

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR08-569

WALTER ANTHONY KING,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered NOVEMBER 19, 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR 07-3621]

HONORABLE JOHN LANGSTON,
JUDGE

AFFIRMED

KAREN R. BAKER, Judge

Appellant Walter Anthony King was found guilty in Pulaski County Circuit Court of ticket scalping, a violation of Arkansas Code Annotated section 5-63-201 (Repl. 2005). King was fined \$500 plus costs for the conviction. On appeal, King asserts that the trial court erred in admitting the tickets into evidence and that there was insufficient evidence to support his conviction. Finding no error, we affirm.

Shortly before the kickoff of the November 24, 2006 Arkansas-LSU football game, King was arrested by the Little Rock Police Department Vice Squad on West Markham near War Memorial Stadium. After the arrest, he was charged with two counts of ticket scalping. King was tried in a bench trial in Pulaski County Circuit Court on appeal of his conviction in Little Rock District Court.

The testimony at the hearing before the circuit court was as follows: Officer Hall testified that he was working undercover at the game and was targeting ticket scalpers. He was given information that King was possibly engaged in ticket scalping. Officer Hall approached King, who

was standing west of the stadium near Markham Street. King had a map of the stadium in his left hand and was holding up tickets in his right hand. Officer Hall asked King the price of the tickets, and King responded that the tickets were not for sale. King said that he was selling the map for \$500 and that the tickets came with the purchase of the map. Officer Hall testified that he took the tickets from King, inspected them, saw that the face value of each ticket was \$35, and handed them back to King. Officer Hall agreed to purchase the tickets and “gave a nod” to officers who were standing nearby. The officers approached King and took the tickets from him. Officer Hall testified that the map was a seating chart of the stadium that had been printed on November 22, 2006 from the internet. On cross-examination, Officer Hall testified that he personally did not take the map and tickets from King, and he did not see the other officers take the items. Rather, when the other officers approached King, Officer Hall simply “walked off.”

Detective Manning testified he also worked the Arkansas-LSU football game. He stood on the Markham Street sidewalk, west of where King stood, and watched as King held up the two game tickets. Detective Manning stated that after Officer Hall motioned for him, he approached King and removed the tickets from King’s right hand. King attempted to grab the tickets from Detective Manning’s hand; however, he was unsuccessful. Detective Manning testified that he believed that “Detective Ringgold took the map from him.” Detective Manning handed the tickets to Detective Ringgold, and the two walked to the command post. Detective Manning filled out an incident report concerning King. Detective Manning testified that he had “no doubt that [King was] the one that was holding the tickets and the map” and was certain that “those tickets [were] the ones that I saw, took and handed to Ringgold.”

Detective Ringgold testified that he too was working the Arkansas-LSU football game. He

saw King standing at the corner of Markham and Fair Park, waving tickets and a map of the stadium. Detective Ringgold watched as Officer Hall approached King, and when Officer Hall gave Detective Ringgold the nod to approach, he and Detective Manning made contact with King. Detective Ringgold took the map from King's left hand. Detective Manning took the tickets from King's right hand and gave them to Detective Ringgold. The two detectives took King to the command post, located on the east side of the stadium, and completed the paperwork on the incident. Detective Ringgold stored the tickets and the map at the northwest sub-station property room.

At this point in the case, the State introduced Exhibits one, two, and three, which consisted of the two football tickets and the map of the stadium. King objected to the introduction of the tickets based on an improper identification and chain of custody. In response to King's objection to the chain of custody, Detective Ringgold testified further that the tickets and map were put into an envelope marked with the incident number. King again objected based on chain of custody; however, the trial court overruled the objection.

On behalf of King, Lewis Dottley testified that he and his wife had been invited by King to the Arkansas-LSU game on November 24, 2006. King was responsible for getting the tickets to the game. Just as the Dottleys were about to meet the Kings to go into the game, Mr. Dottley received a call that King had been arrested and had been taken to the North Little Rock jail. Dottley traveled to North Little Rock and bailed King out of jail. They went back to the stadium, purchased more tickets, and went in to watch the game. Dottley testified that King would not have sold the Dottleys' game tickets, as it was a tradition for them to attend the Arkansas-LSU game together.

King testified on his own behalf. He maintained that he was innocent of the charges. He testified that he purchased four tickets to the 2006 Arkansas-LSU game; that two of the tickets

belonged to Mr. Dottley and his wife; and that he did not offer any of the tickets for sale. King testified that Officer Manning approached him and “jerked a map out of [his] hand.” He stated that at that time, the tickets were in his pants pocket.

