ATTORNEY FOR APPELLANT:

JOHN T. WILSON
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

WILLIAM FARNO,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 33A01-0801-CR-28
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HENRY CIRCUIT COURT
The Honorable Mary G. Willis, Judge
Cause No. 33C01-0611-FB-18

June 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

William Farno appeals his sentence and conviction for dealing in a schedule II controlled substance, as a class B felony;[1] and his convictions for maintaining a common nuisance, as a class D felony;[2] and dealing in marijuana, as a class A misdemeanor.[3]

We affirm.

ISSUES

1. Whether the evidence was sufficient to support Farno's convictions.

2. Whether Farno's sentence for class B felony dealing in a schedule II controlled substance is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

In the afternoon of August 16, 2006, Brenda Young met Farno outside of her residence. Young asked Farno whether he had any "pain pills"; Farno told Young that "he didn't have any on him at that time, but to give him a call and he would try and set [Young] up with something later." (Tr. 129). Subsequently, Young spoke with Farno on the telephone, and Farno informed Young that he had obtained some "[p]ain pills." (Tr. 130).

Young contacted Henry County Sheriff's Department Detective Sergeant Anthony Darling. Detective Darling was assigned to the Henry County Area Drug Task Force, conducting narcotic-related investigations. Young told Detective Darling that she "had

---

[1] Ind. Code § 35-48-4-2.

[2] I.C. § 35-48-4-13.

[3] I.C. § 35-48-4-10.

been in touch with Mr. Farno and that [she] could make a purchase from him." (Tr. 131). Specifically, Young told Detective Darling that she could purchase "[p]ain pills and marijuana" from Farno. (Tr. 131).

Later in the afternoon of August 16, 2006, Detective Darling and Henry County Sheriff's Department Detective Josh Smith met Young behind a Rural King store in New Castle, where they discussed conducting a controlled drug buy from Farno. Detectives Darling and Smith then drove Young to the Criminal Investigative Division (the "CID") of the Henry County Sheriff's Department. Once at the CID, a female officer strip-searched Young to confirm that Young had no illegal contraband or narcotics on her person.

Detectives Darling and Smith transported Young back to the Rural King, where Young had left her vehicle. Detective Smith searched Young's vehicle for weapons and contraband and found none, while Detective Darling provided Young with an "audio recording device to record the transaction as well as funds that were belongings of the Area Drug Task Force[.]" (Tr. 29). Detectives Darling and Smith then followed Young as she drove to a residence located on Walnut Street in New Castle.

Young approached Farno in the driveway and "asked him if he had any pain pills." (Tr. 140). Farno stated "that he didn't have anything and to contact him . . . at approximately 5:30." (Tr. 140).

The detectives then followed Young back to the Rural King, where Young returned the money and recording device to Detective Darling. Detectives Darling and Smith arranged to meet Young later that evening.

Young telephoned Farno at approximately 5:30 p.m.; Farno told Young "to come by his house" for the drugs. (Tr. 146). Detectives Darling and Smith again met Young behind the Rural King at approximately 6:00 p.m. Detectives Darling and Smith transported Young to the CID, where a female officer conducted another strip search of Young's person. Detectives Darling and Smith then drove Young back to the Rural King, where Detective Smith searched the interior and trunk of Young's vehicle for contraband and found none. Detective Darling once again provided Young "with a recording device as well as funds . . . from the Area Drug Task Force . . . ." (Tr. 37). Detective Darling provided Young with twenty-seven dollars, with which Young was to purchase "an eighth ounce of marijuana as well as a Lortab pill."[4] (Tr. 36).

Young then drove to the Walnut Street residence, as Detectives Darling and Smith followed in Detective Smith's vehicle. Detective Aaron Strong and Detective James Cantrell, also with the Henry County Area Drug Task Force, were assigned to observe the rear of the Walnut Street residence "to see if they could observe any of the transaction." (Tr. 39).

