ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR07-452

November 28, 2007

MICHAEL D. DUNLAP	APPELLANT	APPEAL FROM THE OUACHITA COUNTY CIRCUIT COURT [CR-06-141-4]
V.		HON. CAROL C. ANTHONY, CIRCUIT JUDGE
STATE OF ARKANSAS	APPELLEE	AFFIRMED

A Ouachita County jury convicted appellant Michael Dunlap of possession of a controlled substance with intent to deliver and possession of drug paraphernalia for which he was sentenced to 360 months' and 120 months' imprisonment respectively. On appeal, he claims that there was insufficient evidence to support either conviction and, as such, the trial court erred in its denial of his directed-verdict motions. We disagree and affirm.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. When determining the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence, which is evidence that is of sufficient certainty and precision to compel a conclusion one way or the other. When determining if sufficient evidence exists,

we review the evidence in the light most favorable to the State. *Ladwig v. State*, 328 Ark. 241, 943 S.W.2d 571 (1997).

On appeal Dunlap first claims that the State failed to carry its burden on the possession-with-intent-to-deliver conviction because it did not establish that the cocaine recovered at the crime scene had ever been in his actual possession. Indeed, the testimony from Carol Brewer established that Dunlap passed her some items to hold while he was being arrested in front of his apartment—a black box with a ribbon on it, some keys, and some money—but that she did not notice Dunlap handing her a plastic bag. However, she also admitted that she was not paying close attention to what Dunlap was passing to her. According to her testimony, after receiving the items from Dunlap, she placed them on a nearby chair as she was ordered to do by one of the arresting officers, Romero Scruggs.

Officer Glen Gilbert of the Camden Police Department also testified at trial. He stated that he came into contact with Dunlap after receiving a notification that there was an active warrant for Dunlap's arrest. Officer Gilbert stated that as he and Officer Scruggs were attempting to effectuate the arrest, Dunlap began pulling items from his pocket and handing them to Brewer. Officer Gilbert testified that he noticed a "little square object that seemed suspicious ... almost like a calculator" but that he did not observe the other items that Dunlap removed from his pocket.

Finally, Officer Scruggs testified that during the arrest, he observed—on two occasions—Dunlap remove items from his pocket and hand them to Brewer. According to Officer Scruggs, during the second transfer, he witnessed Dunlap remove a small plastic bag

containing an off-white substance from his pocket. The substance was later determined to be a "cookie" of crack cocaine.

Dunlap does not dispute that the substance recovered was cocaine; he merely disputes the fact that he possessed it. However, based on Officer Scruggs testimony alone, the State provided substantial evidence that the illegal substance was in Dunlap's possession. Further, the State presented testimony from Cassie Burns, a forensic chemist with the Arkansas State Crime Laboratory, that the cocaine base recovered from the scene weighed 12.450 grams. Contrary to Dunlap's argument otherwise, this amount is well over the requisite one gram that is necessary to create a statutory presumption of intent to deliver. *See Young v. State*, 77 Ark. App. 245, 72 S.W.3d 895 (2002).

Dunlap also argues that the State failed to provide sufficient evidence that he possessed drug paraphernalia because the scale he possessed "could" be used for something other than drug use. At trial he argued that he should not be convicted of the paraphernalia charge because scales do not fit the description that provides for "planting, propagating, cultivating, growing... ." Because a party may not change the scope or nature of argument on appeal, but is bound by the objections made at trial, we do not reach the merits of his newly formulated appeal argument. *Abshure v. State*, 79 Ark. App. 317, 87 S.W.3d 822 (2002).

Affirmed.

ROBBINS and BAKER, JJ., agree.