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**IN THE
COURT OF APPEALS OF INDIANA**

BRIAN JAMES HAWN,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 76A05-0512-CR-737

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable William C. Fee, Judge
Cause No. 76D01-0408-FB-765

October 24, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Brian James Hawn appeals his conviction for dealing in a controlled substance as a class B felony. We affirm.

Issue

We restate the issue as whether the evidence was sufficient to convict Hawn of dealing in a controlled substance as a class B felony.

Facts and Procedural History

The facts favorable to the verdict are as follows. On July 31, 2005, Thomas Sides, a confidential informant, met with Steuben County Sheriff Darrin Troyer and Auburn Police Officer Adam Barton, who worked on the IMAGE Drug Task Force. Sides told them that he could purchase mushrooms containing a hallucinogenic substance from Hawn. A controlled buy was arranged. Police officers searched Sides's vehicle to ensure that he did not already have any drugs in his possession. Sides was then fitted with a recording device and a "wire" and given a hundred dollars for the purchase. The police officers followed Sides to Hawn's residence. Sides pulled up to the residence and approached Hawn, who was outside working on the siding of the home he shared with his father. Although Sheriff Troyer could hear the conversation, both Sides and Hawn were either partially or completely obscured from the police officers' view during the buy. Sides and Hawn discussed the quality of the mushrooms and whether Sides wanted the "whole thing." Tr. at 103. After Sides confirmed that he did, Hawn went inside and returned with a bag of mushrooms. Sides paid Hawn the hundred dollars and then returned to his vehicle with the drugs. The police officers followed Sides to a prearranged location, where he handed over the tape recording and the mushrooms.

According to the lab analysis, the mushrooms weighed 12.86 grams and contained the hallucinogen Psilocyn. The State charged Hawn with dealing in a controlled substance and with being a habitual offender.

Sides and the police officers testified that Sides had worked with the Steuben County Sheriff's Department for several years as an informant and had participated in over twenty controlled buys. Sides had also known Hawn for at least three years prior and had spoken with him about narcotics on more than one occasion. Finally, although admitting to past drug use himself, Sides testified that he has been "clean" for years and has passed several drug tests since.

On October 13, 2005, the jury found Hawn guilty of dealing in a controlled substance, and Hawn admitted to being a habitual offender. Hawn now appeals.

Discussion and Decision

Hawn asserts that the evidence was insufficient to convict him of dealing in a controlled substance. "In reviewing sufficiency of the evidence, we will affirm a conviction if, considering only the probative evidence and reasonable inferences supporting the verdict, and without weighing evidence or assessing witness credibility, a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt." *Alves v. State*, 816 N.E.2d 64, 65 (Ind. Ct. App. 2004), *trans. denied*. To obtain a conviction for dealing in a controlled substance, the State had to prove beyond a reasonable doubt that Hawn knowingly or intentionally delivered the Psilocyn to another individual. Ind. Code § 35-48-4-2(a)(1).

The basis of Hawn's argument rests on Sides's credibility. Sides testified that Hawn was the person who had sold him the mushrooms, and Hawn denied it. "It is for the trier of

fact to reject a defendant's version of what happened, to determine all inferences arising from the evidence, and to decide which witness to believe." *Lewis v. State*, 438 N.E.2d 289, 293 (Ind. 1982). But because Sides, a confessed drug user and paid informant, was the only person able to identify Hawn as the person selling the mushrooms, Hawn claims that we should apply the "incredible dubiousity" rule to Sides's testimony. "Under the incredible dubiousity rule, a court will impinge on a jury's responsibility to judge witness credibility only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity." *Majors v. State*, 748 N.E.2d 365, 367 (Ind. 2001). This rule applies only to cases in which a sole witness presents such testimony of the defendant's guilt. *Id.*

We conclude that the incredible dubiousity rule is inapplicable here. Sheriff Troyer and Officer Barton corroborated Sides's testimony by stating that they had followed Sides to Hawn's residence; that Sides referred to the other male on the recording as "Brian"; and that Sides returned after the transaction with a bag of mushrooms containing Psilocyn. Additionally, Sides's testimony was not coerced, equivocal, or inherently improbable as to the essential facts of the case. Therefore, the reasonable inference in favor of the verdict is that Hawn was the person who sold the mushrooms to Sides. We conclude that Sides's testimony was not incredibly dubious and, as the jury is the trier of fact and free to believe or discredit testimony, we affirm Hawn's conviction.

Affirmed.

KIRSCH, C. J., and BAILEY, J., concur.