Once Young arrived at the residence, she parked in front of the house. Detective Smith parked his vehicle "just east" of Young's vehicle. (Tr. 39). Young then exited her vehicle and walked to the rear of the house, at which point Detectives Darling and Smith lost sight of her. Detective Darling did not observe anyone else walk up the driveway or enter the residence.

---

[4] Lortab is a brand name for acetaminophen and hydrocodone.
See http://www.nlm.nih.gov/medlineplus/druginfo/medmaster/a601006.html (May 28, 2008).

Young met Farno in the driveway of the Walnut Street residence and asked him if he had any Lortabs. Farno "stated no, that he didn't at that time, but that he did have what appeared to be a white pain pill." (Tr. 150). Farno then gave "a white oblong pill" to Young, who then asked if he had any marijuana. (Tr. 150). Farno told Young "that [she] would have to go into the house." (Tr. 150). Once Farno and Young were inside Farno's residence, Farno "got [the marijuana] out of the cabinet, weighed it on the scales and handed [Young] the marijuana," (Tr. 150), which was "[i]n a clear baggie." (Tr. 151). Young then paid Farno twenty-seven dollars.

After Young left the residence, Detectives Darling and Smith followed her to the Rural King. Young provided Detective Darling "with a clear plastic bag containing a green plant-like substance as well as a white oblong pill," (Tr. 40) marked with the letter "M" and "523" on one side and "10 with a back slash and 325" on the other side. (Tr. 41). Young also returned the recording device to Detective Darling. Detective Smith again searched Young's vehicle; the detectives then transported Young to the CID, where a female officer strip-searched Young again.

Tests conducted at the Indiana State Police Laboratory revealed that the white pill contained "Oxycodone, a controlled substance," and acetaminophen. (Tr. 185). Tests also revealed that the plant substance consisted of 2.19 grams of marijuana.

On November 27, 2006, the State charged Farno with Count 1, dealing in a schedule II controlled substance, as a class B felony; Count 2, maintaining a common nuisance, as a class D felony; and Count 3, dealing in marijuana, as a class A

misdemeanor. The trial court commenced a two-day jury trial on September 24, 2007, at which Young testified. The jury found Farno guilty as charged.

The trial court ordered a pre-sentence investigation report ("PSI") and held a sentencing hearing on October 23, 2007. According to Farno's PSI,[5] he had five prior misdemeanor convictions, including convictions for operating a vehicle while intoxicated in 1979 and 2005; operating a vehicle per se in 1992; possession of marijuana in 2001; and possession of paraphernalia in 2001. Farno also had two cases pending in Henry Superior Court, filed on September 19, 2006, and March 28, 2007. The pending cases consisted of alcohol-related charges.

The trial court found Farno's prior criminal history to be an aggravating circumstance. The trial court found as a mitigating circumstance "that [Farno's] imprisonment is going to cause an undue hardship on his wife who does have a serious medical condition." (Tr. 250). Finding that the aggravating circumstance balanced the mitigating circumstance, the trial court sentenced Farno to concurrent sentences of ten years on Count 1, one and one-half years on Count 2, and one year on Count 3.

Additional facts will be provided as necessary.

DECISION

1. Sufficiency of the Evidence

[5] We remind Farno's counsel that Appellate Rule 9(J) requires documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) be filed in accordance with Trial Rule 5(G). Presentence investigation reports are excluded from public access and are confidential. *See* Ind. Administrative Rule 9(G)(1)(viii). Presentence investigation reports therefore shall be "tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential." Ind. Trial Rule 5(G)(1).

Farno asserts that the evidence is insufficient to support his convictions. We disagree.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

Pursuant to Indiana Code sections 35-48-4-2 and 35-48-4-10, the State was required to prove that Farno knowingly or intentionally delivered to Young a schedule II controlled substance and marijuana. Pursuant to Indiana Code section 35-48-4-13(b), the State was required to prove that Farno knowingly or intentionally maintained a dwelling that was used for selling a controlled substance. Furthermore, the State had to show that Farno possessed the controlled substances before the buy and transferred them to Young. *See* I.C. § 35-48-1-11 ("Delivery" is defined as "an actual or constructive transfer from one (1) person to another of a controlled substance . . . .").

