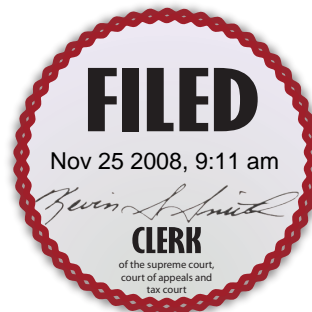


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

MARK S. LENYO
South Bend, Indiana

STEVE CARTER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MELVIN MUHAMMAD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)
)
)
)
)

No. 71A03-0805-CR-238

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-0609-FB-124

November 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Melvin Muhammad appeals his convictions for class B felony possession of a narcotic drug within 1000 feet of a public park and class D felony maintaining a common nuisance. We affirm.

Issue

We address one issue, which we restate as whether the State presented sufficient evidence to support Muhammad's conviction.

Facts

On June 21, 2006, Officers Alan Delinski and Juan Lora of the South Bend Police Department received a report that an individual driving a 2005 white Pontiac Bonneville was in possession of narcotics. The officers proceeded to the reported location and saw a vehicle matching the description parked on the side of the road. The officers observed the driver, Cedric Pearson, speaking with a female who was standing alongside the vehicle. At this time, Officer Delinski contacted Officer Greg Early of the Neighborhood Enforcement Service Team for assistance.¹

After a few minutes, Pearson continued in the opposite direction in order to pick up Muhammad at his girlfriend's residence. Shortly after Pearson's arrival, Muhammad got behind the wheel of the Bonneville and the two men continued towards the southeast side of town. While en route, Muhammad noticed the law enforcement personnel and pulled the vehicle over. He and Pearson got out of the Bonneville and spoke with an

¹ The Neighborhood Enforcement Service Team is a specialized law enforcement unit that addresses narcotics, prostitution, and other community problems.

individual along the roadside. After no more than ten minutes, Muhammad and Pearson continued on their way. At this point, Officers Delinski and Lora—who had been surveilling the Bonneville—contacted Officer Early and informed him that the vehicle was headed toward Scott Street. As Muhammad turned on to Scott Street, he and Pearson found themselves face to face with Officer Early’s police cruiser. Muhammad immediately pulled over.

While the two vehicles sat parked facing one another, Muhammad produced a bag of heroin and tossed it into Pearson’s lap. Although Pearson struggled to give it back, Muhammad insisted that he flee, assuring Pearson that he would “pay [his] way to get out.” Tr. p. 371. Officer Early witnessed this struggle from within his vehicle before observing Pearson get out of the Bonneville and sprint away. At that point, Officer Early held Muhammad in the Bonneville while Officers Delinski and Lora apprehended Pearson. Although narcotics were not found on Muhammad’s person or in his vehicle, heroin was found in Pearson’s pocket.

Based on the foregoing account provided by Pearson, Muhammad was charged with possession of a narcotic drug within 1000 feet of a public park and maintaining a common nuisance. After a jury trial, Muhammad was convicted as charged. He now appeals.

Analysis

Muhammad contends that there is insufficient evidence to support his conviction.

In reviewing sufficiency claims, we will neither reweigh the evidence nor judge the credibility of witnesses. Baxter v. State, 891 N.E.2d 110, 120 (Ind. Ct. App. 2008). Instead, we must consider only the probative evidence and reasonable inferences in a light most favorable to the verdict. Id. We must affirm a conviction unless no reasonable trier-of-fact could have found the elements of the crime proven beyond a reasonable doubt. Id. In order to convict Muhammad of class B felony possession of a controlled substance as charged in this case, the State was required to prove that he knowingly or intentionally possessed a controlled substance within 1000 feet of a public park. Ind. Code § 35-48-4-6(b)(2)(B)(ii). Likewise, in order to convict Muhammad of class D felony maintaining a common nuisance as charged in this case, the State was required to demonstrate that Muhammad maintained a vehicle used by one or more persons in connection with the unlawful use, manufacturing, keeping, offering for sale, selling, delivering, or financing the delivery of a controlled substance. I.C. § 35-48-4-13(b)(1).

The evidence most favorable to the State indicates that upon encountering Officer Early's vehicle, Muhammad parked the Bonneville, produced a bag of heroin, and tossed it into Pearson's lap. After struggling to give it back to Muhammad, Pearson ran from the vehicle with the contraband.

Although Pearson testified to all of the foregoing, Muhammad argues Pearson's uncorroborated testimony is by itself insufficient to form a basis for his conviction. Muhammad points out that at the time of trial, Pearson was facing charges arising out of this very incident. In addition, Pearson has been twice convicted of false informing. In

light of this, Muhammad claims Pearson's testimony is "not only suspect, but unbelievable, in light of all of the surrounding circumstances." Appellant's Br. p. 16.

At the outset, we emphasize that the uncorroborated testimony of a sole witness can be sufficient evidence to support a conviction. Robinson v. State, 365 N.E.2d 1218, 1221 (Ind. 1977), *cert. denied*, 434 U.S. 973, 98 S. Ct. 527 (1977). Here, the State established that Muhammad had direct and physical control of the contraband by virtue of Pearson's testimony. Although the three arresting officers did not witness Muhammad in possession of the heroin, a conviction for actual possession does not require that a Defendant be caught "red handed." Wilburn v. State, 442 N.E.2d 1098, 1101 (Ind. Ct. App. 1982). Instead, the elements of this offense can be established through witness testimony. Id.

A conviction may be reversed if a sole witness's testimony is inherently unbelievable and there is a complete lack of circumstantial evidence. White v. State, 706 N.E.2d 1078, 1079 (Ind. 1999). This is often referred to as the "incredible dubiousity rule." Id. For a conviction to be set aside, a sole witness must present "inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the appellant's guilt." Id.

Despite Muhammad's contentions as to Pearson's lack of credibility, the present case does not warrant application of this rule. Pearson presented consistent testimony that was neither coerced nor provided in exchange for some benefit. The fact that he had pending charges arising out of this incident does not require us to reject his testimony.

Moreover, Officer Early's testimony regarding the furtive motions between the two immediately prior to Pearson fleeing the Bonneville partially corroborates Pearson's account.

In such a case, it is the role of the fact finder to assess the veracity of a witness's testimony, not an appellate court. We therefore decline the invitation to reassess credibility determinations made. Based on Pearson's testimony, Muhammad had direct and physical control of the controlled substance. This evidence is sufficient to establish that Muhammad possessed the heroin.² In light of the foregoing, we also find that the evidence was sufficient to convict Muhammad of maintaining a common nuisance as charged in this case.

Conclusion

There was sufficient evidence to convict Muhammad of possession of a controlled substance within 1000 feet of a public park and maintaining a common nuisance. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.

² Because the evidence is sufficient to show that Muhammad actually possessed the heroin, we need not determine whether he constructively possessed it.

