNEY RAY HALL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered OCTOBER 27, 2010

APPEAL FROM THE RANDOLPH
COUNTY CIRCUIT COURT
[NO. CR2009-84]

HONORABLE HAROLD S. ERWIN,
JUDGE

AFFIRMED

KAREN R. BAKER, Judge

A Randolph County jury found appellant Rodney Ray Hall guilty of delivery of methamphetamine, a Class Y felony, and sentenced him as a habitual offender to forty years in the Arkansas Department of Correction. Appellant's only argument on appeal is that the State failed to provide sufficient evidence to support his conviction. He claims that the State failed to corroborate the testimony of Steven Mitchell, which linked appellant to the charged crime. We find no error and affirm.

On March 26, 2009, Officer Randy Mulligan of the Pocahontas Police Department observed a man standing and talking to another man in a parked car located in an apartment complex parking lot. Officer Mulligan pulled closer and recognized the driver as Steven

Mitchell. Officer Mulligan observed the other man walking toward a unit at the apartment complex. Mitchell pulled out and led Officer Mulligan down a number of streets before pulling into a residence. At the residence, Mitchell consented to a search of his car, which produced no evidence. However, after searching the vehicle, Officer Mulligan noticed and confiscated a small white baggie with a white, powdery substance in it on the ground near Mitchell's foot. Officer Mulligan handcuffed Mitchell and asked him whom he had gone to see at the apartment complex. Mitchell replied that he had seen his friend, appellant, who lived in the complex; at that time, Mitchell did not reveal where he obtained the baggie, which was later identified as containing methamphetamine. Officer Mulligan transported Mitchell to the Randolph County jail.

The following morning, Mitchell was questioned by Detective Arvin Volner. During the course of the interview, Mitchell told Detective Volner that he procured the methamphetamine from "Rod," and Detective Volner asked if he meant "Rod Hall" to which Mitchell replied "yes." Mitchell gave a written statement that he contacted appellant and asked to trade one box of 24-hour Sudafed in exchange for one-half gram of methamphetamine and that appellant agreed to and then effected the trade at the apartment complex where Officer Mulligan first spotted Mitchell. Mitchell was charged with possession of methamphetamine.

Detective Volner then contacted appellant. He read appellant his *Miranda* rights and interviewed him. Detective Volner informed appellant that Mitchell had been arrested and

had reported that he obtained methamphetamine from appellant. Detective Volner testified that appellant admitted exchanging Sudafed for the methamphetamine, but he did not obtain a written statement from appellant or otherwise record or memorialize the conversation. Afterward, appellant denied confessing to the charges. Detective Volner testified that a box of Sudafed was found in appellant's apartment; on cross-examination, he stated that he did not know what type of Sudafed it was, and the confiscated Sudafed was not entered into evidence at trial.

Appellant was charged with delivery of methamphetamine. A trial was held on September 17, 2009. At trial, appellant moved for a directed verdict at the close of the State's case and at the close of all of the evidence, both of which were denied. The jury found appellant guilty of delivery of methamphetamine pursuant to Arkansas Code Annotated section 5-64-101 (Supp. 2009). Appellant brought this timely appeal.

We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Coggin v. State*, 356 Ark. 424, 156 S.W.3d 712 (2004). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Id.* We do not weigh witness credibility. *See Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). The jury is free to believe all or part of any

witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Phillips v. State*, 344 Ark. 453, 40 S.W.3d 778 (2001). Likewise, the reliability of an eyewitness is a question for the jury. *Id.* After a jury gives credence to a witness's testimony, it will not be disregarded unless it is so inherently improbable, or clearly unbelievable that reasonable minds could not differ. *Williams v. State*, 351 Ark. 215, 91 S.W.3d 54 (2002).

At issue in this appeal is whether the testimony of Mitchell is sufficient to prove that appellant *delivered* the methamphetamine that Mitchell admitted to possessing. The relevant section of the Code defines delivery as “the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance . . . in exchange for money or anything of value, whether or not there is an agency relationship.” Ark. Code Ann. § 5-64-101(7).

Appellant asserts that Mitchell was an “informer-addict” and not an accomplice to the charged offense. Appellant urges that because Mitchell, as a self-admitted methamphetamine cook and user, was an informer-addict, his testimony was inherently unreliable, and the court should have required corroboration. Appellant cites to *People v. Mickelson*, 336 N.E.2d 806 (Ill. App. Ct. 1975), in support of this argument. We need not address this argument because the jury was properly instructed that Mitchell's testimony must be corroborated.