Farno contends that "there were insufficient controls over the police-sponsored drug purchase" because neither Young nor all of the entrances to Farno's residence were under police observation throughout the transaction. Farno's Br. at 8. Thus, Farno

argues that the State failed to show that he "possessed the oxycodone and marijuana before the buy and transferred it to" Young. Farno's Br. at 8.

"A properly conducted controlled buy will permit an inference the defendant had prior possession of a controlled substance." *Watson v. State*, 839 N.E.2d 1291, 1293 (Ind. Ct. App. 2003).

> "A controlled buy consists of searching the person who is to act as the buyer, removing all personal effects, giving him money with which to make the purchase, and then sending him into the residence in question. Upon his return he is again searched for contraband. Except for what actually transpires within the residence, the entire transaction takes place under the direct observation of the police. They ascertain that the buyer goes directly to the residence and returns directly, and they closely watch all entrances to the residence throughout the transaction."

Id. (quoting *Mills v. State*, 177 Ind. App. 432, 379 N.E.2d 1023, 1026 (1978)).

In this case, Detective Darling testified that searches of Young's person and vehicle confirmed that she did not possess any controlled substance prior to going to Farno's residence; upon her return to the Rural King, however, Young had a tablet of oxycodone and a package of marijuana. Detective Darling also testified that until Young entered the rear of Farno's property, Detectives Darling and Smith kept her under observation.[6] A recording device also recorded the transaction between Young and Farno.

Furthermore, Young testified at Farno's trial. Namely, Young testified that she arranged to purchase marijuana and "pain pills" from Farno. (Tr. 129). Young further testified that she met Farno at Farno's residence, where he handed her a tablet, later

[6] Detective Darling testified that Detectives Strong and Cantrell observed the rear of the Walnut Street residence; neither Detective Strong nor Detective Cantrell, however, testified at Farno's trial.

revealed to be a schedule II controlled substance. Young also testified that while in his residence, Farno gave her a baggie, containing "a green leafy substance," which tests revealed was marijuana. (Tr. 151). Young testified that she paid Farno twenty-seven dollars for the drugs.

We find the evidence sufficient to support Farno's convictions. Farno's argument to the contrary amounts to an invitation to reweigh the evidence and credibility of the witnesses, which we will not do.

2. Inappropriate Sentence

Farno asserts that his sentence of ten years for class B felony dealing in a schedule II controlled substance is inappropriate. Farno argues that the trial court abused its discretion when it sentenced him "without considering alternatives to incarceration." Farno's Br. at 10.

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "'persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime

committed." *Childress*, 848 N.E.2d at 1081. In this case, the trial court sentenced Farno to the advisory sentence of ten years. *See* I.C. § 35-50-2-5.[7]

Farno contends that his sentence is inappropriate in light of his character. Farno maintains that "his criminal history does not support the imposition of a ten (10) year sentence," Farno's Br. at 11, where he has had only "misdemeanor convictions over a twenty-six (26) year period, no felony convictions, has never been to prison, had never been on formal probation, [and] had worked consistently for many years[.]" Farno's Br. 11-12.

We recognize that Farno's criminal history consists only of misdemeanor convictions. Those convictions, however, were alcohol-or drug-related. We too are sympathetic to Farno's position; however, it appears that prior attempts to rehabilitate Farno and deter him from future unlawful conduct have failed, leading to a more serious felony conviction. Finally, the weight assigned to Farno's criminal history is not subject to review. *See Anglemyer*, 868 N.E.2d at 490. We therefore cannot say that Farno's advisory sentence is inappropriate.

Affirmed.

NAJAM, J., and BROWN, J., concur.

---

[7] Indiana's new advisory sentencing scheme, which went into effect on April 25, 2005, applies in this case. Pursuant to Indiana Code section 35-50-2-5, "[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years."