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IN THE
COURT OF APPEALS OF INDIANA

CITRON STOVALL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A04-1008-CR-618
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0904-FA-10

May 27, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Citron Stovall appeals his conviction for Dealing in Cocaine,[1] a class A felony. Specifically, Stovall argues that his conviction must be set aside because the trial court erred in denying his request to question jurors regarding possible bias or prejudice, evidence seized following a canine search was improperly admitted at trial, and it was error to admit his confession into evidence. Finally, Stovall contends that his thirty-year sentence was inappropriate when considering the nature of the offense and his character. Concluding that the cocaine and Stovall's confession were properly admitted into evidence and finding no other error, we affirm the judgment of the trial court.

FACTS

On August 27, 2008, Lafayette Police Officer Nicolas Amor was on patrol when he noticed that a vehicle ahead of him was traveling approximately five miles per hour over the speed limit. At approximately 11:20 p.m., Officer Amor initiated a traffic stop after observing the vehicle cross the center line.

Stovall was the driver and the sole occupant of the vehicle. Officer Amor requested Stovall to produce his driver's license and vehicle registration, and asked Stovall questions about where he was going and where he had been coming from. After Stovall provided conflicting answers, Officer Amor radioed for a canine unit. Officer Ryan French and his canine partner, Jarca, arrived at the scene approximately five

[1] Ind. Code § 35-48-4-1.

minutes later. Jarca immediately "alerted" on the vehicle, and Officer Amor radioed in Stovall's driver's license and registration information. Tr. p. 42-43.

Based on Jarca's alert, Officer French searched the vehicle. A cigarette package was found under the driver's seat that contained 12.7 grams of cocaine. The officers also found $464 in cash in Stovall's pockets.

Officer Amor asked Stovall if he wanted to give a statement regarding the drugs. Officer Amor did not make any threats or promises to Stovall. More particularly, Officer Amor made no representations to Stovall about the length of possible incarceration, that he would go "easy" on him, or that he would be "freed" if he told Officer Amor and his "friends what they wanted to hear." Id. at 53, 56, 216, 234-35.

Later that evening, Detective William Dempster interviewed Stovall. Detective Dempster advised Stovall of the Miranda[2] warnings and Stovall executed a written waiver of his rights. Detective Dempster made no promises to Stovall during this interview regarding a possible dismissal of the charges. At some point, Stovall told Detective Dempster that he sold cocaine, had purchased the cocaine that was seized in the vehicle, and that he intended to sell those drugs.

Stovall was charged with dealing in cocaine, a class A felony, and possession of cocaine, a class C felony. Prior to trial, Stovall filed a motion to suppress, claiming that he was "improperly induced to waive his right to remain silent; right to be free from self incrimination, and right to an attorney during interrogation." Appellant's App. p. 55. As

[2] Miranda v. Arizona, 384 U.S. 436 (1968).

a result, Stovall sought to have all of his statements excluded from the evidence because they violated his constitutional rights under the United States and Indiana Constitutions.

Stovall also argued that the evidence seized from his vehicle should be suppressed because the canine search was improper. Stovall claimed that there was no probable cause or reasonable suspicion to justify the search without a warrant, there was no consent to the search, and the scope of the search was unreasonable.

Following a hearing, the trial court determined that Officer Amor was justified in stopping Stovall's vehicle for the traffic violation and that Officer Amor's call for the canine unit did not violate Stovall's constitutional rights. Moreover, the trial court concluded that the canine's alert to the presence of controlled substances provided probable cause for the subsequent search of the vehicle.

The trial court then determined that there was no evidence that the detectives informed Stovall that he would be granted immunity or leniency if he made a statement. Moreover, the trial court concluded that any " inducements to [Stovall] to cooperate were not in and of themselves a ground for suppressing his statement." Id. at 100.

