

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Moon, Senior Judges Cole and Duff
Argued at Richmond, Virginia

ERIC SMITH

v. Record No. 2525-94-2
COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
CHIEF JUDGE NORMAN K. MOON
MARCH 19, 1996

FROM THE CIRCUIT COURT OF CAROLINE COUNTY
J. Peyton Farmer, Judge

Thomas L. Barney (Thomas L. Barney, P.C., on
briefs), for appellant.

Kathleen B. Martin, Assistant Attorney
General (James S. Gilmore, III, Attorney
General, on brief), for appellee.

Eric Smith challenges the sufficiency of the evidence to sustain his conviction of distribution of cocaine. We hold that the evidence was sufficient and affirm the conviction.

State Police Special Agent Lloyd Evans testified that on April 1, 1993, he went to a trailer, in Caroline County, belonging to Eric Smith. The door was answered by a fairly tall brown skinned female. He went inside and saw Eric Smith dressed in a Chicago Bulls coat, a white cotton shirt, dark trousers, and sneakers. Evans told Smith that he wanted a fifty dollar piece of crack cocaine. Smith went into a back room. When he returned, he placed approximately six pieces of suspected crack cocaine on a table and told Evans to take his pick. Evans took

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

one piece and handed Smith two twenty dollar bills and one ten dollar bill. Evans then left and turned the suspected crack cocaine over to Special Agent Ray Seal.

Evans testified that he went to the Smith residence at about 9:02 p.m. and left at about 9:04 p.m. While there he saw another young black male, "a light skinned guy," Smith's brother, who referred to himself as "Coon," and one female who opened the door.

On cross-examination Evans testified that he returned to Smith's home one time after the transaction. That time Smith told him that he didn't have anything. Several times after that Evans returned but Eric Smith was not there. On one occasion Evans rode around with Eric Smith's brother, "Coon," looking for Eric "because his brother said he [Eric] had it, but he just hadn't gotten there."

State Police Special Agent Raymond A. Seal testified that on the 1st of April, 1993, he was in the vicinity of Eric Smith's residence where he and Evans had preplanned to meet after Evans went to Smith's house. At 9:12 p.m. Smith came to his location and handed him a "block of an off-white solid material." Seal delivered it to the lab which certified that it was cocaine.

The defendant called Leutha Brown who testified that she had lived with Smith for eight years. On May 4, 1994, the date of the trial, she testified that she remembered April 1, 1993, because it was April Fool's Day. She said that she was home with Smith and that she never saw Evans come to the house. On cross-

examination she testified that she normally got home about "9:00 p.m., something to 9:00, something after 9:00." She didn't remember what time she got home on April 1. She said that another fellow used to hang out there and that Smith's brother came to visit.

Smith testified that he had a guy renting from him back on April 1, 1993, who was renting "maybe two or three days out of the week and paying \$50 a week." After Smith was raided by the police he made the roomer leave. Smith said he had never sold cocaine to Evans. He testified that he had never seen Special Agent Evans "a day in his life."

Elvis "Coon" Smith testified that he was not at his brother's house on April Fool's Day but was at the shelter in Fredericksburg. He testified he had never seen Evans and never rode around with Evans looking for Eric Smith. On cross-examination Elvis testified that he was assuming that April 1 was the day his brother's place was raided by the police. He was at the shelter on the day of the raid. Other evidence refuted April 1 as being the date of the raid.

Special Agent Lloyd Evans was called back on rebuttal and stated that he recognized Elvis Smith as "Coon" Smith, as being a person who was at the residence on April 1 and as being the person he rode around with looking for Eric on another day. He particularly remembered that Elvis Smith had a speech impediment.

Evans also testified that Leutha Brown appeared to be the woman who opened the door for him, but he could not be 100

percent sure.

Appellant argues that Special Agent Evans should not be believed because he did not produce for the record careful notes concerning a description of Smith at the time of the incident on April 1, 1993.

"On appeal, we review the evidence in the light most favorable to the Commonwealth, granting to it all reasonable inferences fairly deducible therefrom." Martin v. Commonwealth, 4 Va. App. 438, 443, 358 S.E.2d 415, 418 (1987).

Special Agent Evans testified that appellant was the person who sold cocaine to him. The fact finder believed Evans' testimony and rejected appellant's evidence. "The weight which should be given to evidence and whether the testimony of a witness is credible are questions which the fact finder must decide." Bridgeman v. Commonwealth, 3 Va. App. 523, 528, 351 S.E.2d 598, 601 (1986). Evans' testimony was competent, was not inherently incredible, and was sufficient to prove that appellant was the person who sold cocaine to Evans.

Affirmed.