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IN THE
COURT OF APPEALS OF INDIANA

AARON K. CAMERON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A05-0802-CR-108
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D1-0404-FD-359

June 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Following his convictions for two counts of dealing in cocaine, possession of cocaine, and maintaining a common nuisance and his acquittal for a third count of dealing in cocaine, Aaron K. Cameron appeals. Specifically, he maintains that the evidence is insufficient to support his convictions, the jury's verdicts are inconsistent, and his sentence is inappropriate. Concluding that sufficient evidence exists to support his convictions, that the jury's verdicts are not fatally inconsistent, and that his sentence is not inappropriate, we affirm the judgment of the trial court.

Facts and Procedural History[1]

On April 7, 2005, Officer Paul Moring of the South Bend Police Department arranged for an undercover hand-to-hand drug transaction with a male he knew as Brandon.[2] Officer Moring contacted Brandon and informed him that he wanted to buy $100.00 worth of crack cocaine. Brandon told Officer Moring to call a particular telephone number and to tell the person "that his son sent him." Tr. p. 137. Officer Moring called the telephone number provided to him and told the person that he wanted to buy $100.00 worth of crack cocaine to which the person replied that "he already had it ready for [him]." *Id*. Officer Moring arranged a buy near Division Street and Mishawaka Avenue in Mishawaka, Indiana.

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[1] We bring to the attention of Cameron's appellate counsel that Indiana Appellate Rule 50(C) provides, "A table of contents shall be prepared for every Appendix. The table of contents shall specifically identify each item contained in the Appendix, including the item's date." Ind. Appellate Rule 50(C). Cameron's failure to specifically identify each item contained in his appendix has hindered our review on appeal.

[2] Officer Moring is a member of both the Indiana Drug Enforcement Association and the International Association of Undercover Officers.

As Officer Moring approached the location where the buy was to take place, he called the same telephone number he had previously dialed and was instructed to go to the 7-Eleven convenience store located at the corner of Main Street and Mishawaka Avenue. Officer Moring, equipped with marked currency and an audio recording device, met a man at 7-Eleven, which was within 1000 feet of a public park. An exchange of cocaine and money was made, and Officer Moring left the scene. Officer Moring later described the person as a "male black, twenties or thirties, medium build, 5'9" or 5'11", approximately 220 pounds and black hair, brown eyes." *Id*. at 178.

On June 3, 2005, Officer Moring arranged to buy crack cocaine from Roy Neal. After an exchange of telephone calls between Officer Moring and Neal, Officer Moring was told that he would meet someone riding a bicycle near a cafe on Mishawaka Avenue. At the cafe, which was within 1000 feet of a public park, Cameron, while riding a bicycle, approached Officer Moring and initiated a buy. An exchange of cocaine and money was made, and Officer Moring left the scene. Officer Moring described Cameron as a "male black, forty-one, medium build, 5'4", a hundred and seventy pounds, black hair, brown eyes." *Id*. at 183.

On June 17, 2005, Officer Moring contacted Cameron to arrange another crack cocaine buy. Officer Moring informed Cameron that he wanted to buy $100.00 worth of cocaine and also asked if Cameron had any hubcaps that he could purchase. Cameron told Officer Moring to meet him at his auto shop, A & B Auto, located on Division Street. Officer Moring met Cameron at the auto shop to complete the buy. An exchange of cocaine and money was made, and Officer Moring left the scene.

Thereafter, a search warrant was executed at Cameron's auto shop. Officer Moring identified Cameron to the other officers on the scene and left. After detaining Cameron and searching his person, an officer found a bag in his pocket containing cocaine. The State charged Cameron with Counts I and II: dealing in cocaine within 1000 feet of a public park as a Class A felony,[3] Count III: dealing in cocaine as a Class B felony,[4] Count IV: possession of cocaine as a Class D felony,[5] and Count V: maintaining a common nuisance, a Class D felony.[6] Following a jury trial, Cameron was found guilty on all counts except Count I, of which he was acquitted. The trial court sentenced Cameron to an above-advisory sentence of forty years on Count II, a maximum sentence of twenty years on Count III, and the advisory sentence of eighteen months on Counts IV and V, all to be served concurrently. Cameron now appeals.

Discussion and Decision

Cameron raises the following three issues on appeal: (1) the evidence is insufficient to support his convictions; (2) the jury's verdicts are inconsistent; and (3) his sentence is inappropriate.

I. Sufficiency of the Evidence

Cameron contends that the evidence is insufficient to support his convictions. When reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Trimble v. State*, 848 N.E.2d 278, 279 (Ind. 2006). If

[3] Ind. Code § 35-48-4-1(b)(3)(B)(ii).

[4] Ind. Code § 35-48-4-1(a)(1)(C).

[5] Ind. Code § 35-48-4-6(a).

[6] Ind. Code § 35-48-4-13(b).

there is sufficient evidence of probative value to support the jury's conclusion, then the conviction will not be disturbed. *Id*.

In order to prove that Cameron was guilty of dealing in cocaine, the State was required to prove that he knowingly or intentionally delivered cocaine. Ind. Code § 35-48-4-1(a)(1)C). To prove that he was guilty of dealing in cocaine within 1000 feet of a public park, the State was required to prove that he knowingly or intentionally delivered cocaine within 1000 feet of a public park. Ind. Code § 35-48-4-1(b)(3)(B)(ii). To prove that Cameron maintained a common nuisance, the State had to prove that Cameron knowingly or intentionally maintained a building that was used one or more times to unlawfully use controlled substances or for unlawfully keeping, offering for sale, selling, delivering, or financing the delivery of cocaine or items of paraphernalia. Ind. Code § 35-48-4-13(b).

