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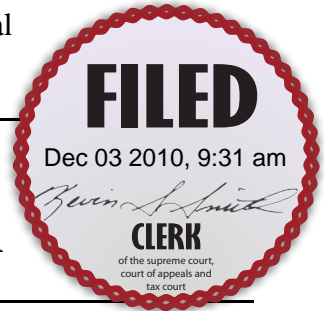
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**IN THE
COURT OF APPEALS OF INDIANA**



CARLTON J. HARWOOD,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 57A03-1005-CR-263

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Robert E. Kirsch, Judge
Cause No. 57D01-0912-FA-24

December 3, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Carlton J. Harwood (“Harwood”) appeals from his conviction for Dealing in Methamphetamine, as a Class A felony.¹

We affirm.

Issue

Harwood raises two issues for our review:

- I. Whether there was sufficient evidence to support his conviction; and
- II. Whether his sentence is inappropriate under Appellate Rule 7(B).

Facts and Procedural History

On December 28, 2009, Toni Dare (“Dare”) was at home in her Kendallville apartment, ill with H1N1 influenza. Dare shared her apartment with her two children and a friend, Aaron Cox (“Cox”), who was watching her younger son while she slept. Harwood had been Dare’s roommate while Cox was in the LaGrange County Prison in October 2009. Harwood called Cox to help him get the supplies to make methamphetamine, and Cox left the apartment to meet Harwood around six or six-thirty in the evening. Dare’s son remained in the apartment while Dare slept.

After driving to a number of different retail stores in and around Kendallville, Cox and Harwood returned to the apartment to prepare the methamphetamine. Cox crushed Sudafed tablets in a mug in one of the bedrooms while Harwood went into the bathroom to prepare the catalysts necessary to produce the drug. Cox brought the crushed tablets to

¹ See Ind. Code § 35-48-4-1.1.

Harwood and went to get a beer.

Upon his return to the bathroom, Cox saw Harwood add water to the plastic bottle they were using to make the methamphetamine. As Harwood added water, the ingredients inside suddenly ignited. Harwood threw the bottle into the bathtub and attempted to dump water on the flames to extinguish them. This failed; Harwood left the bathroom and returned, giving Cox a blanket. Harwood then left the apartment. Cox threw the bottle and blanket into a cooler, smothering the fire, and took the cooler onto the balcony outside the second-floor apartment.

As Cox was smothering the fire, the alarm system and fire sprinklers were activated and Dare and her son fled the apartment. Cox revealed during an interview with police and in a written statement on December 29, 2009, that he and Harwood were cooking methamphetamine, though he initially claimed the fire was started by a smoldering cigarette.²

On December 29, 2009, Harwood was charged with dealing in methamphetamine, specifically for the intentional and knowing manufacture of the drug. A jury trial was conducted on April 6, 2010, and April 7, 2010, at the end of which the jury found Harwood guilty. On May 7, 2010, Harwood was sentenced to forty years imprisonment with credit for 130 days of time served.

This appeal followed.

² Cox entered a plea agreement for his part in this offense.

Discussion and Decision

Sufficiency of the Evidence

Harwood challenges his conviction, asserting that there was insufficient evidence to support it. Specifically, Harwood argues that the doctrine of incredible dubiousity applies because

there was conflicting testimony on Dare's knowledge about the meth lab, a lack of corroborating evidence to Cox's testimony Harwood participated in manufacturing methamphetamine, conflicting evidence on how the fire started, Dare made conflicting statements on whether Harwood made an incriminating statement, a lack of corroborating evidence on whether Harwood was burned, and the State's two main witnesses had a general incentive to shift the blame onto Harwood.

(Appellant's Br. 9.)

Our supreme court has stated the standard for incredible dubiousity:

Under the incredible dubiousity rule, a court will impinge on a jury's responsibility to judge witness credibility only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. Tillman v. State, 642 N.E.2d 221, 223 (Ind. 1994). The incredible dubiousity rule, however, is limited to cases where a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt. Id.

Majors v. State, 748 N.E.2d 365, 367 (Ind. 2001) (emphasis supplied). "The incredible dubiousity rule applies to conflicts in trial testimony rather than conflicts that exist between trial testimony and statements made to the police before trial." Buckner v. State, 857 N.E.2d 1011, 1018 (Ind. Ct. App. 2006) (citing Reyburn v. State, 737 N.E.2d 1169, 1171 (Ind. Ct. App. 2000)).

