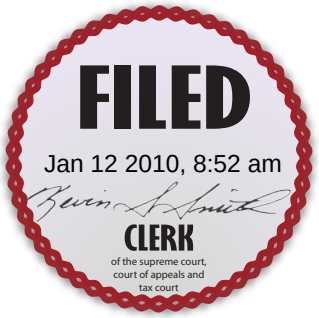

ATTORNEY FOR APPELLANT:

MATTHEW D. ANGLEMEYER
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

JAMAR ALSTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0906-CR-501
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Eichholtz, Judge
Cause No. 49G20-0810-FA-245200

January 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jamar Alston appeals his conviction for Class A felony dealing in cocaine. We affirm.

Issues

Alston raises two issues, which we restate as:

I. whether the trial court properly admitted evidence discovered during an inventory search of Alston's car; and

II. whether there is sufficient evidence to support Alston's conviction.

Facts

At approximately 4:15 a.m. on October 29, 2008, Indianapolis Metropolitan Police Officer Noreen Cooper saw Alston's car stopped with its flashers on in the right northbound lane of the 2300 block of North Keystone Avenue in Indianapolis. Officer Cooper approached the car to assist the driver and noticed Alston slumped over the steering wheel. Officer Cooper opened the unlocked driver's side door and unsuccessfully attempted to wake Alston. She called for backup, and the assisting officers were able to wake Alston. When Alston got out of the car, he was unsteady and smelled of alcohol. Because he lived close by, Officer Cooper decided to let Alston go but decided to have his car towed because of the impending rush hour traffic.

As another officer prepared the paperwork for the tow, Officer Cooper conducted an inventory search of Alston's car. Looking for items of value, Alston observed a torn paper bag on the passenger side floor that contained what appeared to be plastic baggies

of cocaine. The contents of the paper bag were in plain view, and Officer Cooper "didn't have to unveil anything to see it." Tr. p. 67. The contents of the bag were later determined to be three larger baggies containing a total of 13.92 grams of cocaine and fifteen smaller baggies containing a total of 1.85 grams of cocaine. Officer Cooper did not conduct an inventory search of the trunk of Alston's car. During Alston's arrest, the arresting officer discovered ten "bricks" of money wrapped in rubber bands totaling $9,215.00 in Alston's coat pockets. Tr. p. 125.

On October 30, 2009, the State charged Alston with Class A felony dealing in cocaine, Class C felony possession of cocaine, and Class B misdemeanor public intoxication. Alston moved to suppress the admission of evidence associated with the cocaine discovered during the inventory search. The trial court denied Alston's motion to suppress. A jury found Alston guilty as charged. Because of double jeopardy concerns, the trial court did not enter a judgment of conviction on the possession charge. Alston now appeals his dealing conviction.

Analysis

I. Admission of Evidence

Alston first argues that the trial court improperly admitted the cocaine discovered during the inventory search of his car into evidence. He contends that because Officer Cooper looked only for items of value and did not search the trunk of the car, it was an unconstitutional search. "Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection: we do not reweigh the evidence, and we consider

conflicting evidence most favorable to the trial court's ruling." Jackson v. State, 890 N.E.2d 11, 15 (Ind. Ct. App. 2008). We must also consider the uncontested evidence favorable to the defendant. Id.

The Fourth Amendment generally requires a warrant for a search to be considered reasonable. Id. at 17. "There are exceptions to this requirement, but the State bears the burden of proving that a warrantless search falls within one of these exceptions." Id. One exception to the warrant requirement is a valid inventory search. Id. "The underlying rationale for the inventory exception is: (1) the protection of private property in police custody; (2) the protection of police against claims of lost or stolen property; and (3) the protection of police from possible danger." Id.

"The threshold question in determining the propriety of an inventory search is whether the impoundment itself was proper." Id. Alston concedes that the impoundment of his car was proper. Even if there is a lawful impoundment of the vehicle, the constitutional requirement of reasonableness requires that the inventory search itself must be conducted pursuant to standard police procedures. Id. at 18. "This ensures that the inventory is not a pretext for a general rummaging in order to discover incriminating evidence." Id.

Alston argues that Officer Cooper did not comply with standard police procedures in two regards. First, he argues that Officer Cooper looked only for items of value to include in her notebook when the General Order of the Indianapolis Marion County Police Department regarding towing/impounding vehicles states that "All property discovered during an inventory search, including those found in closed containers will be

listed in the officer's personal notebook." Exhibit 4. Officer Cooper's decision to look for and list only items of value, as opposed to the entire contents of a car, was a practical consideration, not a blatant disregard for routine police procedures.

