

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR12-867AARON ANTHONY FLEMONS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered APRIL 17, 2013

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NOS. CR-11-491, CR-11-493, CR-11-
494, CR-11-977]HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED

BILL H. WALMSLEY, Judge

Appellant Aaron Anthony Flemons appeals his convictions for delivery of cocaine and delivery of a counterfeit substance. On appeal, he argues that there was insufficient evidence to support his convictions and that the trial court erred in denying his motion in limine. We affirm.

Appellant was charged with three counts of delivery of cocaine and one count of delivery of a counterfeit substance after a series of controlled buys performed by the Fort Smith Police Department using a confidential informant. Prior to trial, appellant moved in limine to exclude the informant's testimony because it would be unreliable due to the fact that she received payment for her work as an informant. The trial court denied the motion, noting that the payment issue reflected on the informant's credibility, not the admissibility of her testimony.

At trial, Gretchen Carney testified that she became an informant for the Fort Smith Police Department after being charged with several drug offenses. Carney said that she knew appellant by the name Tony Herrera and that she had previously bought crack cocaine from him. Carney and Officer Greg Napier testified regarding four controlled buys from appellant conducted on May 17, May 18, May 24, and May 31 of 2011. On each of these dates, Carney made a recorded phone call to appellant to arrange a meeting location. Napier would then search Carney to ensure that she had no contraband. The search included having Carney show Napier her waistband and pull out and shake other clothing. Napier then gave Carney \$100 in buy money and a device to record and transmit the transaction. Recordings and transcripts of Carney's phone calls and transactions with appellant were admitted into evidence.

On the first occasion, Napier and other officers watched as Carney got into appellant's car, which was also occupied by two other men. Carney testified that, as appellant drove around the block, he gave her five pieces of crack cocaine in exchange for \$100. Appellant then dropped Carney off, and Napier watched Carney walk back to the officers. Carney gave Napier the drugs and was searched again in the same manner. The same procedure was followed for the second controlled buy. Napier said that he lost sight of Carney for a second or two at a time as she paced back and forth in her apartment parking lot waiting for appellant to arrive. Appellant arrived alone and they stayed in his car in the parking lot to complete the transaction. Carney purchased six pieces of crack cocaine for \$100. On May 24, appellant was alone and he again took Carney for a ride around the block to complete the transaction.

Carney was sold four pieces of crack cocaine on this date.

On May 31, a fourth buy was performed. When appellant arrived at the meeting location, Carney and appellant exchanged cigarette packs through his car window. Carney had put her \$100 in a cigarette pack and appellant represented that crack cocaine was in his pack. The police arrested appellant after the transaction was completed. No money was found on appellant or in his car, but the other people in the car were not searched. In the cigarette pack appellant had given to Carney, a substance wrapped up like cocaine was determined not to be a controlled substance.

Appellant moved for a directed verdict on all four charges, arguing that the evidence was not reliable and that the State had not proved that he was the person who delivered the contraband. Appellant also moved for Carney's testimony to be stricken because it was inconsistent, she was not credible, and she could not remember certain aspects of the controlled buys. Both motions were denied, and the jury found appellant guilty on all counts. Appellant filed a timely notice of appeal.

The test for determining the sufficiency of the evidence is whether there is substantial evidence to support the verdict. *Wilson v. State*, 2011 Ark. App. 382. Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Id.* In considering the evidence, we will not weigh the evidence or assess credibility, as those are questions for the finder of fact. *Id.*

Appellant argues that there was no evidence that he had the cocaine or counterfeit substance in his possession. He claims that the informant's motives "are in question" and that her testimony was inconsistent with Napier's testimony regarding what she wore, how she was searched, and the order in which the events took place. Appellant notes that Napier did not search the informant's phone, did not touch her when searching her, and admitted that he lost sight of her at times. Appellant also argues that upon his arrest neither drugs nor buy money was found on his person or in his car. Lastly, he argues that because the informant was similar to an accomplice, we should require corroboration of her testimony.

Through cross-examination, appellant highlighted what he perceived as inconsistencies regarding searches of the informant and her questionable motives and credibility. The jury has the duty to weigh evidence, assess the credibility of witnesses, and resolve questions of conflicting testimony and inconsistent evidence. *Wilson v. State*, 2011 Ark. App. 382. Though there may have been slight inconsistencies in Carney's memory of the events from nearly a year before, such as where she was sitting in Napier's car, the jury found her credible. Furthermore, Napier testified that he had a clearer recollection of the events because he took notes when the controlled buys occurred. There was no inconsistency in the evidence that appellant was the person who gave Carney cocaine, or what he represented to be cocaine, in exchange for money. Lastly, as the State notes, there is no basis to treat the informant's testimony as accomplice testimony. *See Hoback v. State*, 286 Ark. 153, 689 S.W.2d 569 (1985). We hold that there is sufficient evidence to support the convictions.

Appellant also argues that the trial court erred in denying his motion in limine to

exclude Carney's testimony. He claims that Carney contradicted herself in her testimony regarding her drug use and had difficulty answering the simplest of questions about the controlled buys, such as who was driving or which officer was with Napier. He claims that her testimony and the officers' testimony was contradictory regarding the searches. Lastly, appellant argues that Carney's testimony should have been stricken when it became apparent that she had possibly perjured herself. Appellant had attempted to show that Carney had lied in a Department of Human Services hearing, but Carney denied having lied when questioned.

The admission or rejection of testimony is a matter within the circuit court's sound discretion and will not be reversed on appeal absent a manifest abuse of that discretion and a showing of prejudice to the defendant. *Solomon v. State*, 2010 Ark. App. 559, 379 S.W.3d 489. Appellant has not shown that the trial court abused its discretion where Carney's testimony contained only minor inconsistencies with the officers' testimony. Appellant's attempt to show that Carney had previously committed perjury failed. As the trial court found, her testimony was not so patently unreliable that it should be stricken from the record. There was no abuse of discretion.

Affirmed.

GLOVER and WHITEAKER, JJ., agree.

Kellie M. Emerson, for appellant.

Dustin McDaniel, Att'y Gen., by: *Kent G. Holt*, Ass't Att'y Gen., for appellee.