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IN THE
COURT OF APPEALS OF INDIANA

STEVEN LAWSON,	)	
	)	
Appellant-Defendant ,	)	
	)	
vs.	)	No. 49A05-0704-CR-221
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G23-0609-FA-166293

November 15, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Steven Lawson ("Lawson") was convicted in Marion Superior Court of Class A felony dealing in cocaine and Class A misdemeanor possession of paraphernalia and ordered to serve an aggregate sentence of 30 years. Lawson appeals and argues that:

I. The evidence was insufficient to establish that he was predisposed to commit dealing in cocaine;

II. The trial court abused its discretion by failing to provide a sentencing statement; and,

III. The sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On September 2, 2006, Steven Lawson ("Lawson") approached a vehicle containing three men and inquired as to what the occupants were looking for. The occupants responded that they were looking for crack cocaine or "hard" in the street vernacular. Unfortunately for Lawson, the occupants were three undercover police officers of the Speedway Police Department. Lawson stated that he knew someone at the International Village Apartment complex who could sell them the cocaine. Lawson then met the officers at the front entrance to the complex and directed them to the proper location where Lawson met with his contact. Lawson returned to the vehicle to report that his contact wanted to meet one of them. One of the officers, Detective Mike Marstellar ("Detective Marstellar"), met with Lawson's contact. The contact thought that Detective Marstellar was a police officer and asked him to raise his shirt to see if a wire was present. Although Detective Marstellar raised the front of his shirt, Lawson's

contact asked him to raise the back of his shirt, as well. At this point, Detective Marstellar told Lawson's contact that he would get his cocaine elsewhere and walked back to his vehicle. Lawson followed Detective Marstellar back to his car and said that he had cocaine and would sell it for sixty dollars. The officers took the cocaine and gave Lawson the money. As Lawson walked away, the officers identified themselves as such and placed Lawson and his contact under arrest.

On September 5, 2006, Lawson was charged with Class A felony conspiracy to commit dealing in cocaine; Class A felony dealing in cocaine; Class B felony possession of cocaine; and Class A misdemeanor possession of paraphernalia. Prior to trial, the State moved to dismiss the Class A felony conspiracy to commit dealing in cocaine. After a jury trial, Lawson was found guilty of Class A felony dealing in cocaine and Class A misdemeanor possession of paraphernalia. He was subsequently sentenced to the advisory sentence of thirty years for dealing in cocaine and one year for possession of paraphernalia to be served concurrently in the Indiana Department of Correction. Lawson now appeals.

I. Sufficient Evidence

When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132,1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Lawson argues that the State failed to produce sufficient evidence to negate his defense of entrapment. He contends that the State failed to prove beyond a reasonable doubt that he was predisposed to commit the crime of dealing in cocaine. A claim of entrapment is reviewed using the same standard that applies to other challenges to the sufficiency of evidence. Ferge v. State, 764 N.E.2d 268, 270 (Ind Ct. App. 2002)

Indiana Code section 35-41-3-9 (2007) defines the defense of entrapment and provides as follows:

> (a) It is a defense that:
>
> (1) the prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in the conduct; and
>
> (2) the person was not predisposed to commit the offense.
>
> (b) Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

Lawson must indicate his intent to rely on the defense of entrapment and establish police inducement before the burden shifts to the State to show that Lawson was predisposed to commit the crime. Ferge, 764 N.E.2d at 271. The trier of fact must make the determination that Lawson was predisposed to commit the crime charged. Id. Upon the defendant showing police inducement, the State must prove predisposition on the part of the defendant to commit the crime charged or entrapment will be established as a matter of law. Id.

> The defense of entrapment turns upon the defendant's state of mind, or "whether the 'criminal intent originated with the defendant.'" "In other words, the question is whether 'criminal intent [was] deliberately implanted in the mind of an innocent person[.]'" The defense of entrapment is determined by "whether the 'criminal intent originated with the defendant.'" The following factors are important in determining whether a defendant was predisposed to commit the charged crime:

> 1) the character or reputation of the defendant, 2) whether the suggestion of criminal activity was originally made by the government, 3) whether the defendant was engaged in criminal activity for a profit, 4) whether the defendant evidenced reluctance to commit the offense, overcome by government persuasion, and 5) the nature of the inducement or persuasion offered by the government.

Id. (internal citations omitted)

In this case, Lawson did not establish police inducement. However, even if Lawson had established inducement, the State provided sufficient evidence to allow the trier of fact to determine that Lawson was predisposed to commit dealing in cocaine. The testimony of the three undercover officers showed that Lawson approached them and initiated contact. Lawson then set up a meeting between the undercover officers and his contact. When Detective Marstellar stated that he would buy his crack somewhere else, Lawson followed him to his vehicle and completed the transaction. Lawson, by his own admission, undertook the transaction because he expected a profit or benefit. Tr. p. 198.

Under these facts and circumstances, we conclude that the State presented sufficient evidence to establish that Lawson was predisposed to commit the crime of dealing in cocaine and that Lawson did not establish the defense of entrapment as a matter of law.

II. Lawson's Sentence

Lawson finally argues that his sentence is inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. "[A] defendant must persuade

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). Additionally, "[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." Id. at 490.

First, Lawson asserts that the trial court abused its discretion when it failed to provide a sentencing statement. Under Anglemyer and Indiana Code section 35-38-1-1.3 (2007), Lawson would be correct in his assertion; however when Lawson was sentenced on March 19, 2007, Anglemyer had not been decided nor had the statutory requirement of a sentencing statement gone into effect.

In Windhorst v. State, 868 N.E.2d 504, 506 (Ind. 2007), the trial court did not enter a sentencing statement but adhered to long-standing precedent which did not require a statement when imposing the presumptive sentence. In the present case, the trial court did not abuse its discretion by failing to enter a sentencing statement because it was not required to do so at the time of the sentencing hearing. Id at 506-507.

Lawson asserts that the sentence was inappropriate because of Lawson's purportedly minimal role as a middleman, the amount of cocaine involved, and the enhancement to a Class A felony due to the location of the transaction. Concerning the nature of the offense, Lawson initiated a drug transaction elsewhere but delivered the cocaine at an apartment complex. That fact alone enhanced the charge from a Class B felony to a Class A felony. See Ind. Code § 35-48-4-1(b)(3) (2007).

In addition, Lawson's character does not reflect an individual who has respect for the law. Lawson's criminal history includes two juvenile adjudications, three

misdemeanor convictions, and three felony convictions for rape, confinement, and aggravated battery. Lawson has already served two executed sentences in the Indiana Department of Correction for prior felony convictions and has received twenty-four conduct incident reports while serving those sentences. Accordingly, we conclude that Lawson's thirty-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

Lawson's conviction for Class A felony dealing in cocaine is supported by sufficient evidence and his thirty-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.