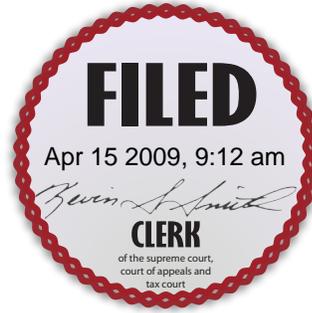


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

BRIAN J. MAY
South Bend, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

HENRY A. FLORES, JR.
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DENNIS WOODS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 71A03-0812-CR-580

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-0801-FA-4

April 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Dennis Woods appeals his convictions, after a jury trial, of three counts of dealing in cocaine, as class A felonies.

We affirm.

ISSUE

Whether the State presented sufficient evidence to rebut Woods' defense of entrapment.

FACTS

In March of 2007, Officer Jennifer Gobel was working as an undercover officer with the narcotics unit of the South Bend Police Department. On March 7, 2007, Gobel contacted Woods by cell phone to arrange the purchase of ¼ ounce¹ of crack cocaine. Woods instructed Gobel to meet him at a video store and subsequently called her to say that he was on his way. Woods arrived in a black Monte Carlo containing four occupants; Woods was in the back seat behind the driver. Woods called Gobel again and told her to follow the Monte Carlo. She followed the vehicle to a liquor store.

Woods exited the Monte Carlo and entered Gobel's vehicle. He asked whether she had a scale. She handed him her pocket-sized digital scale, and he asked for a nickel or a dollar bill.² She handed him a nickel, and he weighed it. Woods stated that the agreed price of \$175 was too low and demanded \$200. Woods then weighed the crack

¹ Gobel testified that ¼ ounce was approximately 7 grams.

² Gobel testified that they are used to verify the accuracy of a scale, with the nickel weighing .5 grams and a dollar bill weighing a gram.

cocaine and showed her the weight reading of 6.2 grams. Gobel gave him \$200. Gobel asked him how much ½ ounce would cost, and Woods said \$350.

On March 13, 2007, Gobel called Woods and asked to purchase more crack cocaine. Woods agreed to provide ¼ ounce of crack cocaine for \$225. Woods directed her to a certain location, but subsequently directed her to go to another location. Woods arrived in the back seat of the same black Monte Carlo, and he motioned Gobel to follow it. Gobel followed the car, and after it stopped, Woods entered her car. Woods confirmed that Gobel wanted “a quarter,” took her scale, and returned to the Monte Carlo. (Ex. 5). She observed him “hunched” over, as though apportioning and weighing “the goods” with her scale near the console of the Monte Carlo. *Id.* Woods returned to Gobel’s vehicle and said that he hoped she had “big cash on [her]” because he “need[ed] \$250” for the crack cocaine. *Id.* Woods told Gobel that she could make money by selling it in small amounts, and that he could provide either brown or white crack -- whatever her clients wanted. Gobel paid him, and he handed her the crack cocaine.

On March 21, 2008, Gobel again called Woods to purchase crack cocaine, and Woods agreed to provide ¼ ounce for \$220. Woods directed Gobel to go to a certain location, but later called and redirected her to the liquor store where they had met on March 7th. Woods arrived as a passenger in a green Tahoe. Woods entered Gobel’s vehicle and told her to drive across the street to Papa John’s so that he could use the restroom. Gobel drove him across the street, followed by the Tahoe. Woods went into Papa John’s and came out, and re-entered Gobel’s vehicle and asked for her scale. Woods took the scale, went to the Tahoe -- where he appeared to be apportioning and

weighing the drugs near its console, and came back with what he said was 6 grams of crack cocaine. Gobel paid him, and Woods asked if she wanted any more – stating that he was willing to give her a “nice deal.” (Ex. 10).

The State charged Woods with three counts of dealing in cocaine, as class A felonies. A jury trial was held on September 25-26, 2008. At trial, Gobel’s testimony, recordings made by the wire she wore on the three occasions, and photographs taken by surveillance officers on the first and last meetings established the above facts. In addition, forensic evidence established that the substances purchased by Gobel from Woods were crack cocaine in the respective amounts of 5.49 grams, 4.52 grams, and 4.59 grams. The jury found Woods guilty on all three counts.

DECISION

Woods argues that his conviction should be reversed because the State failed to rebut his defense of entrapment. Specifically, Woods argues that “the State initiated contact” with him, that the “prohibited conduct was the product” of the calls by Gobel “to induce [him] to sell drugs,” and that there was “no evidence to support the idea that [he] was predisposed to commit the offense” given the lack of evidence that he had any history of selling drugs in the past. Woods’ Br. at 5. We are not persuaded.

The defense of entrapment is set forth in Indiana Code section 35-41-3-0, which 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 the person an opportunity to commit the offense does not constitute entrapment.

Once the entrapment defense is raised, the State bears the burden of showing that the defendant was predisposed to commit the crime. *Dockery v. State*, 644 N.E.2d 573, 577 (Ind. 1994). Whether a defendant was predisposed to commit the crime charged is a question of fact for the trier of fact. *Id.* The State must prove the defendant's predisposition beyond a reasonable doubt. *Id.* Appellate review of an entrapment claim uses "the same standard that applies to other challenges to the sufficiency of the evidence." *Id.* at 578. We consider only the evidence that supports the verdict, and we draw all reasonable inferences from that evidence. We neither reweigh the evidence nor judge the credibility of the witnesses. *Id.*

In *Riley v. State*, 711 N.E.2d 489, 494 (Ind. 1999), our Supreme Court found that when the evidence included "that the defendant was familiar with drug jargon and prices, engaged in multiple transactions, and that he undertook to arrange future transactions," these facts were "sufficient to show a predisposition to deal in controlled substances." Woods initially agreed to sell Gobel $\frac{1}{4}$ ounce of crack for \$175, but then insisted on \$200 because the initial price was too low, which reflects his familiarity with drugs prices – as does the similar fact pattern in each of the ensuing transactions. Further, Woods' familiarity with the use of a digital scale and the informal methods for testing the scale's accuracy reflect his familiarity with drug sales. It is undisputed that Woods engaged in three cocaine sale transactions, each in an amount of more than four grams. At the conclusion of the first sale, Gobel asked Woods how much $\frac{1}{2}$ ounce would cost, and Woods quoted her a price of \$350 – implying that he could provide that amount. Also,

Woods expressly solicited future cocaine sales when at the conclusion of the second sale, he offered Gobel a choice of brown or white crack cocaine, and at the conclusion of the third sale, he asked Gobel if she wanted to buy more. Consistent with *Riley*, we find the evidence presented was sufficient to establish that Woods was predisposed to commit the offense of dealing in cocaine and, therefore, the State rebutted his defense of entrapment.

Affirmed.

BAILEY, J., and ROBB, J., concur.