At some point during Stovall's jury trial that commenced on May 25, 2010, the trial court informed the parties that

> Stacey [the bailiff] reported that jurors reported to her that someone who had been attending the trial on the fourth floor came out of that trial, leaned over the railing and was taking pictures of our jury. The jurors felt that they were being—having their pictures taken. Stacey confronted the person; the person became rude and left the courthouse before further investigation. The bailiffs think they know who the person is and are going to attempt to investigate further. So I thought I would report that to you.

Tr. p. 423.

The bailiff testified that the jurors discussed the incident among themselves. Id. at 424. She also reported that the entire jury may have seen the person taking photographs. After receiving this information, Stovall moved for a mistrial or, alternatively, for an opportunity to question the jurors as to any bias or prejudice they may have had as a result of the third person who was taking photographs. The trial court denied the motion.

Following the presentation of the evidence, Stovall was found guilty as charged. The trial court entered a judgment of conviction on the dealing charge. At a subsequent sentencing hearing, the trial court found that Stovall's criminal history and the fact that he was on probation when he committed the instant offense were aggravating factors. The trial court then identified Stovall's cooperation with police, the support from his family, and his stable employment history, as mitigating circumstances. After determining that the aggravating and mitigating factors "balanced," the trial court sentenced Stovall to thirty years of incarceration. Appellant's App. p. 133. He now appeals.

DISCUSSION AND DECISION

I. Exclusion of Evidence

A. Cocaine in Vehicle

Stovall argues that his conviction must be reversed because the cocaine that was seized from the vehicle following the canine sniff was improperly admitted into evidence.

Specifically, Stovall contends that the traffic stop was "unduly prolonged" or delayed as a result of the canine sniff. Appellant's Br. p. 6.

We initially observe that a trial court is afforded broad discretion in ruling on the admissibility of evidence. Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). Absent a requisite showing of abuse, the trial court's decision will not be disturbed. Goodner v. State, 685 N.E.2d 1058, 1060 (Ind. 1997). An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Bentley v. State, 846 N.E.2d 300, 304 (Ind. Ct. App. 2006). We will not reweigh the evidence and will consider conflicting evidence in favor of the trial court's ruling. Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005).

With regard to Stovall's contention that the cocaine was improperly admitted into evidence, we note that a police officer is permitted to stop and briefly detain an individual who has committed a traffic infraction. Ind. Code § 34-28-5-3; Datzek v. State, 838 N.E.2d 1149, 1154 (Ind. Ct. App. 2005). As noted above, Officer Amor observed Stovall speeding and crossing the center line. Tr. p. 5-6, 30, 181, 183. Both are infractions. Ind. Code § 9-21-5-2; I.C. 9-21-8-2. Hence, Officer Amor was justified in stopping Stovall's vehicle.

It has also been held that a canine sweep is not a "search" within the meaning of the Fourth Amendment to the United States Constitution. Bradshaw v. State, 759 N.E.2d 271, 273 (Ind. Ct. App. 2001). More particularly, as long as the canine sniff occurs during the course of an otherwise valid traffic stop without prolonging the length of the

stop, the seizure is reasonable because it is still attributable to the valid stop. Myers v. State, 839 N.E.2d 1146, 1149-50 (Ind. 2005). The State bears the burden of showing that the time for the traffic stop was not increased due to a canine sweep. Wells v. State, 922 N.E.2d 697, 700 (Ind. Ct. App. 2010), trans. denied.

The evidence in this case demonstrates that Officer Amor initiated the traffic stop at 11:23 p.m. and radioed for a canine unit almost immediately. Tr. p. 7-8, 27-28, 38. Officer French arrived on the scene only a couple of minutes later with Jarca. Id. at 71, 87-88. And the evidence indicates that Jarca had finished the sweep by 11:30 p.m. Id. at 87-88. No more than seven minutes had elapsed between the initiation of the traffic stop and the completion of the dog sniff, which gave rise to probable cause for the continued detention due to the canine's alert on the vehicle.

Evidence was presented establishing that a typical traffic stop takes from fifteen to twenty minutes to complete. Id. at 81-82, 257. Here, less than half that amount of time had elapsed when the canine sweep was completed. In fact, the time that elapsed from when Officer French arrived at the scene until he found the cocaine in the search of Stovall's vehicle was about ten minutes. State's Ex. 9.

