

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

DIVISION III

CACR06-1488

August 29, 2007

CONNEAL BUCKHANNA
APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[CR-2006-1178]

V.

HON. JOHN W. LANGSTON,
CIRCUIT JUDGE

STATE OF ARKANSAS
APPELLEES

AFFIRMED

Appellant Conneal Buckhanna was convicted of possession of a controlled substance and possession of drug paraphernalia. He was sentenced to two thirty-year terms of imprisonment in the Arkansas Department of Correction, to run concurrently. Buckhanna appeals his convictions arguing that the trial court erred in allowing the State to offer into evidence testimony about the street value of the cocaine that was found in his possession upon his arrest. We affirm.

On February 12, 2006, Little Rock Police responded to a disturbance call. Upon arriving at the scene, the officers learned that Buckhanna was the subject of the disturbance. Officer Tim Pope testified that he approached Buckhanna to “pat him down for weapons and officer safety” and found “a small baggie sticking out of the side of his pocket,” which

Officer Pope believed contained crack cocaine. Officer Pope then conducted a more thorough search of Buckhanna and found a glass pipe deeper in his pocket. Officer Pope testified that a glass pipe is typically used to ingest crack cocaine. The State introduced testimony from a forensic chemist, employed by the Arkansas State Crime Laboratory, who confirmed that the baggie contained 5.5 grams of crack cocaine and that the pipe had crack cocaine residue on it.

Little Rock Police Department Narcotics Officer Clark Sheffield testified that after Buckhanna was taken into custody, he read Buckhanna the Miranda Rights Form. Buckhanna waived his Miranda rights and gave a verbal statement. In his statement, Buckhanna said that he gave a woman, who was purchasing drugs for herself, sixty-five dollars to purchase some drugs for him, which he smoked. Buckhanna stated that a commotion occurred, the woman dropped her drugs, and he picked them up.

At trial, the State asked Officer Sheffield to identify the street value of 5.5 grams of crack cocaine; this inquiry received a relevance objection from Buckhanna. The State responded that the question was relevant in that Buckhanna, in his statement, contended that he only paid sixty-five dollars for drugs when the evidence showed he had more than sixty-five dollars of drugs in his possession. The trial court found that the question was relevant and overruled the objection. Officer Sheffield proceeded to testify that 5.5 grams of crack cocaine had a street value of \$500.

Buckhanna was the only defense witness at trial. The jury convicted Buckhanna of possession of a controlled substance and possession of drug paraphernalia. He appeals his convictions, arguing solely that the trial court erred in allowing the State to offer into evidence testimony about the street value of the crack cocaine in his possession. He argues that this testimony was irrelevant as Buckhanna was only charged with possession and that such evidence was overwhelmingly prejudicial.

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Ark. R. Evid. 401. Although all relevant evidence is admissible, even relevant evidence can be excluded if its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues. Ark. R. Evid. 403. Trial courts have broad discretion in deciding evidentiary issues, including the admissibility of evidence under Rule 403, and those decisions will not be reversed absent an abuse of discretion. *Jones v. State*, 340 Ark. 390, 10 S.W.3d 449 (2000).

We hold that the trial court did not abuse its discretion in allowing the testimony of Officer Sheffield that the 5.5 grams of crack cocaine found in the possession of Buckhanna had a street value of \$500. First, such evidence was relevant.¹ The testimony in question refutes and impeaches the out-of-court statement of Buckhanna who claimed that he only

¹ Even Buckhanna, in his brief on appeal, concedes to the “minimal” relevance of Officer Sheffield’s testimony on this issue.

paid sixty-five dollars for his drugs.² Moreover, under Rule 403 of the Arkansas Rules of Evidence, the probative value of Officer Sheffield's testimony is not substantially outweighed by the danger of unfair prejudice. In fact, in this case, the testimony about the street value of the drugs found in Buckhanna's possession is not prejudicial at all. The charges against him were for possession of drugs and drug paraphernalia. Buckhanna confessed multiple times at trial that he possessed the drugs.

Buckhanna's argument that the testimony about the street value of the drugs in his possession was prejudicial in that it unfairly characterized him as a drug dealer, rather than a drug user, must fail. Buckhanna, at trial, characterized himself as a drug dealer. He testified that he had two prior convictions for possession of controlled substances with the intent to deliver (along with three other prior convictions for possession of a controlled substance).

A review of the evidence in the instant case reveals that the testimony concerning the street value of the crack cocaine found in the possession of Buckhanna was relevant and that the probative value of that testimony was not substantially outweighed by unfair prejudice. Therefore, we hold that the trial court did not abuse its discretion in admitting this testimony, and accordingly, we affirm.

Affirmed.

² The timing of the State's offer of Officer Sheffield's testimony is also of significance on the issue of relevance. The testimony of Officer Sheffield was offered by the State, and admitted into evidence by the trial court, *before* Buckhanna testified at trial and confessed to the charge of possession of a controlled substance.

GLADWIN and GRIFFEN, JJ., agree.