Alston also argues that Officer Cooper improperly failed to search the trunk of his car. The argument is unavailing. The General Order explains, "If a key is available, or if unlocked, the glove compartment and trunk will also be searched." Id. Here, it is unclear whether Officer Cooper ever had a key to Alston's trunk. Therefore, it is not clear that she failed to comply with the General Order regarding the search of the trunk.

There is no indication that the inventory search was a pretext to discover incriminating evidence, especially when we consider that the baggies of cocaine were in plain view on the floor of the passenger side of the car. Given the facts of this case, we cannot conclude that Officer Cooper's decision to include only valuable items in the inventory search amounted to such a disregard for police procedures so as to render the search unreasonable.[1] See Jackson, 890 N.E.2d at 19 ("The towing of the car was authorized by statute and by police policy, and the inventory of the vehicle was similarly authorized by established police policy. Although this policy was not thoroughly followed, this alone does not establish that the inventory was a pretext. Inventory

[1] Alston claims that the search was also unreasonable under Article 1, Section 11 of the Indiana Constitution. However, he does not argue that a separate analysis applies. Accordingly, we apply the same reasonableness framework to both his United States constitutional and Indiana constitutional claims and conclude that his Indiana constitutional rights were not violated. See Jackson, 890 N.E.2d at 19 ("Similarly, under Article 1, Section 11 of the Indiana Constitution, we conclude that the actions of the police in conducting the inventory, when viewed in light of the totality of the circumstances, were reasonable despite the failure to fully follow the police policy.").

searches are not always unreasonable when standard procedures are not followed.").[2] The trial court did not abuse its discretion in admitting the cocaine discovered during the inventory search into evidence.

II. Sufficiency of the Evidence

Alston also argues there is insufficient evidence to support his conviction. Upon such a challenge, we do not reweigh the evidence or judge the credibility of the witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We respect the jury's exclusive province to weigh conflicting evidence. Id. We must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

To establish Class A felony dealing in cocaine, the State was required to prove that Alston possessed with intent to deliver three or more grams of cocaine. Ind. Code § 35-48-4-1. Alston concedes that he possessed more than fifteen grams of cocaine. He argues, however, that there is insufficient evidence that he intended to deliver it.

Alston argues that he is a heavy cocaine user, not a dealer. He explains that he was moving to Louisiana, that he had no contacts there to buy cocaine from, and that he intended to take the larger amounts with him for his personal use. Alston also asserts, "buying in bulk has its advantages." Appellant's Br. p. 15. He compares buying large amounts of cocaine to buying a case of beer or a ninety-six roll pack of toilet paper at a

[2] Alston does not specifically argue that because the inventory search was performed at the scene it was unconstitutional. He asserts only that searches at an impound lot are preferred. See Jackson, 890 N.E.2d at 19 ("We take this opportunity to repeat our admonition that inventory searches performed at the scene invite challenges."). In the absence of a specific argument, we need not address this issue further.

warehouse store. Finally, Alston points out that no other items typically associated with dealing cocaine, such as scales, logs, multiple cell phones, or guns, were found in his car. These arguments, however, are requests to reweigh the evidence, and we cannot do that.

"Intent is a mental state, and the trier of fact often must infer its existence from surrounding circumstances when determining whether the requisite intent exists." Goodner v. State, 685 N.E.2d 1058, 1062 (Ind. 1997). Detective Joshua Harpe of the Indianapolis Metropolitan Police Department testified that a typical user would consume between .15 and .30 grams of cocaine in one sitting and that in "an extremely rare circumstance" a heavy user would use as much as four grams in a twenty-four hour period. Tr. p. 137. Detective Harpe also testified that dealers take large pieces of cocaine and break them into rocks that weigh between .15 and .30 grams and individually package them. These individual rocks cost $20.00 on the street. Detective Harpe stated that the typical cocaine users do not keep a lot of cocaine on them because they do not have the necessary self-control and would use it up. Finally Detective Harpe testified that it is common to find a lot of $20 bills on drug dealers.

Here, three larger baggies of cocaine and fifteen smaller baggies of cocaine were found in Alston's car. The fifteen smaller baggies weighed 1.85 grams combined. Alston was also found with ten "bricks" of cash totaling $9,215.00 in his coat pockets. The $9,215.00 was made up of nine $5 bills, thirty-seven $10 bills, twenty $50 bills, eleven $100 bills, and 335 $20 bills. The fifteen small baggies of cocaine and the large amount of cash, especially the large number of $20 bills, supports the inference that

Alston was dealing in cocaine. There is sufficient evidence from which the jury could infer Alston intended to deliver the cocaine.

Conclusion

The trial court did not abuse its discretion in admitting the cocaine into evidence, and there is sufficient evidence to support Alston's Class A felony dealing in cocaine conviction. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.