Contrary to Stovall's assertion, the canine sweep did not unreasonably delay or prolong the traffic stop. See Myers, 839 N.E.2d at 1149-50 (finding no unreasonable delay where the canine sniff began approximately thirteen minutes after the traffic stop was initiated). In fact, traffic stops have been identified as "unreasonably delayed" only when much longer periods of time have occurred. See Wells, 922 N.E.2d at 700 (finding

unreasonable delay where a canine sweep did not begin until forty minutes after the initiation of the stop and twenty minutes after the officer had completed everything that he needed to do with respect to the traffic infraction). Moreover, even without the canine sweep, the traffic stop in these circumstances could not have been completed in less than seven minutes. In fact, Officer Amor had not yet written the warnings for the infractions at the time of the canine sniff.

Even though Stovall argues that Officer Amor failed to conduct the traffic stop in an expeditious manner, there is no evidence of a delay in requesting the presence of a canine unit. Indeed, Officer Amor called for the unit almost immediately after he stopped Stovall's vehicle. Moreover, he radioed in Stovall's license and registration information before Officer French had even begun searching the vehicle. Tr. p. 42-43.

Officer Amor testified that he did not enter his vehicle to begin writing the warning ticket while the canine sniff was occurring because of officer safety reasons. In other words, Officer Amor did not want to leave Stovall outside and unattended with Officer French in light of the attention that was focused on the dog and the drug sweep. Id. at 44-45.

Given the extraordinarily brief time that elapsed here, Stovall cannot show that he was unreasonably delayed beyond the average fifteen minutes necessary to complete a traffic stop. We cannot conclude that an "unreasonable delay" occurred here merely because the length of the traffic stop could have been a minute or two shorter had no canine sweep been requested and performed. Inasmuch as Stovall has failed to show that

a seven-minute traffic stop amounted to an unreasonable delay, his argument that the canine sniff subjected him to an impermissible search and seizure fails. Thus, Stovall has not demonstrated that the trial court erred in admitting the cocaine into evidence that was seized during the search.

B. Stovall's Confession

Stovall claims that his conviction must be reversed because his statement was improperly admitted into evidence. Specifically, Stovall argues that he was induced to confess because the police officers and detectives allegedly promised to release him if he admitted to committing the offense.

It is the State's burden to prove beyond a reasonable doubt that a defendant voluntarily waived his Miranda[3] rights and that the confession was given voluntarily. Ringo v. State, 736 N.E.2d 1209, 1211 (Ind. 2000). The issue of whether or not there has been a valid waiver of the Miranda rights is controlled by determining, from the totality of the circumstances, whether the defendant, after being advised of such rights, voluntarily choose to forego them. Brown v. State, 271 Ind. 129, 131, 390 N.E.2d 1000, 1002 (1979). Courts examine the totality of the circumstances to determine whether a confession was made voluntarily and was not induced by violence, threats, or other improper influences that overcame the defendant's free will. Ringo, 736 N.E.2d at 1212.

[3] Miranda v. Arizona, 384 U.S. 436 (1966).

Among the factors considered are the "crucial element" of police coercion, the length, location, and continuity of the interrogation, and the defendant's maturity, education, and physical and mental condition. Miller v. State, 770 N.E.2d 763, 767 (Ind. 2002). This same test determines whether the defendant has waived the Miranda rights. Ringo, 735 N.E.2d at 1212. A signed waiver form is one way of demonstrating that the defendant was aware of and understood his rights. Id.

