



George v. State

2007 | Cited 0 times | Court of Appeals of Arkansas | May 2, 2007

NOT DESIGNATED FOR PUBLICATION

Appellant John George challenges the sufficiency of the evidence supporting his conviction of two counts of delivering a controlled substance (crystal methamphetamine) and the enhancement of his prison sentence for delivering the methamphetamine within 1000 feet of a church. We affirm.

The Camden Police Department and the Arkansas State Police utilized Lessa Colby to conduct two controlled buys from George. On July 13, 2005, Colby was searched, equipped with a hidden video/audio recorder, and instructed to purchase one gram of methamphetamine from George at his home at 405 Ingram in east Camden. Colby made the purchase and turned over the object of her purchase to the officers conducting the operation. On July 22, the same procedure was followed to make a second buy from George.

On October 5, 2005, the State charged George via information with two counts of delivering crystal methamphetamine. On April 27, 2006, the information was amended to allege that the two deliveries occurred within 1000 feet of a church and to request an enhanced sentence pursuant to Ark. Code Ann. § 5-64-411(a) (Repl. 2005).

At trial, Colby testified that she had known George for four years and that she assisted law enforcement in exchange for not being prosecuted for a recent arrest for methamphetamine possession. She said she made a controlled buy from George on July 13, 2005, at his home at 405 Ingram, by giving him \$100 in exchange for a substance she believed to be one gram of methamphetamine. The substance she received from George came in a package with a Superman emblem emblazoned on it. She stated that she made a second controlled buy from George on July 22, at the same location, by giving him \$100 in exchange for one gram of methamphetamine. She turned over each purchase to the officers at a prearranged location.

Special Agent Larry McMahan of the Arkansas State Police identified, as an exhibit, the bag he received from Colby on July 13 which bore a Superman emblem. He said that he submitted the bag to the state crime lab and the crime lab determined that it contained 0.6496 grams of methamphetamine. He also identified the July 22 purchase. Agent McMahan testified that he interviewed George following his arrest and that George admitted to selling methamphetamine and said he had obtained it from a friend.

Camden Police Lieutenant William Zeek testified that he measured the distance between George's



George v. State

2007 | Cited 0 times | Court of Appeals of Arkansas | May 2, 2007

home and the property line of the First Baptist Church of East Camden, located at 335 Ingram Street, and that they were 490 feet apart. He identified as exhibits, photos produced from Colby's video recording of the transactions involving George.

George denied selling methamphetamine to Colby. He said that, on July 13, he sold Colby a bag containing crushed rock salt and vitamin B-12 and that, on July 22, he sold her crushed rock salt. George admitted that he lived at 405 Ingram and that a church was located down the street. He assumed that the church was within 1000 feet of his home.

George now challenges the sufficiency of the evidence supporting his conviction. 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 supporting the verdict. *Barnes v. State*, 94 Ark. App. 321, S.W.3d (2006). We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence, whether direct or indirect, is that which is forceful enough to compel reasonable minds to reach a conclusion one way or another without resort to speculation or conjecture. *Boveia v. State*, 94 Ark. App. 252, S.W.3d (2006).

Although George argues that the State failed to prove that the crystal methamphetamine identified at trial came from him, we disagree and affirm his conviction. First, Colby testified that the methamphetamine she purchased from George came in a package with a Superman emblem emblazoned on it, and Agent McMahan testified that the methamphetamine he obtained from Colby after the controlled buy from George came in a bag with a Superman emblem on it. The State also introduced photos from the various transactions between George and Colby. Because the credibility of trial witnesses and the weighing of evidence are solely within the province of the jury, see *Winston v. State*, 368 Ark. 105, S.W.3d (2006), we hold that there was substantial evidence supporting George's convictions.

We also affirm the enhancement of George's sentence pursuant to Arkansas Code Annotated Section 5-64-411(a) (Repl. 2005), because there was sufficient evidence for the jury to determine that the buys occurred within 1000 feet of the First Baptist Church. Arkansas Code Annotated 5-64-411(a) (Repl. 2005) provides in pertinent part that:

(a) Any person who commits an offense under § 5-64-401(a) by selling, delivering, possessing with intent to deliver, dispensing, manufacturing, transporting, administering, or distributing a controlled substance may be subject to an enhanced sentence of an additional term of imprisonment of ten (10) years if the offense is committed on or within one thousand feet (1,000N) of the real property of:

(7) A church[.]

George conceded that the church was located within 1000 feet of his home. Moreover, the evidence showed that the distance between the church's property line and George's front door was 540 feet.



George v. State

2007 | Cited 0 times | Court of Appeals of Arkansas | May 2, 2007

Specifically, the distance between the two property lines was 490 feet and it was estimated that the distance between George's property line and his front door was 50 feet. Furthermore, in denying George's motion for directed verdict, the trial court found the following:

I think there's ample evidence that the jury could, that it's well within 1,000 feet because they have the tape that the person is walking through from the front door to the back. And I think that they can reasonably determine that it's less than 500 feet from that front door to the back room.

Finally, George argues that there was no evidence "that the church was in existence on the date of the sales." George failed to raise this argument below and it is well settled that we will only review arguments that have been preserved for appeal; arguments raised for the first time on appeal are not considered. *Simmons v. State*, 95 Ark. App. 114, S.W.3d __ (2006); *Taylor v. State*, 94 Ark. App. 21, S.W.3d (2006).

Affirmed.

PITTMAN, C.J., and MARSHALL, J., agree.

