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IN THE
COURT OF APPEALS OF INDIANA

JEFFREY I. HOLLIDAY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0604-CR-146
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0509-FB-127

November 6, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

In challenging the sufficiency of the evidence to support his conviction for class B felony dealing in cocaine,[1] Jeffrey Holliday asserts that the State failed to disprove his defense of entrapment. Specifically, he contends that the prohibited conduct was the product of police efforts and that the State did not prove beyond a reasonable doubt that he was predisposed to engage in such conduct. *See* Appellant's Br. at 5, 6, 8. We affirm.

Facts and Procedural History

The relevant facts most favorable to the conviction reveal that on the evening of August 30, 2005, Detective Craig Wise was working undercover for the vice and narcotics unit of the Fort Wayne Police Department. Driving an unmarked car and "dressed to blend in," he "cruised" a Fort Wayne neighborhood and was alert for persons who might flag him down or approach him. Tr. at 109-10. For protection and/or credibility, Detective Wise was outfitted with an electronic monitoring device, a police radio, a gun, a police badge, prerecorded buy money, and a crack pipe. *Id*. at 109-10, 124.

Holliday, whom Detective Wise had never met before that evening, saw him driving and waved him down.[2] *Id*. at 110. In response, Detective Wise stopped, alerted backup officers, hid his police equipment, and then permitted Holliday to approach his unmarked vehicle. *Id*. at 111. When Detective Wise pulled up, Holliday attempted to enter the passenger side of Detective Wise's vehicle, which was locked. *Id*. at 112. Holliday walked

[1] *See* Ind. Code § 35-48-4-1 (providing that a person who knowingly or intentionally delivers cocaine, pure or adulterated, commits dealing in cocaine, a class B felony).

[2] Detective Wise was not surprised to be flagged down by a stranger in his "line" of work; indeed, it is apparently a fairly frequent occurrence. Tr. at 110-11.

around to the driver's side and asked what Detective Wise was looking for. *Id.* at 111-12. Detective Wise responded, "a twenty rock," meaning $20.00 worth of crack cocaine. *Id.* Holliday then inquired if Detective Wise was a cop; Detective Wise lied and said, "no." *Id*. at 112-13. Holliday indicated that he could "get it," but that he needed a ride "around the corner" to a red brick house where he was a "runner." *Id*. at 113-14. Detective Wise allowed Holliday into the unmarked police vehicle, and per Holliday's instructions, drove down the street, turned up an alley, and parked in the back of the red brick house. *Id*. at 114. Holliday stated that he would need money to acquire the cocaine. *Id*. Fearing that Holliday would simply steal the $20.00, Detective Wise was hesitant to give the prerecorded buy money to him. *Id.* To assuage the detective's apprehension, Holliday let Detective Wise hold his wallet, photo identification, watch, and keys while Holliday took the $20.00 into the house. *Id*. at 114-15. Approximately two minutes after entering the house, Holliday returned, got back inside Detective Wise's vehicle, and presented him with a piece of cocaine.[3] *Id*. at 115. Detective Wise began driving and signaled the other officers for a "take down," which ultimately did not happen as swiftly as the detective hoped. *Id*. at 115-16, 124. To kill time until the backup officers could make the arrest, Detective Wise suggested that he and Holliday smoke the cocaine. *Id.* at 123-24. Thus, Detective Wise drove to a parking lot and took out the crack pipe, at which point police arrested Holliday and appeared to arrest Detective Wise. *Id*. at 116, 124, 131.

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[3] The cocaine was later found to have a net weight of .25 grams. Tr. at 145.

On September 6, 2005, the State filed an information charging Holliday with dealing in cocaine or a narcotic drug, or methamphetamine. Appellant's App. at 9. On January 5, 2006, a jury found Holliday guilty as charged. *Id*. at 4, 50. At the conclusion of a hearing held on January 30, 2006, the court entered judgment of conviction and ordered Holliday committed to the Department of Correction for ten years. *Id*. at 50.