We also note that a confession obtained by a promise of immunity or mitigation of punishment is inadmissible. Ashby v. State, 265 Ind. 316, 320, 354 N.E.2d 192, 195 (1976). However, indefinite or vague statements or promises that it is in a defendant's interest to give a statement or cooperate do not render a confession involuntary. See Gary v. State, 471 N.E.2d 695, 698 (Ind. 1984) (holding that a promise to speak to the prosecutor about helping the defendant did not render the statement involuntary); Giles v. State, 760 N.E.2d 248, 250 (Ind. Ct. App. 2002) (suggesting that the possibility of minimal punishment if the individual confessed did not render the statement involuntary). Finally, implied promises are too indefinite to render a confession involuntary. Collins v. State, 509 N.E.2d 827, 830 (Ind. 1987).

In this case, Stovall asserts that his conviction must be reversed because the trial court gave deference to his testimony that one of the detectives stated that he would be "turned loose" if he told the officers "what they wanted to hear." Appellant's App. p. 99.

More specifically, the order denying Stovall's motion to suppress provided that

> Detective Dempster, who took these statements, testified that he had been told that the defendant wanted to talk to him, and denied that he made any promises or threats to the defendant. No officer testified about the conversations with the defendant leading up to the defendant's decision to give a statement. Thus, the Court must credit the testimony of the defendant. The defendant stated that he was advised that he faced up to 140 years in prison for the cocaine discovered in his care, and that if he told the police officers what they wanted to hear he would be "turned loose."

Appellant's App. p. 99.

In light of the above, it is apparent that the trial court understood that it was necessarily bound to credit Stovall's testimony because "no officer testified about the conversations with the defendant leading up to the defendant's decision to give a statement." Id. However, the record demonstrates that several police officers did, in fact, testify about their conversations with Stovall before he gave his statement. In particular, Officer Amor testified that, while not remembering the exact words that he used, he asked Stovall if he desired to give a statement about the drugs that were found. Officer Amor also explicitly testified that he never told Stovall that he would be "let go" or that the police would go "easy on him" if Stovall told the detectives "what they wanted to hear." Tr. p. 53, 56, 234-35. Officer Amor also did not tell Stovall about the possible term of incarceration and he made no threats or promises to Stovall. Id. at 22, 53, 56, 234-35. In addition, the two detectives testified that they did not make any comments about lenient treatment; nor did they promise Stovall that there would be no jail time "if he talked." Id. at 83, 94, 110-17, 120, 265, 268-69, 303-04, 310-13.

In light of this evidence, it is apparent that the police officers did, in fact, contradict Stovall's testimony. Moreover, even accepting Stovall's testimony as true, none of the officers made direct promises of leniency or immunity to Stovall that rendered his confession involuntary. At most, the police officers made the sort of vague and indefinite statements to Stovall that do not render a defendant's confession involuntary. Giles, 760 N.E.2d at 250.

We also find unpersuasive Stovall's argument that the police officer's comment that he would "let him go" if he made a statement necessarily meant that no criminal charges would be filed. Appellant's App. p. 15. Although the trial court could have drawn such an inference, it did not make that finding. In essence, it was just as reasonable from the evidence to infer that the detectives' comments meant that Stovall could be released from incarceration and return home if he agreed to make a statement. Otherwise, Stovall would be compelled to believe that even though he possessed over twelve grams of cocaine, the police officers would obtain a confession but not charge him. In short, such action would render Stovall's confession meaningless. Moreover, Stovall is quite familiar with the criminal justice system given his extensive criminal record. Appellant's App. p. 116-17. He was informed of the Miranda rights and signed a waiver form. Tr. p. 97-98, 293-99. The record is also devoid of any evidence that the officers engaged in physically coercive behavior toward Stovall.

In sum, the trial court's determination that none of the officers testified about Stovall's statements is not supported by the record. All of the officers testified and

expressly denied making the statements that Stovall claimed they made. And Stovall has made no showing that any of the officers promised leniency or a lesser punishment in exchange for a confession. Id. at 22, 53, 56, 83, 94, 110-11, 115-17, 216, 234-35, 265, 268-69, 303-04, 310-13. Moreover, the record shows that Stovall was willing to cooperate from the outset without expressing any doubt or hesitation as to whether he should invoke his rights. State's Ex. 10. As a result, we conclude that the trial court did not err in determining that Stovall's confession was free and voluntary. Thus, the confession was properly admitted into evidence.

