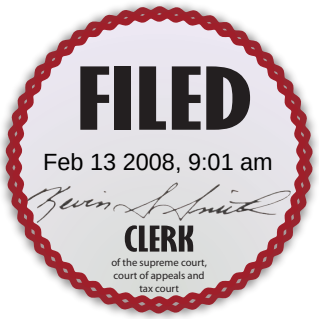

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IN THE COURT OF APPEALS OF INDIANA

KENDRICK NEWSOM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A04-0709-CR-517
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT CIRCUIT COURT
The Honorable Mark E. Spitzer, Judge
Cause No. 27C01-0609-FB-142

February 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Kendrick Newsom appeals his conviction for Dealing in Cocaine, as a Class B felony. Newsom raises a single issue for our review, namely, whether the jury rendered inconsistent verdicts when it acquitted him of one count of dealing in cocaine, as a Class B felony, while finding him guilty on another count.

We affirm.

FACTS AND PROCEDURAL HISTORY

Since October of 2003, Russell Sulfridge has worked with the Grant County drug task force as a confidential informant. On August 30, 2005, Sulfridge agreed to a controlled buy of crack cocaine from a man that identified himself only as "John." Transcript at 37, 42. Sulfridge met "John" at 2201 South Adams Street in Marion, where Sulfridge then purchased crack cocaine. On September 6, 2005, Sulfridge again arranged a controlled buy of crack cocaine at 2201 South Adams Street from a man identifying himself only as "John." Conversations between Sulfridge and "John" were recorded and transcribed.

On September 19, 2006, the State charged Newsom with two counts of dealing in cocaine, each as a Class B felony. The first count alleged that Newsom sold Sulfridge cocaine on August 30, 2005, and the second count alleged that he sold Sulfridge cocaine on September 6, 2005. On April 17, 2007, the court held a jury trial.

At the trial, various members of the Grant County drug task force testified about their roles in each of the two controlled buys. Most notably, Detective Todd Fleece testified that he had known Newsom since they "were kids" and that it was his opinion

that the voice recorded in the controlled buy of September 6th was Newsom's voice. Transcript at 107-08. Detective Ross Allen testified that he knew Newsom and saw him with Sulfridge at the September 6th transaction. Detective Mark Stefanatos also testified that he saw Newsom during the September 6th exchange with Sulfridge. Further, Detective Stefanatos testified that, in the transcript of the September 6th transaction, "John" stated that he was in court that same day on an OWI charge. Newsom's record revealed that he was in court on September 6th on an OWI charge. By contrast, only Sulfridge testified that he identified Newsom from the August 30th transaction.

The jury found Newsom guilty of the September 6th transaction and acquitted him of the August 30th transaction. The trial court entered judgment accordingly and sentenced Newsom to twenty years in the Indiana Department of Correction. This appeal ensued.

DISCUSSION AND DECISION

Newsom argues that the jury rendered inconsistent verdicts when it acquitted him of the August 30th charge but convicted him on the September 6th charge. When this court reviews a claim of inconsistent jury verdicts, "we will take corrective action only when the verdicts are extremely contradictory and irreconcilable." Powell v. State, 769 N.E.2d 1128, 1131 (Ind. 2002) (quoting Mitchell v. State, 726 N.E.2d 1228, 1239 (Ind. 2000)). A jury's verdict may be inconsistent or even illogical but nevertheless permissible if it is supported by sufficient evidence. Id.; see also Hodge v. State, 688 N.E.2d 1246, 1248-49 (Ind. 1997) (noting that ordinarily when the trial of a defendant results in acquittal on some charges and convictions on others, the verdicts will survive a

claim of inconsistency when the evidence is sufficient to support the convictions). In resolving such a claim, we neither interpret nor speculate about the thought process or motivation of the jury in reaching its verdict. Powell, 769 N.E.2d at 1131.

Here, Newsom acknowledges "that the testimony of Detectives Fleece and Stefanatos provided additional evidence for the jury to consider on [the September 6th charge], evidence that was not available on [the August 30th charge]." Appellant's Brief at 5. The crux of Newsom's argument, rather, is that by acquitting him of the August 30th charge, the jury necessarily found that Sulfridge's testimony lacked credibility, as Sulfridge was the only witness that testified as to the August 30th transaction. Thus, Newsom continues, because Sulfridge "was the only witness who could reliably identify [Newsom] as the individual who sold him cocaine on both August 30th and September 6th," the jury inconsistently "found his testimony unreliable . . . and sufficiently reliable." Id. at 5. We cannot agree.

Again, when reviewing the jury's verdicts, "we will take corrective action only when the verdicts are extremely contradictory and irreconcilable." Powell, 769 N.E.2d at 1131 (quoting Mitchell, 726 N.E.2d at 1239). That standard is not met here. Indeed, the jury's verdicts are reconciled by the additional evidence provided by Detective Fleece, Detective Stefanatos, and Detective Allen, who each testified that they identified Newsom either visually or by voice during the September 6th transaction. That testimony was further corroborated by Newsom's September 6th court appearance for an OWI. Thus, the jury's differing verdicts "may be explained by virtue of the fact-finder's exercise of its power to assign weight to and either accept or reject certain pieces of

evidence." Carmona v. State, 827 N.E.2d 588, 594 (Ind. Ct. App. 2005). Accordingly, the jury's verdicts here are not inconsistent.

Affirmed.

BAILEY, J., and CRONE, J., concur.