In the instant case, the jury was instructed to consider Mitchell an accomplice. The jury instruction, AMI Crim. 2d 402, included a directive that Mitchell's testimony must be “corroborated by other evidence tending to connect [appellant] with the commission of the

offense.” Accordingly, this court must determine whether there was sufficient evidence to corroborate Mitchell’s testimony as an accomplice under Arkansas law without the necessity of looking to other jurisdictions for guidance on issues not presented at trial.

It is well settled in Arkansas law that the testimony of an accomplice must be corroborated in a felony case. Ark. Code Ann. § 16-89-111(e)(1)(A) (Repl. 2005). Additionally, subsection (B) states that the corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof. Ark. Code Ann. § 16-89-111(e)(1)(B). It must be evidence of a substantive nature since it must be directed toward proving the connection of the accused with a crime and not toward corroborating the accomplice testimony. *Stephenson v. State*, 373 Ark. 134, 282 S.W.3d 772 (2008). The corroborating evidence need not be sufficient standing alone to sustain the conviction, but it must, independent from that of the accomplice, tend to connect to a substantial degree the accused with the commission of the crime. *Id.* The test is whether, if the testimony of the accomplice were completely eliminated from the case, the other evidence independently establishes the crime and tends to connect the accused with its commission. *Id.* The corroborating evidence may be circumstantial, so long as it is substantial; evidence that merely raises a suspicion of guilt is insufficient to corroborate an accomplice’s testimony. *Id.* The presence of an accused in the proximity of a crime, opportunity, and association with a person involved in the crime in a manner suggestive of joint participation are relevant facts in determining the connection of an accomplice with the crime. *Passley v. State*, 323 Ark. 301,

915 S.W.2d 248 (1996). When circumstantial evidence is used to support accomplice testimony, all facts in evidence may be considered to constitute a chain sufficient to present a question for resolution by the trier of fact as to the adequacy of corroboration. *Tate v. State*, 357 Ark. 369, 167 S.W.3d 655 (2004).

Here, Officer Mulligan testified that he observed appellant meeting with Mitchell at the apartment complex parking lot, after which Mitchell evaded Officer Mulligan. Officer Mulligan found methamphetamine at Mitchell's feet. Detective Volner testified that appellant admitted delivering the methamphetamine to Mitchell in exchange for Sudafed. We hold that the testimonies of Officer Mulligan and Detective Volner were sufficient to connect appellant to the crime. *See, e.g., Williams v. State*, 290 Ark. 449, 720 S.W.2d 305 (1986) (holding that the testimony of a law-enforcement officer was sufficient evidence to corroborate the appellant's connection to the crime).

Appellant also argues that his oral confession to Detective Volner was unreliable testimony because it is not sufficiently corroborated and asserts that the failure to admit the box of Sudafed into evidence is an evidentiary shortfall, leaving no direct evidence to support Detective Volner's testimony. Under Arkansas law, a confession of a defendant, unless made in open court, is insufficient to warrant a conviction, unless it is accompanied with other proof that the offense was committed. Ark. Code Ann. § 16-89-111(d) (Repl. 2005). The supreme court has interpreted this statute as follows:

This requirement for other proof, sometimes referred to as the *corpus delicti* rule, mandates only proof that the offense occurred and nothing more. In other words,

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under the *corpus delicti* rule, the State must prove (1) the existence of an injury or harm constituting a crime and (2) that the injury or harm was caused by someone's criminal activity. It is not necessary to establish any further connection between the crime and the particular defendant. Accordingly, we must determine whether, setting aside appellant's confession, the evidence demonstrates that the crime . . . was committed by someone.

Tinsley v. State, 338 Ark. 342, 345, 993 S.W.2d 898, 900 (1999) (internal citations omitted);
see also Lewis v. State, 74 Ark. App. 61, 48 S.W.3d 535 (2001).

Here, Officer Mulligan and Mitchell both testified that the crime of delivery of methamphetamine occurred. Officer Mulligan observed a male standing by the passenger side of Mitchell's car, who then walked toward the door of what was later identified as appellant's apartment. Mitchell testified that he exchanged a box of Sudafed for the methamphetamine from appellant. Mitchell then evaded contact with Officer Mulligan, and when he was pulled over, the baggie containing methamphetamine fell out of his underwear onto the ground by his feet where Officer Mulligan confiscated it. The evidence proves that the delivery of methamphetamine occurred as a result of someone's criminal activity, which is sufficient to meet the requirements of the statute.

The evidence supporting appellant's conviction is substantial, and we affirm the circuit court's decision.

Affirmed.

VAUGHT, C.J., and GLOVER, J., agree.