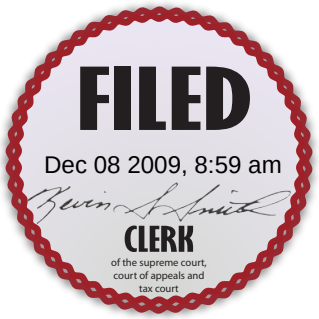

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IN THE
COURT OF APPEALS OF INDIANA

SCOTT A. MADDOCK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 91A04-0904-CR-201
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WHITE SUPERIOR COURT
The Honorable Robert B. Mrzlack, Judge
Cause No. 91D01-0809-FB-144

DECEMBER 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Scott Maddock appeals his conviction and sentence for dealing in methamphetamine, a Class A felony. Ind. Code § 35-48-4-1.1.

We affirm.

Maddock presents two issues for our review, which we restate as:

I. Whether there was sufficient evidence to support his conviction.

II. Whether his sentence is inappropriate.

One evening in September 2008, Maddock went to the trailer home of David Baker and Mickenzie Lindstrom at approximately midnight. While there, Maddock began making methamphetamine with Baker. At the time of this activity, Baker and Lindstrom's 14-month-old son was in the trailer. Police officers, who arrived at the trailer to serve a warrant on Lindstrom, smelled the odor of anhydrous ammonia, an ingredient in the manufacture of methamphetamine, and noticed some activity inside the trailer by Baker and Maddock. Following the arrest of the two men, the police found in the trailer all of the ingredients for manufacturing methamphetamine, as well as some of the drug in the process of being manufactured. Based upon this incident, Maddock was charged with dealing in methamphetamine, as a Class A felony. Following a jury trial, Maddock was found guilty as charged. The court sentenced him to thirty (30) years, with twenty-five (25) years executed and five years suspended to probation. It is from this conviction and sentence that he now appeals.

Maddock first contends that there was not sufficient evidence to sustain his conviction. Particularly, Maddock challenges the veracity of three of the State's witnesses who testified that he was engaged in the manufacture of methamphetamine, rather than, as Maddock claims, merely being present in the trailer while Baker was manufacturing the drug.

Our standard of review with regard to sufficiency claims is well settled. We neither weigh the evidence nor judge the credibility of the witnesses, and we consider only the evidence favorable to the verdict and all reasonable inferences which can be drawn therefrom. *Newman v. State*, 677 N.E.2d 590, 593 (Ind. Ct. App. 1997). If there is substantial evidence of probative value from which a trier of fact could find guilt beyond a reasonable doubt, we will affirm the conviction. *Id*. Moreover, we are mindful that the trier of fact is entitled to determine which version of the incident to credit. *Barton v. State*, 490 N.E.2d 317, 318 (Ind. 1986).

With regard to his sufficiency claim, Maddock specifically refers to the testimony of Baker, Lindstrom, and Melinda Howell. Maddock claims that none of these witnesses can be believed because they all had something to gain by cooperating with the State. On direct examination of Baker, the State brought up his charges of manufacturing methamphetamine and neglect of a dependent stemming from this incident, as well as his previous convictions of burglary, theft, battery, and a pending charge out of Illinois. In addition, Baker admitted that he was a methamphetamine addict and testified regarding his plea agreement in the current case. He indicated that his plea agreement contained no

requirement that he testify against Maddock and that he had no promise from the State in exchange for his testimony. Yet, he unequivocally identified Maddock as the manufacturer of the methamphetamine. On cross-examination, defense counsel brought up a false informing conviction and the pending CHINS (Child in Need of Services) action and neglect of a dependent charge involving Baker's 14-month-old son who was present when Baker and Maddock were manufacturing the methamphetamine. Additionally, defense counsel exposed discrepancies between Baker's testimony at trial and previous statements and discrepancies within his trial testimony.

During the direct examination of Mickenzie Lindstrom, she testified regarding her pending theft and forgery charges. She also acknowledged that she had been made no promises in exchange for her testimony in the current case but, because she wanted to have her son returned to her in the CHINS action, she was choosing to testify. When asked what Maddock's role was in the manufacturing process, Lindstrom indisputably testified, "Everything. He provided the ingredients, he provided, [ ] the knowledge of better ways to make methamphetamine, and he participated exclusively in it." Tr. at 220.

