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IN THE
COURT OF APPEALS OF INDIANA

LARRY R. BRADLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0908-CR-377
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20C01-0708-FB-50

February 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Larry Bradley appeals his conviction for Class B felony dealing in cocaine. We affirm.

Issues

Bradley raises two issues, which we restate as:

I. whether the trial court abused its discretion by admitting evidence at trial; and

II. whether there is sufficient evidence to support his conviction.

Facts

On October 10, 2006, confidential source 06-048 ("CS 06-048") made arrangements to assist the Elkhart Police Department in a "controlled buy" of cocaine. Tr. p. 26. To prepare for the controlled buy, an undercover officer from the Elkhart Police Department searched CS 06-048's pockets and shoes and patted her down with the back of his hands. The undercover police officer gave CS 06-048 $100 and wired her with an audio recording and transmitting device. The undercover police officer drove CS 06-048 to an intersection where she got out of the car, walked between two houses, bought $100 worth of cocaine from Bradley, and then returned to the undercover officer's car with 1.259 grams of cocaine. Two other undercover officers waited in another car and listened to the audio transmission of the buy. CS 06-408 later identified Bradley from a photo array as the man who sold her the cocaine.

An affidavit to show probable cause for Bradley's arrest was prepared by a police officer who was not involved in the transaction, and a warrant was issued for Bradley's

arrest. On June 13, 2007, the State charged Bradley with Class B felony dealing in cocaine. On February 17, 2009, Bradley filed a motion to be released on his own recognizance based on the lack of probable cause for his arrest. Bradley claimed that the probable cause affidavit was insufficient because it did not indicate that a police officer witnessed the transaction and CS 06-048's veracity had not been established.

On April 23, 2009, a hearing was held on this motion. At the hearing, defense counsel explained, "if there's a lack of probable cause, that basically means he can still be tried, but he can't be held to post bond." Hearings Tr. p. 5. Two of the undercover police officers testified at the hearing regarding the events that occurred on October 10, 2006. The trial court admitted a document showing that in May 2008 CS 06-048 was convicted of two counts of forgery. Bradley claimed CS 06-048's 2008 convictions affected her credibility at the time of the 2006 controlled buy so as to prevent the State from establishing probable cause for his arrest. The trial court rejected this argument and concluded that, based on the police officers' testimony, there was probable cause for Bradley's arrest.

The undercover police officers and CS 06-048 testified at the jury trial. The jury found Bradley guilty as charged. Bradley now appeals.

Analysis

I. Admission of Evidence

Bradley argues that the probable cause affidavit supporting his arrest warrant was so fatally flawed that "the trial court abused its discretion in admitting any evidence at

trial stemming from the October 10, 2006 probable cause affidavit." Appellant's Br. pp. 13-14. This argument fails.

First, as the State points out, Bradley did not object to the admissibility of the evidence at trial. "Failure to object at trial to the admission of evidence results in waiver of that issue on appeal." Kubsch v. State, 784 N.E.2d 905, 923 (Ind. 2003). This issue is waived.

Waiver notwithstanding, the issue here is whether there was probable cause to support an arrest warrant, not whether there was probable cause to support the issuance of a search warrant. Even if there was not probable cause to support the arrest, we fail to see how that would require suppression of evidence collected prior to the allegedly faulty arrest. See Scott v. State, 404 N.E.2d 1190, 1192 (Ind. Ct. App. 1980) ("The illegality of an arrest, however, is of consequence only as it affects the admission of evidence obtained through a search incident to the arrest."). Bradley as much as conceded this point at the April 23, 2009 hearing when he acknowledged that he could still be tried and that the remedy for the lack of probable cause to support an arrest was that he could not be held to post bond. Without more, Bradley has not established that suppression of any, let alone all, of the evidence is required in this case.

II. Sufficiency of the Evidence

Bradley also argues that there is insufficient evidence to support his Class B felony dealing in cocaine conviction. 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 must consider only

the probative evidence and reasonable inferences supporting the verdict. Id. We must affirm a conviction 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.

A person who knowingly or intentionally delivers cocaine commits Class B felony dealing in cocaine. Ind. Code § 35-48-4-1(a). Bradley claims the State failed to prove that a physical exchange of cocaine occurred because none of the undercover police officers observed the exchange and CS 06-048's testimony was the only evidence that a transaction had taken place.[1]

The undercover police officer testified that, prior to the controlled buy, he searched CS 06-048, gave her $100 to purchase cocaine, and wired her with a microphone. He testified that he watched CS 06-048 walk between two houses and that she returned two to three minutes later with cocaine. Shortly thereafter CS 06-048 identified Bradley from a photo array. This same police officer testified that he saw Bradley come out from between the houses behind CS 06-048 and that CS 06-048 did not appear to be intoxicated or high at the time of the controlled buy. CS 06-048 identified Bradley at trial as the man who sold her drugs on October 10, 2006. She also stated that Bradley gave her cocaine in exchange for money. The police officers also listened to the audio transmission of the controlled buy as it occurred.

The jury was aware of CS 06-048's testimony that she was high at the time of the controlled buy. The jury was also aware that CS 06-048 took checks from her mother in

[1] Bradley does not specifically argue that CS 06-048's testimony was incredibly dubious.

2007 to support her drug habit and that she had sold drugs in January 2008. It was for the jury to assess CS 06-048's credibility and weigh her testimony accordingly. We may not reweigh the evidence. There is sufficient evidence to support Bradley's conviction.

Conclusion

Bradley has not established that the evidence against him should have been suppressed or that there is insufficient evidence to support his conviction. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.