

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR11-1069SHARVELT MARQUETTE MISTER
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 26, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CR-10-1319]HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

CLIFF HOOFFMAN, Judge

Appellant Sharvelt Mister appeals his conviction for delivery of cocaine, arguing that there is insufficient evidence to support his conviction and that the trial court erred in denying his motion to suppress. We affirm.

Appellant was charged with delivery of cocaine after selling cocaine to a confidential informant. Prior to trial, appellant filed a motion to suppress evidence, arguing that the testimony of the confidential informant and the testimony of police officers regarding the informant's actions should be suppressed as she was not properly searched.

A hearing on the motion to suppress was held on July 5, 2011. Greg Napier, a narcotics detective with the Fort Smith Police Department, testified that he conducted an investigation into appellant's selling of crack cocaine. He testified that a confidential informant, Gretchen Carney, had provided information about appellant and that on

December 2, 2010, he had Carney make a controlled buy from appellant. Napier and Detective Eric Fairless searched Carney prior to the buy to make sure she did not have any contraband on her. Carney was wearing pajamas with flip flops and no underwear or bra. Napier said they had Carney pull out her waistband and shake her pants and that she was standing in a manner so that if she was concealing anything in her crotch area it would have fallen out. They had her hold her arms up to see that she had nothing under her arms. Fairless also searched Carney's vehicle, and no contraband was found. Carney was provided with pre-recorded buy money and a covert recording device for the police to monitor and record the transaction. Napier testified that they followed Carney to the meeting location, and they parked and watched as she pulled beside the car appellant was in. They saw Carney get out of her vehicle and get into the backseat of the car occupied by appellant and another man. Carney then got back in her own car and drove back to the police meeting location, followed by Napier. Carney and her vehicle were searched again, and she handed Napier the recording device and the crack cocaine. Carney could not identify the driver of the other vehicle but identified appellant as the suspect from whom she bought the crack cocaine.

Napier testified that another controlled buy from appellant was performed on December 20, 2010. After that buy, appellant was arrested, and pre-recorded buy money from the transaction just completed was found on him. Napier said that the police had used Carney to catch about sixty people and that she did exactly what they told her to do. He said that for her informant work she received consideration on the criminal charges that were

pending against her. Napier testified that it was not necessary to use a female officer to search a female informant and that he had never had an informant hide contraband on themselves to get a bust. Detective Fairless corroborated Napier's testimony about searching Carney and her vehicle.

Gretchen Carney testified that she met appellant through a friend trading ecstasy for crack and that she had previously traded a laptop computer to him for crack. She admitted that she was arrested on drug charges and subsequently received a five-year suspended imposition of sentence through a plea bargain. Carney confirmed that on the day of the controlled buy, she wore only fleece pajama pants and a "hoodie" sweatshirt and was searched by Napier.

The State argued that appellant's arguments in the motion to suppress went to the weight and credibility of the testimony but did not give rise to suppression. The trial court denied appellant's motion. Subsequently, a jury trial was held. The trial court denied appellant's motion for a directed verdict, and the jury found him guilty of delivery of cocaine.

On appeal, appellant combines his arguments regarding sufficiency of the evidence and the denial of his motion to suppress. We note, however, that his sufficiency argument is not preserved. For his directed-verdict motion at the close of the State's case, appellant stated as follows:

The defendant moves the court for . . . a directed verdict of acquittal in that the prosecution has failed to prove the *res gestae* of the offense, that the testimony adduced is not sufficient to bring the case to the jury.

To preserve a challenge to the sufficiency of the evidence on appeal, a clear and specific motion for a directed verdict must be made to the trial court. *Elkins v. State*, 374 Ark. 399, 288 S.W.3d 570 (2008). A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense. Ark. R. Crim. P. 33.1(c). Because appellant's directed-verdict motion was not specific, his argument is not preserved for our review.

When reviewing the denial of a motion to suppress evidence, this court conducts a de novo review based upon the totality of the circumstances, reversing only if the trial court's ruling is clearly against the preponderance of the evidence. *Morgan v. State*, 2009 Ark. 257, 308 S.W.3d 147. Issues regarding the credibility of witnesses testifying at a suppression hearing are within the province of the circuit court. *Id.* Any conflicts in the testimony are for the circuit court to resolve, as it is in a superior position to determine the credibility of the witnesses. *Id.*

Appellant vaguely argues in his brief that the trial court arbitrarily disregarded conflicting testimony and erred in choosing to give credibility to Detective Napier's speculations. Appellant argues that the failure of the police to conduct a thorough search of the confidential informant leaves a very distinct possibility that the trial court was lied to and misled. He claims that the reliability and trustworthiness of the confidential informant was never completely proved to the court.

The State argues that appellant has failed to correlate the informant's alleged unreliability with an argument for suppression by arguing that it resulted in his illegal search

or seizure. Appellant's arguments address only the weight of the evidence. Appellant has not claimed that any evidence was illegally obtained, and thus, has not shown that any testimony regarding Carney's actions should have been suppressed. The trial court's ruling denying appellant's motion to suppress is not clearly against the preponderance of the evidence. We affirm.

Affirmed.

ABRAMSON and BROWN, JJ., agree.

David L. Dunagin, for appellant.

Dustin McDaniel, Att'y Gen., by: *LeaAnn J. Irvin*, Ass't Att'y Gen., for appellee.