

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION IV

CACR 07-396

NOVEMBER 14, 2007

VERNIST MCCRANEY
APPELLANT

APPEAL FROM THE CLEVELAND
COUNTY CIRCUIT COURT
[NO. CR-06-47-5]

V.

HONORABLE LARRY CHANDLER,
JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Appellant Vernist McCraney was convicted by a jury in Cleveland County of the offense of delivery of crack cocaine, with an enhancement for having been committed within one thousand feet of a church. For this crime, he was sentenced to twelve years in prison for delivery of the drugs, enhanced by ten years for having been delivered within that distance from a church. Appellant challenges the sufficiency of the evidence to support his conviction, attacking whether a drug transaction actually took place between him and the confidential informant. We have examined the evidence under the proper standard of review and hold that the State presented sufficient evidence upon which the jury could rely to support its guilty verdict.

A motion for directed verdict is a challenge to the sufficiency of the evidence. *Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001). The test for determining sufficiency of the evidence is whether substantial evidence, direct or circumstantial, supports the verdict. *Id.* Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another and pass beyond mere suspicion or conjecture. *Id.* On appeal, we review the evidence in the light most favorable to the appellee and consider only the evidence that supports the verdict. *Id.*

The credibility of witnesses is an issue for the jury and not the court. *Phillips v. State*, 344 Ark. 453, 40 S.W.3d 778 (2001). The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.* We will disturb the jury's determination only if the evidence did not meet the required standards, thereby leaving the jury to speculation and conjecture in reaching its verdict. *Id.* Circumstantial evidence may constitute substantial evidence to support a conviction. *Gregory v. State*, 341 Ark. 243, 15 S.W.3d 690 (2000). Guilt can be established without eyewitness testimony and evidence of guilt is not less because it is circumstantial. *Id.* Upon review, this court must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *Id.* The test is one of substantiality. *Id.*

The evidence presented to the jury is as follows, viewed in the light most favorable to the State. On the evening of May 18, 2006, confidential informant Ruby Young, an admittedly recovering drug addict with a pending burglary charge, met with sheriff's department investigators on Tyson Road, just south of Rison, Arkansas, in order to conduct

a controlled drug buy. Young was patted down, in a frisk-type search of her person, to ensure that she did not already have drugs with her. Young was given \$20 in cash, given an audio recording device disguised as a cellular telephone, and instructed to make a drug purchase. One of the investigators testified that Young had worked with him on previous drug buys, and he believed her to be very trustworthy. Young testified that she had been working with law enforcement in exchange for leniency regarding the burglary charge.

Young drove to a location in Unionville where she knew drug activity took place. She summoned a man to her car, who got into the passenger side. She asked for twenty dollars worth of crack, which she said he produced from a plastic bag. The only part of this interaction recorded on audiotape was when the man asked Young “What do you want to put it in?” and Young replied “A piece of paper.” Young explained that the paper was to be used to wrap the crack cocaine. Young immediately returned to the investigator with crack cocaine, which the investigator sent to the State Crime Laboratory to verify that it contained cocaine base. At trial, Young identified appellant as the man who sold her crack cocaine that night.

The investigator testified that he heard the man’s voice on the recording and knew that it was appellant’s, because his voice was distinctive. The investigator testified that he personally measured the distance between where Young said the transaction took place and the nearest church, Unionville Missionary Baptist Church. The investigator stated that the distance was 355 feet between the two locations.

Appellant's counsel moved for directed verdict, arguing that the State's case rested on the testimony of a drug addict with a motive to work off a criminal charge. The trial judge, noting that this was an issue of credibility, denied the motion and its renewal. The jury deliberated and found appellant guilty. This appeal followed.

Appellant critiques the investigation for having failed to use marked currency so that the money could be traced to appellant, for having failed to conduct a thorough search of Young's person to ensure that she did not already have drugs, and for having used a faulty recording device. He contends that these deficiencies render the State's case too frail to go to the jury, and he asserts that he was more likely framed by the informant. We disagree.

Appellant's arguments are essentially directed to the believability of the confidential informant. The testimony of the informant alone, if believed by the jury, was enough to sustain the jury's conclusion that he delivered cocaine to her that night. *Compare Brunson v. State*, 45 Ark. App. 161, 873 S.W.2d 562 (1994) (jury's acceptance of informant's testimony sufficient to sustain guilty verdict on delivery of drugs). *See also Warren v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 17, 2007). Our appellate courts will not pass upon the credibility of a witness and have no right to disregard the testimony of any witness after the jury has given it full credence, unless the testimony is inherently improbable, physically impossible, or clearly unbelievable. *Barnes v. State*, 258 Ark. 565, 528 S.W.2d 370 (1975).

We affirm appellant's conviction.

VAUGHT and BAKER, JJ., agree.