Cite as 2010 Ark. App. 781

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-484

EARMON LAMAR BROWN APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** December 1, 2010 APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT [NO. CR-09-158] HONORABLE PHILLIP WHITEAKER, JUDGE AFFIRMED

JOSEPHINE LINKER HART, Judge

Earmon Lamar Brown was convicted in a bench trial of possession of drugs and firearms and possession of marijuana with intent to deliver. For these offenses, he received concurrent 120-month sentences in the Arkansas Department of Correction. On appeal, he does not challenge his conviction for simultaneous possession of drugs and firearms. He does, however, argue that the trial court erred in denying his directed-verdict motion with respect to the possession of marijuana with intent to deliver. We affirm.

An appeal from a denial of a motion for a directed verdict is a challenge to the sufficiency of the evidence. *Clemons v. State*, 2010 Ark. 337, ___ S.W.3d ___. In reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict was supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence that is forceful enough to compel a conclusion without speculation or conjecture. *Id.*

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). 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 trier of fact, 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.*

England Police Officer Joshua Vaughn testified that on April 16, 2009, he observed the vehicle that Brown was driving cross the solid-white fog line several times. He made a traffic stop. Officer Vaughn stated that Brown admitted driving on a suspended license, so he arrested Brown for that offense. Arrangements were made to have Brown's vehicle towed. A subsequent search of the vehicle uncovered a nine-millimeter handgun. Next to the gun was a black nylon containing three baggies filled with what turned out to be marijuana, three cell phones, and a digital scale. Seven hundred seventy dollars was found on Brown's person. Lize Wilcox of the Arkansas State Crime Lab testified that the three baggies contained 5.2 grams, 27.9 grams, and 2 grams of marijuana, which in total is 1.2 ounces of the drug.

In Brown's case, his mother, Tracy Brown, testified that she owned two of the baggies of marijuana that were found in Brown's car. Brown also testified that he owned only one of the baggies of marijuana. He confirmed that the other baggies belonged to his mother and were

distinguishable from his narcotics because it was a higher quality. Further, he disputed Officer Vaughn's testimony that all three baggies were in the black nylon bag; he asserted that his marijuana was in the car's cup holder. Finally, Brown explained that he had $780 in cash because his girlfriend cashed her check and gave it to him to get his car fixed so that he could sell it. Kasey Bass, Brown's girlfriend, also testified and confirmed that she gave Brown $750 from her recently cashed paycheck.

On appeal, Brown does not dispute that he possessed marijuana, only that he possessed the drug with intent to deliver. He acknowledges that the aggregate total of marijuana found in his vehicle exceeded the one-ounce threshold required to trigger the statutory presumption, codified under Arkansas Code Annotated section 5-64-401(d)(3)(A)(vii), that he possessed the drug with intent to deliver. However, he relies on the testimony in his case-in-chief to assert that he successfully rebutted the presumption. This argument is not persuasive.

Under our standard of review, we do not even consider the evidence that does not support the verdict. *Morgan v. State*, *supra*. Accordingly, the testimony from Brown and his mother concerning ownership of the marijuana does not factor into our analysis. Therefore, in light of the statutory presumption, the possession of 1.2 ounces is substantial evidence of intent to deliver. *Owens v. State*, 325 Ark. 110, 926 S.W.2d 650 (1996). Further, the marijuana found in Brown's vehicle was separately packaged, which has also been held to be substantial evidence of intent to deliver, even when the aggregate amount of the drug in question falls below the weight required to trigger the statutory presumption. *Thomason v. State*, 91 Ark. App. 128, 208

S.W.3d 830 (2005).

Affirmed.

BAKER and BROWN, JJ., agree.