II. Mistrial

Stovall next argues that the trial court erred in denying his motion for a mistrial because his request to question the jurors regarding possible bias or prejudice was denied. More specifically, Stovall claims that the jurors might have become biased or prejudiced because someone had allegedly photographed them while they were taking a break.

A decision to deny a defendant's motion for mistrial lies within the trial court's sound discretion. Lucio v. State, 907 N.E.2d 1008, 1010 (Ind. 2009). We review such a decision only for an abuse of discretion. Id. We consider whether the defendant was prejudiced to the extent that he or she was placed in a position of grave peril. Id. Because the mistrial remedy is extreme, "it should be prescribed only when 'no other action can be expected to remedy the situation' at the trial level." Id. at 1010-11. To succeed on appeal from the denial of a motion for mistrial, a defendant must demonstrate

that misconduct occurred and that it had a probable persuasive effect on the jury's decision. Booher v. State, 773 N.E.2d 814, 820 (Ind. 2002).

The right to an impartial jury is a constitutional right and an essential element of due process. Caruthers v. State, 926 N.E.2d 1016, 1020 (Ind. 2010). Biased jurors must be dismissed, and when there is a suggestion that they have been exposed to extrajudicial matters, such as outside publicity or comments from third parties, the trial court must make a threshold assessment of the likelihood of resulting prejudice. Id. at 1021. If the court determines that no risk of substantial prejudice exists, it need not investigate further. Id. On the other hand, if the trial court finds that the risk of prejudice is substantial, as opposed to imaginary or remote, it should interrogate the jury collectively to determine who, if anyone, has been exposed, and individually interrogate any such jurors away from the others. Id. At all stages in this process, the trial court has discretion to take what actions it deems necessary and appropriate. Id.

While we note that our trial courts have a duty to ensure an impartial jury, there is no obligation "to ensure the absence of any bias." Id. at 1021 (emphasis in original). To the contrary, our Supreme Court has long maintained that "jurors need not be absolutely insulated from all extraneous influences regarding the case and that such exposure, without a showing of influence, will not require a new trial." Lindsey v. State, 260 Ind. 351, 357, 295 N.E.2d 819, 823 (1973).

Although we will discuss the merits of Stovall's claim, we first note that he did not ask the trial court to admonish the jury to ignore the alleged incident. Tr. p. 423-25, 428-

29. Our Supreme Court has determined that when something improper has been placed before the jury, the correct procedure is to request an admonishment and, if that still seems insufficient to solve the problem, then to move for a mistrial. Dumas v. State, 803 N.E.2d 1113, 1117 (Ind. 2004). Admonishments are generally presumed to cure any problem that may have occurred, and juries are presumed to follow the trial court's admonishment. Kocielko v. State, 938 N.E.2d 243, 252 (Ind. Ct. App. 2010). Because Stovall never requested this remedy, he has waived his claim that the trial court erroneously denied his motion for mistrial.

Waiver notwithstanding, Stovall has failed to demonstrate that the trial court abused its discretion in denying the motion. The trial court received information that an individual wholly unrelated to this case who was attending a different trial in another courtroom had been leaning down from the fourth floor of the courthouse taking photographs. The jurors reported this information to the bailiff, and Stovall argues that "the jury may likely have understood that a third person taking pictures of the jury was acting on behalf of Stovall, and that Stovall intended to intimidate or threaten the members of the jury." Appellant's Br. p. 10.

For this reason, Stovall maintains that he

> should have been given an opportunity to either interrogate the jurors collectively or, at a minimum question those jurors who had informed the bailiff about pictures being taken of the jury; and, in both instances, the trial court should have firmly instructed the entire jury to disregard this incident and to reach a verdict based strictly on the evidence.

Id.