At the close of the State’s case, King moved to dismiss the charges for lack of sufficient evidence that he either sold the two tickets introduced into evidence or had offered them for sale. The trial judge granted King’s motion as to one count, holding that a single offer to sell two tickets constituted only one offense; however, he denied the motion as to the second count. King renewed his motion at the close of all the evidence, and it was again denied. The trial judge found that King violated the statute regarding ticket scalping and fined him accordingly. This appeal followed.

While appellant presents the challenge to the sufficiency of the evidence as his second point on appeal, preservation of his freedom from double jeopardy requires us to examine the sufficiency argument before addressing trial errors. *Nelson v. State*, 365 Ark. 314, 229 S.W.3d 35 (2006) (citing *Rankin v. State*, 329 Ark. 379, 948 S.W.2d 397 (1997)). A motion to dismiss in a bench trial is identical to a motion for a directed verdict in a jury trial in that it is a challenge to the sufficiency of the evidence. *Springs v. State*, 368 Ark. 256, 244 S.W.3d 683 (2006). In reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). We affirm a conviction if substantial evidence exists to support it. *Id.* 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 resorting to speculation or conjecture. *Id.*

In the present case, King contends that the evidence was insufficient to sustain his conviction in that the State failed to prove that he either sold or offered to sell the football tickets. Arkansas

Code Annotated section 5-63-201(a)(1) (Repl. 2005) states that it is unlawful for any person to sell or offer for sale any ticket to a high school or college athletic event at a greater price than that printed on the ticket. Subsection (b)(1) provides that “[a]ny person . . . violating any provision of this section is guilty of a violation and upon conviction shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500).” Every sale or offer for sale is a separate offense. Ark. Code Ann. § 5-63-201(b)(2).

Officer Hall testified that on November 24, 2006, he approached King and inquired about the price of the tickets that he was holding up in the air. He testified that King informed him that the map of the stadium was for sale for \$500 and that the tickets were free with the purchase of the map. Officer Hall testified that he inspected the tickets, handed them back to King, and then agreed to purchase the tickets. Officer Hall pretended to reach for his wallet as he motioned for the detectives standing nearby to make contact with King. The detectives took the map and two tickets from King’s hands, placed him under arrest for ticket scalping, and took him to the command post. The tickets and map were placed in an envelope, which bore the incident number pertaining to King’s case. At trial, Detective Ringgold testified that the tickets in evidence were the tickets that were confiscated from King on November 24, 2006. While King testified that the tickets were in his pants pocket and that he did not offer the tickets for sale, resolution of conflicts in testimony and assessment of witness credibility is for the fact finder. *Harris v. State*, 72 Ark. App. 227, 35 S.W.3d 819 (2000). The trial court is free to believe the prosecution’s version of events rather than the defendant’s. *See Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001). Based on the foregoing, there was sufficient evidence to sustain King’s conviction for ticket scalping.

King also contends that the trial court erred in admitting the football tickets into evidence

without adequate foundation regarding identification and authentication for chain of custody. This court will not reverse a trial court's ruling on the admissibility of evidence absent a showing that it clearly abused its discretion. *Jones v. State*, 82 Ark. App. 229, 105 S.W.3d 835 (2003). The purpose of establishing a chain of custody is to prevent the introduction of physical evidence that has been tampered with or is not authentic. *Newman v. State*, 327 Ark. 339, 939 S.W.2d 811 (1997). It is an abuse of discretion for a trial court to allow the introduction of evidence that has been tampered with or is not authentic. *Crisco v. State*, 328 Ark. 388, 943 S.W.2d 582 (1997).

The trial court heard testimony that, after officers approached King, Detective Manning confiscated the map and two football tickets from him. Detective Manning handed the tickets to Detective Ringgold. The two detectives arrested King and took him, along with the evidence, to the command post. Detective Ringgold testified that he placed the tickets and the map in an envelope and left the envelope at the northwest sub-station property room. The envelope was marked with the incident number corresponding to King's case.

King asserts that the tickets he possessed were for different seats, section, and row than the tickets admitted into evidence. However, Detective Ringgold identified the two tickets at trial and testified that the tickets introduced into evidence were the actual tickets confiscated from King on November 24. Furthermore, the envelope in which the tickets were placed was marked with an incident number matching that of the information report. We cannot say that the trial court abused its discretion by allowing the introduction of the evidence.

Affirmed.

BIRD, J., agrees.

MARSHALL, J., concurs.