Specifically, Cameron argues that the State failed to present sufficient evidence to identify him because "[n]o DNA testing was done on any of the evidence . . . no fingerprints were taken . . . [and] [n]o cellular telephone records were produced linking the number police called to [Cameron]." Appellant's Br. p. 14, 15. Cameron also maintains that insufficient evidence exists to prove that cocaine was kept within his auto shop. We disagree.

"A single eyewitness's testimony is sufficient to sustain a conviction." *Stewart v. State*, 866 N.E.2d 858, 862 (Ind. Ct. App. 2007). Officer Moring identified Cameron as the individual who sold him cocaine at the various drug buys and stated that one of the drug buys occurred inside Cameron's auto shop. It was within the province of the jury

to decide whom to believe and which details were important. The evidence is sufficient to support Cameron's convictions.

II. Inconsistent Jury Verdicts

Next, Cameron argues that his convictions for dealing in cocaine within 1000 feet of a public park, dealing in cocaine, and maintaining a common nuisance are fatally inconsistent with his acquittal on the other count of dealing in cocaine within 1000 feet of a public park. We review verdicts for consistency and will take corrective action if necessary. *Owsley v. State*, 769 N.E.2d 181, 183 (Ind. Ct. App. 2002), *reh'g denied, trans. denied*. While perfectly logical verdicts are not required, "extremely contradictory and irreconcilable verdicts warrant corrective action by this Court." *Id.* (quotation omitted). Verdicts that initially may seem inconsistent on some level are not legally inconsistent if they can be explained by the fact-finder's exercise of its power to assign the proper weight to and either accept or reject certain pieces of evidence. *Id.* For example, in *Jackson v. State*, the Indiana Supreme Court held that the defendant's conviction for one count of rape was not inconsistent with his acquittal on a second count of rape that allegedly occurred at another time and place, although both counts were allegedly perpetrated against the same victim, because the jury was free to believe some portions of the victim's testimony but reject other portions. 540 N.E.2d 1232, 1234 (Ind. 1989). Additionally, verdicts are inconsistent

> only where they cannot be explained by weight and credibility assigned to the evidence. Thus, an acquittal on one count will not result in reversal of a conviction on a similar or related count, because the former will generally have at least one element (legal or factual) not required for the latter. In such an instance, the finder of fact will be presumed to have doubted the

> weight or credibility of the evidence presented in support of this distinguishing element.

Owsley, 769 N.E.2d at 183 (quotation omitted).

Cameron maintains that

> [w]hile not identical to the facts in Owsley[], the facts in this case are substantially similar and require the same result. In Owsley, the defendant was acquitted of possession of cocaine and dealing cocaine but convicted of conspiracy to commit dealing cocaine. The Court found that the evidence presented in support of the possession charge was identical to that presented to support the conspiracy charge, a fatal inconsistency. Here, the transactions were virtually identical in the first two instances and . . . [Cameron] was identified in Court by Officer Moring's testimony as being the person delivering crack cocaine, yet were treated differently by the jury. The identified person and the elements of delivery were substantially similar, yet the jury entered inconsistent and contradictory verdicts.

Appellant's Br. p. 16-17 (citations omitted). We disagree. *Owsley* is factually distinguishable from this case. In *Owsley*, the evidence presented in support of Owsley's possession of cocaine was identical to that presented to support his commission of an overt act in furtherance of the alleged conspiracy. When the jury returned its verdict indicating that the State failed to prove beyond a reasonable doubt that Owsley possessed cocaine but sufficiently proved beyond a reasonable doubt that Owsley provided an individual with cocaine, this raised a legitimate concern: if Owsley did not possess cocaine, how could he have provided cocaine? Thus, in *Owsley*, a logical explanation for the inconsistent verdicts did not exist. However, here, a logical explanation does exist.

Regarding Count I (delivery of cocaine within 1000 feet of a public park), of which Cameron was acquitted, the jury may have found Officer Moring's identification testimony less credible than his testimony regarding the other two controlled buys. While Officer Moring did identify Cameron as the dealer from the first transaction, he also

described him as being 5'9" or 5'11" and approximately 220 pounds. However, when testifying regarding the other two controlled buys, Officer Moring described the dealer as being 5'4" and 170 pounds at the buy at the cafe and being 5'6" at the time of the raid of Cameron's auto shop. The height and weight descriptions provided by Officer Moring for Counts II and III are closer to Cameron's actual size and weight (5'6" and 180 pounds) than those given in Count I. Based on this evidence, it was reasonable for the jury to have acquitted Cameron on Count I. The verdicts are not fatally inconsistent.

III. Inappropriate Sentence

Finally, Cameron contends that his aggregate forty-year sentence is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences 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." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The burden is on the defendant to persuade us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offenses, Cameron engaged in the dealing of cocaine to an undercover officer over a series of buys. He did so in fairly close proximity to a park, where children are likely to be present. As for his character, we observe that Cameron

has previously been convicted of four felonies, namely, theft, burglary, possession of cocaine, and possession of marijuana. His convictions in this case also are drug related as they involve delivering, maintaining, and possessing cocaine. Cameron's pattern of crack cocaine sales indicates that he is an established drug dealer. Given the nature of the offenses and the character of this offender, Cameron's aggregate sentence of forty years for one Class A felony, one Class B felony, and two Class D felonies is not inappropriate.

Affirmed.

MAY, J., and MATHIAS, J., concur.