Lastly, Melinda Howell, a friend of Maddock's, testified that she was present for a conversation in which Maddock stated that he went to the trailer home of Baker and Lindstrom in order "to make meth." Tr. at 125. Howell indicated that she was not offered anything in exchange for her testimony. Further, during direct and cross examination Howell acknowledged that she had theft convictions, one of which involved a pending probation revocation.

Maddock's assertions on this issue are an unmistakable invitation to assess witness credibility. Here, the jury observed first-hand the testimony of these witnesses, as well as their cross-examination by defense counsel. Armed with that information, the jury made its determination and found Maddock guilty. In making its decision, the jury considers all the evidence, including any inconsistencies, before it comes to a conclusion. On review of a challenge to the sufficiency of the evidence, this Court must give deference to the jury's exclusive province to weigh conflicting evidence and cannot evaluate the credibility of witnesses. *Collier v. State*, 846 N.E.2d 340, 344 (Ind. Ct. App. 2006). Therefore, we cannot and will not accept Maddock's invitation to disturb the jury's decision.

Maddock also claims that the testimony of Baker, Lindstrom and Howell is incredibly dubious. The incredible dubiosity 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." *Thompson v. State*, 765 N.E.2d 1273, 1274 (Ind. 2002). This Court has observed that application of this doctrine is rare, but, when used, the applicable standard is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Krumm v. State*, 793 N.E.2d 1170, 1177 (Ind. Ct. App. 2003). In support of his application of this doctrine to the present case, Maddock points only to Baker's inconsistent testimony regarding his son's presence on other occasions when methamphetamine was being manufactured. Moreover, he failed to point to any part of

Lindstrom's or Howell's testimony that was inherently contradictory or coerced. Furthermore, our review of the record reveals that all three of these witnesses testified unequivocally that Maddock made methamphetamine. Additionally, there was ample circumstantial evidence in this case. The police found all of the ingredients used to manufacture methamphetamine, as well as methamphetamine in the process of being manufactured in the trailer that night. Maddock's reliance on the rule of incredible dubiosity is unsuccessful. The evidence is sufficient to sustain his conviction.

Maddock's second allegation of error involves his sentence. He asserts that his thirty (30) year sentence is inappropriate.

We have the authority to revise a sentence if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the appellate court that his or her sentence has met the inappropriateness standard of review. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). As long as a defendant's sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Id*. at 490. An abuse of discretion occurs if the sentencing court's decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable and actual deductions to be drawn therefrom. *Id.*

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. *Childress v.*

State, 848 N.E.2d 1073, 1081 (Ind. 2006). Here, Maddock was convicted of a Class A felony. The advisory sentence for a Class A felony is thirty (30) years, with a maximum of fifty (50) years and a minimum of twenty (20) years. *See* Ind. Code § 35-50-2-4. Maddock received the advisory sentence with only twenty-five years executed and five years suspended. In addition, although Maddock appears to have been unaware of this fact until the police arrived, Baker's 14-month-old son was present in the trailer with the dangerous anhydrous ammonia and its harmful fumes. These fumes were so noxious that one of the police officers, who was *outside* the trailer, testified his eyes were watering, his nose was running, and his breathing was difficult.

With respect to Maddock's character, the pre-sentence investigation report indicates that Maddock had two prior misdemeanor convictions. Further, he is the father of three children for whom he had a duty to pay child support; however, records indicate he was $10,214 in arrears. The pre-sentence investigation report also indicated that, prior to his arrest, Maddock had used methamphetamine an average of fifteen times per month and had used marijuana an average of five or six times a month. Maddock admitted at his sentencing hearing that even after his arrest he had used methamphetamine and one such occasion was just five days prior to his trial in this cause. In addition, although Maddock had successfully completed two previous terms of probation, he clearly had not been rehabilitated from his proclivity for engaging in illegal behavior.

Maddock has not carried his burden of persuading this Court that his sentence has met the inappropriateness standard of review. *See Anglemyer*, 868 N.E.2d at 494. He

has been given several chances at rehabilitation and has failed to take advantage of those opportunities. In light of the nature of the offense and the character of Maddock, the sentence is not inappropriate.

Based upon the foregoing discussion and authorities, we conclude there was sufficient evidence to support Maddock's conviction and his sentence is not inappropriate.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.