Discussion and Decision

When we review a claim of entrapment, we use the same standard that applies to other challenges to the sufficiency of the evidence. *Ferge v. State*, 764 N.E.2d 268, 270 (Ind. Ct. App. 2002). "We consider only the evidence that supports the verdict, and we draw all reasonable inferences from that evidence." *Dockery v. State*, 644 N.E.2d 573, 578 (Ind. 1994). We will not reweigh evidence or judge witness credibility. *See id*. "We will uphold a conviction if the record supports it with substantial evidence of probative value from which a reasonable trier of fact could infer that the appellant was guilty beyond a reasonable doubt." *Id*.

Our legislature has defined the defense of entrapment as follows:

> (a) It is a defense that:
>
> > (1) the prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in the conduct; *and*
> > (2) the person was not predisposed to commit the offense.
>
> (b) *Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.*

Ind. Code § 35-41-3-9 (emphases added).

"Once a defendant indicates that he intends to rely on the defense of entrapment, the burden shifts to the State to demonstrate the defendant's predisposition to commit the crime." *Ferge*, 764 N.E.2d at 271.

> Whether a defendant was predisposed to commit the crime charged is a question for the trier of fact. The standard by which the State must prove the defendant's predisposition is beyond a reasonable doubt. The State must prove the defendant's predisposition with evidence subject to the normal rules of admissibility. If the defendant shows police inducement and the State fails to show predisposition on the part of the defendant to commit the crime charged, entrapment is established as a matter of law. . . . [W]hen the evidence establishes no more than a sale or delivery of contraband in response to solicitation by the police or their agents, there is a failure of proof on the issue of predisposition.

Dockery, 644 N.E.2d at 577 (citations omitted).

The entrapment defense turns upon the defendant's state of mind, that is, whether the criminal intent originated with the defendant. *See Ferge*, 764 N.E.2d at 271 (citing *Kats v. State*, 559 N.E.2d 348, 353 (Ind. Ct. App. 1990), *trans. denied*, and *U.S. v. Toro*, 840 F.2d 1221, 1230 (5th Cir.1988)). Stated otherwise, the question is whether criminal intent was deliberately implanted in the mind of an innocent person. *See id*. (citing *U.S. v. Killough*, 607 F. Supp. 1009, 1011 (E. D. Ark.1985)). In determining whether a defendant was predisposed to commit the charged crime, the following factors are important:

> 1) the character or reputation of the defendant, 2) whether the suggestion of criminal activity was originally made by the government, 3) whether the defendant was engaged in criminal activity for a profit, 4) whether the defendant evidenced reluctance to commit the offense, overcome by government persuasion, and 5) the nature of the inducement or persuasion offered by the government.

Id. (citing *U.S. v. Fusko*, 869 F.2d 1048, 1052 (7th Cir. 1989)).

We briefly reiterate the facts favorable to the conviction and the reasonable inferences flowing therefrom. Detective Wise did not initiate contact with Holliday. Instead, Holliday flagged down Detective Wise's vehicle late at night and asked what he was looking for. Holliday not only understood the "twenty rock" lingo, but also volunteered to acquire cocaine at a nearby house where he was a drug "runner." Holliday then offered his personal belongings as collateral for the $20, entered the house he had identified as the place where he could get the drugs, and, within minutes, emerged with the promised cocaine. We do not view Detective Wise's actions as "persuasion or other means likely to cause [Holliday] to engage in" dealing cocaine. *See* Ind. Code § 35-41-3-9. Rather, Detective Wise merely provided Holliday with an opportunity to commit the offense of dealing in cocaine – an opportunity that Holliday quickly seized. This was not a case where Detective Wise "implant[ed] in an otherwise innocent person the disposition to commit" dealing in cocaine and "induce[d] its commission in order that" the State could prosecute. *Cf. Ferge*, 764 N.E.2d at 271. Moreover, we would not characterize the present case as a governmental "quest for conviction [that led] to the apprehension of an otherwise law-abiding citizen who, if left to his own devices, likely would have never run afoul of the law[.]" *See id*. Holliday's argument to the contrary, and his citation to his own self-serving testimony (which differed in parts from Detective Wise's testimony), is merely an invitation to judge credibility and reweigh evidence. As an appellate court, we are not at liberty to accept such an invitation.

Affirmed.

BAKER, J., and VAIDIK, J., concur.