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**IN THE
COURT OF APPEALS OF INDIANA**

RODNEY ROBINSON, JR.,)

Appellant-Defendant,)

vs.)

No. 42A05-0801-CR-9

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-0508-FA-173

July 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Rodney Robinson, Jr., was convicted of Dealing in Cocaine as a Class A felony.¹ Upon appeal, Robinson challenges the sufficiency of the evidence to support his conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

In the light most favorable to the State, the record reveals that sometime around 12:00 a.m. to 1:00 a.m. on August 15, 2005, the Knox County Sheriff's Department set up surveillance with two vehicles outside the Relax Inn, which was reportedly the location of heavy drug activity. Deputy Sheriff Bryan Hicks, Deputy Wally Smith and Reserve Deputy John Streeter conducted surveillance on the Relax Inn for approximately an hour, during which time they witnessed people "milling about," walking up and down the hotel stairs, and "hanging out" on the second floor balcony, as well as hotel doors opening and closing. Based on their observations, the deputies drove over to the Relax Inn to conduct a "stop and knock."² As they headed up the hotel stairs, they observed a man, who was later determined to be Mark Goddard, leaving room 208, and they stopped him for questioning. Goddard told the deputies that he was only there visiting a woman for sexual relations, but that two black men had offered to sell him crack cocaine, which he declined. Goddard also said that he had seen the crack cocaine hidden inside of a WD-40 can and that the same men had had a .357 revolver with them.

¹ Ind. Code § 35-48-4-1(a)(2) (2005).

² A "stop and knock" occurs when an officer knocks on the door of the property in question, without a search warrant, and tells the occupant his reason and purpose for being there, then asks for permission to search the property.

After he gave a written statement, the deputies released Goddard and proceeded with their original plan of a “stop and knock.”

When the deputies approached the door of room 208, but before the deputies knocked, a woman later determined to be April Smith opened the door. After the deputies explained to Smith that they had stopped Goddard earlier in the night and told her what he had said about the room, they asked her for permission to search the room. Smith gave consent for the deputies to search the room, during which they found a glass or ceramic smoking device, a box of sandwich bags, \$643.00 in cash, digital measuring scales with white powder residue, and a set of pocket scales. Additionally, Reserve Deputy Streeter spotted a WD-40 can on the ground outside of the room’s bathroom window. Reserve Deputy Streeter retrieved the WD-40 can and Deputy Smith opened it, finding several baggies of a white rock substance, later determined to be 15.77 grams of a substance containing cocaine. At the time of the search, the only adults in the room were Smith, and one black adult male, later determined to be Rodney Robinson, Jr. The deputies arrested both Smith and Robinson.

On August 19, 2005, Robinson was charged with dealing in cocaine as a Class A felony and possession of stolen property as a Class D felony. On November 21, 2005, the State amended Robinson’s charge, removing Count II for possession of stolen property. During trial, both Smith and Goddard testified that the recovered cocaine belonged to Robinson, and Goddard testified to purchasing

crack cocaine from Robinson. On November 30, 2005, a jury found Robinson guilty of Count I, dealing in cocaine as a Class A felony. Robinson now appeals.

DISCUSSION AND DECISION

Robinson's sole challenge on appeal is to the sufficiency of the evidence to support his conviction of dealing in cocaine. Specifically, he contends that the only evidence on this issue came from witnesses Mark Goddard and April Smith, both of whose testimony was incredibly dubious. Our standard of review for sufficiency-of-the-evidence claims is well-settled. In addressing a claim of insufficient evidence, an appellate court must consider only the probative evidence and reasonable inferences supporting the judgment, without weighing evidence or assessing witness credibility, and determine therefrom whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Marcum v. State*, 725 N.E.2d 852, 863 (Ind. 2000), *reh'g denied*.

The "incredible dubiousity" doctrine applies where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion, and there is a complete lack of circumstantial evidence of the defendant's guilt. *White v. State*, 706 N.E.2d 1078, 1079-80 (Ind. 1999). Under this rule, a reviewing court may impinge on the jury's responsibility to judge the credibility of the witness only when it has confronted "inherently improbable testimony or coerced, unequivocal, wholly uncorroborated testimony of incredible dubiousity." *Rodgers v. State*, 422 N.E.2d 1211, 1213 (Ind. 1981) (citations omitted). Inherently dubious or inherently improbable testimony is that which runs counter to human

experience, and which no reasonable person could believe. *Campbell v. State*, 732 N.E.2d 197, 207 (Ind. Ct. App. 2000).

The incredible dubiousity doctrine, however, does not apply here because the evidence was not from a single witness. *Thompson v. State*, 765 N.E.2d 1273, 1274 (Ind. 2000). While Smith and Goddard's statements to the deputies were not entirely consistent with their testimony, this does not render their testimony inherently contradictory. *See Corbett v. State*, 764 N.E.2d 622, 626 (Ind. 2002) (noting that inconsistencies between the witness's statement to the police and his trial testimony do not render his testimony inherently contradictory).

To convict Robinson, the State was required to prove that he knowingly or intentionally possessed more than three grams of cocaine with the intent to deliver it. *See* Ind. Code § 35-48-4-1(a)(2). Robinson challenges his conviction by claiming that there was inadequate evidence to demonstrate he ever had actual or constructive possession of the recovered cocaine or that he intended to deliver it.

With respect to Robinson's claim that he did not possess the cocaine, the evidence demonstrates he had actual possession of the recovered cocaine. Smith testified that the recovered cocaine belonged to Robinson, that Robinson had told her that he stored his drugs in a WD-40 can, and that he unscrewed the bottom of the can to show her the drugs. Goddard also testified that the cocaine belonged to Robinson and that he had seen the cocaine inside of a WD-40 can. As noted above, in reviewing a claim of insufficient evidence, we cannot reweigh the evidence or assess witness credibility but must look only to the evidence favorable

to the judgment. The State only needs to prove actual or constructive possession. *See Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004) Because actual possession was proved, we do not need to address Robinson's argument that the State did not prove he had constructive possession of the cocaine.

With respect to Robinson's challenge to the evidence demonstrating his intent to deliver, Goddard testified that he went to room 208 of the Relax Inn in the early morning hours of August 15, 2005, in order to purchase cocaine. During his testimony the following exchange occurred:

Q: What did you do while you were in that room?

A: Purchased crack cocaine.

Q: Who did you buy it from?

A: Rodney Robinson.

Tr. p. 189. Additionally, Smith testified that she had witnessed Robinson bagging and weighing cocaine on the recovered digital scales and that Goddard had purchased cocaine from Robinson, which she knew because she had seen Robinson hand the WD-40 can to Goddard. It is for the jury to resolve conflicts in the evidence and to decide which witnesses to believe or disbelieve. *Marshall v. State*, 621 N.E.2d 308, 320 (Ind. 1993). If the testimony believed by the jury is enough to support the verdict, then the reviewing court will not disturb it. *Id.*

Neither Smith nor Goddard's testimony was incredibly dubious. We conclude that there was sufficient evidence for a jury to find Robinson guilty beyond a reasonable doubt. The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.