

Case Summary

Maurice Patterson appeals his conviction for Class B felony delivery of cocaine.¹

We affirm.

Issues

Patterson raises two issues, which we restate as:

- I. whether the trial court committed reversible error when it admitted an out of court statement into evidence; and
- II. whether there is sufficient evidence to support his conviction.

Facts

At 11:30 a.m. on May 30, 2008, several South Bend police officers were involved in a narcotics investigation. During the investigation, an undercover officer asked Calvin Wells, who was riding a bicycle, if he had a “twenty,” which is slang for \$20.00 worth of crack cocaine. Tr. p. 171. Wells told the undercover officer that Wells would have to go to the nearby intersection of Milton Street and Carroll Street to get the cocaine, and Wells rode away on his bicycle. Two other officers observed that intersection from about a block and half away. One of those police officers, Corporal Neil Graber, saw Wells approach Patterson on his bicycle. Wells spoke to Patterson, Patterson reached into his pocket or waistband, Patterson and Wells shook hands, and then the two men went in separate directions.

¹ Patterson does not challenge his conviction for Class A misdemeanor resisting law enforcement.

Within a couple minutes, Wells returned to the undercover officer and handed him a small clear plastic bag containing cocaine. The undercover officer gave Wells \$20.00 for the cocaine and an additional \$20.00 “for his trouble.” *Id.* at 192.

Corporal Graber and his partner then attempted to apprehend Patterson, and Patterson “took off running.” *Id.* at 217. Corporal Graber chased Patterson and saw Patterson throw something as he ran. Patterson was eventually apprehended, and Corporal Graber recovered two clear plastic baggies containing cocaine that Patterson had thrown down during the chase.

On June 3, 2008, the State charged Patterson with Class B felony delivery of cocaine, Class D felony possession of cocaine, and Class A misdemeanor resisting law enforcement. A jury found Patterson guilty as charged. The trial court entered convictions for the Class B felony delivery of cocaine charge and the Class A misdemeanor resisting law enforcement charge. Patterson now appeals.

Analysis

I. Admission of Evidence

Patterson argues that the trial court improperly admitted a statement Wells made to the undercover officer about where Wells had to go to get cocaine. A trial court has inherent discretionary power on the admission of evidence, and its decisions are reviewed only for an abuse of that discretion. *Vasquez v. State*, 868 N.E.2d 473, 476 (Ind. 2007). Even if the trial court abused its discretion here, the error is harmless. We will not overturn a conviction if an erroneous ruling is harmless. *Lander v. State*, 762 N.E.2d

1208, 1213 (Ind. 2002) (citing Ind. Trial Rule 61). “Harmless error is defined as an error that does not “affect the substantial rights of a party.” Id. (citation omitted).

Patterson objected to the undercover officer’s testimony that Wells stated he had to get cocaine from the intersection of Milton Street and Carroll Street.² This testimony offers little more than cumulative evidence regarding where Wells met Patterson to get cocaine. Specifically, the undercover officer testified that he asked Wells for cocaine. Wells did not sell him cocaine and rode his away on his bicycle. Corporal Graber testified that during his observation of the intersection of Milton Street and Carroll Street from a block and a half away Wells rode up on a bicycle, Wells spoke to Patterson, Patterson reached into his pocket or waistband, Wells and Patterson shook hands, and Wells rode away on his bicycle. Wells then returned to the undercover police officer and sold cocaine to him. There is also evidence that this was the undercover officer’s second attempt to buy cocaine from Wells that day because Wells did not have any cocaine when first approached.

Wells’s statements to the undercover officer regarding where he had to go to get cocaine were cumulative of other evidence. Thus, Patterson has not established that his substantial rights were affected. Any error in the admission of Wells’s statement was harmless.

II. Sufficiency of the Evidence

² In accordance with the trial court’s ruling, the undercover officer did not testify regarding the color of the shirt that Wells said Patterson was wearing. Thus, the color of Patterson’s shirt is not relevant to this analysis.

Patterson also argues that there is insufficient evidence to support his conviction because “[t]he State’s evidence produces only speculation and guesswork that delivery of cocaine had taken place.” Appellant’s Br. p. 16. Upon a challenge to the sufficiency of evidence to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We respect the jury’s exclusive province to weigh conflicting evidence. Id. We must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

Here, the circumstantial evidence supports the reasonable inference that Patterson delivered cocaine to Wells. See Rohr v. State, 866 N.E.2d 242, 249 (Ind. 2007) (“Such circumstantial evidence is sufficient if it allows for reasonable inferences enabling the jury to determine guilt beyond a reasonable doubt.”). Even when we do not consider Wells’s statements to the undercover officer, the evidence most favorable to the judgment shows that the undercover officer was investigating complaints of drug dealing in the area and that he had tried to purchase cocaine from Wells earlier in the day, but Wells had no cocaine. When the undercover officer asked to buy cocaine from Wells a second time, Wells rode away, Wells met with Patterson, Patterson reached into his pocket or waistband, Wells and Patterson shook hands, and Wells rode away. Wells returned to the undercover officer “[w]ithin a couple of minutes” and gave the undercover officer a small baggie containing cocaine in exchange for \$40.00. Tr. p. 191. When Corporal Graber tried to apprehend Patterson, Patterson fled from him. During the chase, Patterson threw

two small baggies containing cocaine onto the ground. Corporal Graber also testified that it is not unusual for an individual to keep cocaine in a waistband and that Patterson reached into his right pocket or the right side of his waistband with his right hand and then shook hands with Wells using his right hand.

From this evidence it is reasonable to infer that Patterson delivered cocaine to Wells. There is sufficient evidence to support Patterson's conviction for Class B felony delivery of cocaine.

Conclusion

Any error in the admission of Wells's statements to the undercover officer was harmless. There is sufficient evidence to support Patterson's conviction. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.