In order to convict Harwood of dealing in methamphetamine as charged, the State was required to prove beyond a reasonable doubt that on December 28, 2009, Harwood knowingly or intentionally manufactured methamphetamine within 1000 feet of a family housing complex, specifically at Dare's apartment. Ind. Code § 35-48-4-1.1(a)(1)(A) & (b)(3)(B)(iii).

In light of the testimonial and other evidence introduced at trial, incredible dubiousity does not apply. This is not a case involving a sole witness. Moreover, the testimony by Dare and Cox is internally consistent and provides sufficient evidence of Harwood's involvement in cooking methamphetamine. Dare testified that she was asleep in the apartment, first in her bedroom and then on the couch, and was "out of it" because of her illness and the medication she was taking to treat its symptoms. (Tr. 61.) She recalled seeing Cox and Harwood enter the apartment before the fire, and testified that she next woke up to see an orange "glaze" and her son running toward her screaming. (Tr. 64.) Dare stated that she was not aware that Cox and Harwood were cooking methamphetamine in the apartment and that she wouldn't have allowed it to occur with her son at home. Her testimony is not contradictory on these points.

Cox testified that Harwood initiated the activities necessary to manufacture methamphetamine and that he and Harwood spent the evening acquiring the supplies to pursue this endeavor. Cox also testified that he told Dare what he and Harwood were planning to do, but did not know whether Dare heard or understood him at the time. Harwood asserts that the inconsistency between Cox's initial statements to Dare and his testimony at trial describing Harwood's exploits in cooking were inconsistent and self-

contradicting. While admittedly inconsistent, these inconsistencies go to the weight of the testimony and the credibility of the witness, which was delved into during cross-examination. Because the conflicts presented on appeal consist of pretrial statements to police and statements at trial, these conflicts do not fall within the incredible dubiousity test. See Buckner, 857 N.E.2d at 1018.

Further, Cox's testimony that he and Harwood were cooking methamphetamine finds support in circumstantial evidence. Harwood's hands were red and swollen after having been burned. Dare recalled talking to Harwood outside the apartment building after the fire and that he ran into the neighboring cornfield. Another resident of the apartment building recognized Harwood from his prior visits and time living at the apartment.

Harwood's argument attempts to impeach one witness's testimony with that of another, rather than identifying contradictions within any given witness's testimony at trial as required by the test. Harwood's argument asks us to reweigh the credibility of witness testimony, as when he states that "Cox and Dare were not credible witnesses," (Appellant's Br. 11) and that "Cox lied to Dare and the police." (Appellant's Br. 10.) This we cannot do. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007).

We conclude that there was sufficient evidence to support Harwood's conviction for dealing in methamphetamine.

Sentencing

Harwood also challenges his sentence as inappropriate in light of the nature of his offense and his character pursuant to Appellate Rule 7(B).

In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to “leaven the outliers.” Id. at 1225. “Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Id. at 1224.

The sentencing range for dealing in methamphetamine, as a Class A felony, runs from twenty to fifty years, with an advisory sentence of thirty years. I.C. § 35-50-2-4. Harwood was sentenced to forty years, which is ten years above the advisory sentence.

Harwood engaged in the manufacturing of methamphetamine within 1,000 feet of a family housing complex. Beyond the statutory elements of the crime, Harwood conducted these activities while physically present within the complex, with a child present in the

apartment in which he was cooking methamphetamine and other children in neighboring apartments. Harwood and Cox selected the apartment Cox and Dare shared, rather than Harwood's apartment, because Cox's apartment had better ventilation, despite the presence of Dare and her son. The fire caused physical damage to the apartment building and to the property of the residents of another apartment, including Christmas gifts and a child's crib. We cannot say that the nature of his offense bespeaks an inappropriate sentence by the trial court.

Nor does Harwood's character avail him here. He has an extensive criminal history, including felony convictions for forgery, theft, resisting law enforcement, failure to return to lawful detention, battery causing serious bodily injury, and battery with a deadly weapon, as well as numerous misdemeanor convictions. This criminal history extends from 1988 through 2009 for the instant offense.

Given the nature of Harwood's offense and his character, we are not persuaded that Harwood's forty-year sentence is inappropriate.

Conclusion

There is sufficient evidence to support Harwood's conviction. The forty-year sentence imposed is not inappropriate under Appellate Rule 7(B).

Affirmed.

RILEY, J., and KIRSCH, J., concur.