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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-860

SHARVELT MARQUETTE MISTER APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** May 30, 2012 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NOS. CR00-1053, CR-01-238, CR-01-239, CR-07-963, CR-07-969] HONORABLE STEPHEN TABOR, JUDGE AFFIRMED

CLIFF HOOFMAN, Judge

Appellant, Sharvelt Mister, appeals from the revocation of his suspended sentences. He argues that there was insufficient evidence that he violated a condition of his suspended sentences by committing delivery of cocaine. We affirm.

On August 21, 2001, appellant pled guilty to three drug offenses for which he received a suspended imposition of sentence (SIS) of ten years on each charge, in addition to terms of imprisonment. On September 19, 2007, appellant pled guilty to three more drug offenses for which he received an SIS of eight years on each charge, in addition to terms of imprisonment. On December 27, 2010, the State filed a petition to revoke appellant's suspended sentences, alleging that on December 2, 2010, and December 20, 2010, appellant committed the offense of delivery of cocaine in violation of the terms and conditions of his suspended sentences.

At the revocation hearing, two Fort Smith Police Department narcotics detectives and their informant testified for the State. The informant, Gretchen Carney, was arrested in October 2010 on drug charges and agreed to do some informant work for consideration of a lighter sentence. She ultimately received a five-year suspended sentence on her drug convictions. Carney testified that she had previously bought crack cocaine from appellant, and the police arranged for her to perform two controlled buys. Detective Greg Napier searched Carney for contraband prior to the first buy on December 2, 2010. Napier said that he checked her pockets and the waistband of her pants. Carney's vehicle was also searched, and she was given a device to transmit and record the transaction and $200 in buy money. Napier and Detective Eric Fairless followed Carney as she drove to meet appellant in a parking lot. The detectives maintained visual surveillance as Carney got into the back seat of a car in which appellant was in the front passenger seat. Carney testified that she gave appellant $200, and he gave her ten rocks of crack cocaine packaged in plastic. The detectives listened to their conversation through the wire Carney was wearing. Once the transaction was completed, Carney turned the drugs over to the detectives, and she and her vehicle were searched again.

The same procedure was followed when Carney made a second controlled buy from appellant on December 20, 2010, at a different location. Carney again gave appellant $200 of buy money in exchange for ten rocks of crack cocaine. After that buy was completed, the car appellant was in was pulled over, and he was arrested for delivery of cocaine. Napier testified that $200 of pre-recorded buy money was found in appellant's pocket. Napier had

made photocopies of the bills prior to giving them to Carney, and after the arrest, he confirmed that the serial numbers on the photocopies matched the cash found on appellant. Napier testified that he had since listened to the recordings of the transactions and heard appellant's voice on them. Napier testified that Carney was very reliable.

On cross-examination, Carney testified that no officer searched under her shirt or in her pants before the controlled buys. Detective Fairless acknowledged that they did not search under Carney's breasts and that he did not know if she had contraband in the crotch of her pants. Carney also testified that there was a trash bag full of purses in appellant's car both times they met. Carney said that she did not buy any purses from appellant, although they did talk about it. She testified that there was also a laptop in the car that she had previously given to appellant in a trade for crack cocaine. She said that they had an agreement that she would receive the laptop back when she paid him. Napier testified that he did not recall seeing a laptop or a trash bag of purses in the car.

Appellant testified that Carney was a prostitute whom he knew through a friend. He claimed that Carney had not bought drugs from him in the past, but he had let Carney borrow $125 in November in exchange for a laptop computer. He said that she called him on December 2, 2010, to repay him $100, and when they met he told her he would give the laptop back when she repaid the rest of the money. Appellant claimed that no drugs changed hands that day; instead, he showed her the purses he was selling. Appellant testified that Carney called him on December 20 and said she wanted to buy some purses for her daughters. He claimed that he sold her one bag and several wallets that day. He said that he

did not know how much money he had in his pocket upon being pulled over, but Carney had given him about $60 or $70. Appellant claimed that he did not sell cocaine. Upon questioning by the court, appellant stated that he sold one bag to Carney for $40 and ten wallets for $80; thus, on December 20, he received $120 from Carney. Questioned as to where the other $80 of the $200 in buy money came from, appellant stated that he had an unknown amount of money in his pocket already. He claimed that when they were pulled over, the police took the money out of his pocket and the money from the driver's pocket and combined it.

The court found appellant's testimony about the money to be not credible and found by a preponderance of the evidence that appellant had violated the terms of his suspended sentences. Appellant's suspended sentence was revoked on six convictions, and he was sentenced to fifty-seven years' imprisonment. Appellant now argues that there is insufficient evidence that he violated the terms and conditions of his suspended sentences.

A court may revoke a defendant's suspended sentence only if the State proves by a preponderance of the evidence that the defendant failed to comply with the conditions. *Knotts v. State*, 2012 Ark. App. 121. On appellate review, the trial court's findings are upheld unless they are clearly against a preponderance of the evidence. *Id.* Deference is given to the trial court's superior position to weigh the evidence and determine witness credibility. *Id.* In order to revoke a suspended sentence, the State need only prove that the defendant violated one condition of his suspended sentence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence.

Id.

Appellant argues that the trial court was forced to speculate to find that he had violated his suspended sentences. He claims that Carney had a reason to lie and that the detectives' failure to completely search her prior to the controlled buys leaves a distinct possibility that the trial court was lied to. He suggests that a strip search and body-cavity search were required. Appellant argues that the police did not see the actual transaction take place and that it was just as likely that the buy money recovered after his arrest was given to him by Carney to finish paying off her debt and to purchase purses.

We hold that appellant has failed to prove that the trial court's findings were clearly against a preponderance of the evidence. Although a body-cavity search of the informant was not performed, this does not create a presumption that the police were tricked, as appellant contends. The detectives testified that the informant was searched, and they considered her to be clear of any contraband. They also listened to the transactions through the wire Carney was wearing. Although appellant argues that his possession of the buy money can be explained by Carney's purchase of purses and repayment on a loan, his testimony did not support this argument. Appellant testified that he received only $120 from Carney, but the police recovered $200 of pre-recorded buy money from him. Giving deference to the trial court to weigh the evidence and determine witness credibility, we affirm.

Affirmed.

GLOVER and ABRAMSON, JJ., agree.