As noted above, it was established that the person taking photographs was not connected in any way to this case. Tr. p. 423-24. The bailiff confronted the individual, who became rude and left the courthouse. Id. Although some of the jurors "thought" they were being photographed, the evidence does not support a conclusion that the individual was photographing the jurors as opposed to taking pictures of the courthouse. It is not uncommon for people to photograph courthouses, and the Tippecanoe County Courthouse is included in the National Register of Historic Places and is "truly a treasure." See www.tippecanoe county courthouse.com (last visited May 18, 2011) (containing a link to "tour the courthouse" that discusses and pictures many of the impressive architectural and artistic features of the building).

We also note that the bailiff did not suggest to the trial court that the jurors were worried that their photographs were being taken. Tr. p. 423. Although the trial court could certainly have conducted further inquiry, we cannot say that it was obligated to do so, given the remote risk of prejudice in this instance.

Indeed, we find the circumstances here similar to those in Caruthers, where jurors expressed security concerns to the bailiff "on more than one occasion" regarding "various family members of the victim, of the defendant, as well as the defendant himself." Caruthers, 926 N.E.2d at 1020. As a result of those concerns, the trial court increased security and informed the jurors of that fact. However, it did not otherwise inquire of the jurors to make sure that these concerns would not prevent them from being impartial. Id. at 1021-22. Caruthers's conviction was affirmed, and it was determined that no

fundamental error occurred when the trial court decided not to question the jurors, either collectively or individually. Id. Standing alone, the information demonstrating that the jurors had "security concerns" did not create a substantial risk that the jurors would be biased against the defendant. Id.

Here, the risk is even more remote. Although the jurors' safety concerns in Caruthers were tied specifically to the defendant, the safety concerns, if any in this case, were connected to a third party who had no connection to Stovall or the case. Moreover, in Caruthers, the trial court alleviated the concern by increasing the amount of security.

In this case, the purported concern was ameliorated when the individual left the courthouse once the bailiff stopped him from taking photographs. At most, we find that this was the type of "extraneous influence" that jurors do not have to be insulated from in order to protect the defendant's right to a fair trial.

As a result, we conclude that the trial court acted within in its discretion in determining that there was no substantial risk of prejudice to Stovall when it decided not to conduct any further inquiry or investigation. Thus, the trial court did not err in denying Stovall's request for a mistrial.

III. Sentencing

Stovall argues that his sentence is inappropriate in light of his character and the nature of the offense in accordance with Indiana Appellate Rule 7(B). Specifically, Stovall maintains that a thirty-year sentence was not warranted because the crime was not

violent, a small amount of drugs were involved, he was cooperative with the police, and he has a limited criminal history.

In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). The question under Appellate Rule 7(B) analysis is "not whether another sentence is more appropriate" but rather "whether the sentence imposed is inappropriate." King v. State, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). The sentence for a class A felony ranges from a minimum of twenty years to a maximum of fifty years, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4.

When considering the nature of the offense, the record shows that Stovall possessed 12.7 grams of cocaine that he intended to sell. Tr. p. 332. That is in excess of four times the amount that is necessary to enhance a dealing conviction to a class A felony.

As for Stovall's character, the record shows that he has a history of dealing drugs. Appellant's App. p. 116-17; Tr. p. 530. His prior convictions include dealing and possession of marijuana and domestic battery in 2005, and possession of marijuana in 2001. Stovall also violated his probation for dealing drugs while he was on probation for a similar offense.

In short, the record demonstrates that Stovall had committed four prior felonies—two of which had occurred only three years before the instant offense. Even though

Stovall has been gainfully employed and has earned various vocational certifications, he remains undeterred from engaging in criminal activity.

Additionally, while Stovall is seemingly claiming that his sentence is inappropriate because his incarceration would result in an undue financial hardship to his children, there is no evidence that he is paying child support for any of his three children. Tr. p. 513, 520-21. Moreover, Stovall has failed to demonstrate how his family will suffer any undue hardship distinct from that which all families face in circumstances such as these. Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999).

Taking all of the above into account, we conclude that Stovall has failed to persuade us that thirty years—the advisory sentence for this offense—is inappropriate when considering the nature of the offense and his character.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.