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IN THE
COURT OF APPEALS OF INDIANA

JASON Q. DAUGHERTY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 69A05-1011-CR-743
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE RIPLEY CIRCUIT COURT
The Honorable Carl H. Taul, Judge
Cause No. 69C01-0806-FB-4

June 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jason Q. Daugherty appeals his Class B felony conspiracy to manufacture methamphetamine conviction and accompanying fifteen-year sentence. We conclude that the trial court did not abuse its discretion in admitting a letter that Daugherty wrote a co-conspirator from jail in which he discussed past and future methamphetamine activities under the knowledge exception to Indiana Evidence Rule 404(b) because Daugherty put his knowledge at issue. In addition, Daugherty has failed to persuade us that his fifteen-year sentence is inappropriate in light of his criminal history and the facts that he was on probation at the time he committed this offense, he was arrested for a drug offense while out on bond in this case, and he failed to show up for the last day of trial in this case because he was using methamphetamine. We therefore affirm the trial court.

Facts and Procedural History

On May 30, 2008, Department of Child Services worker Michelle Smoot went to Jamie Copeland's rural Ripley County home to investigate a report that she did not seek appropriate medical treatment when one of her three children stepped on a nail. Indiana State Police Troopers Cameron McCreary and Terry Nickell accompanied Smoot to Jamie's property. At the time, Daugherty and his girlfriend, Crystal Durham, were also living on the property in Daugherty's camper. Daugherty and Crystal had access to Jamie's house, often eating, showering, and doing their laundry there. Sometimes, Daugherty's four children visited him there. In fact, Daugherty's children were there on May 30 when Smoot and the troopers showed up.

As Jamie showed Trooper Nickell the area where her child had stepped on the nail, he noticed burnt aluminum foil and aerosol cans with holes popped out in the bottom in a trash pile between the house and the garage. In a burn pile, Trooper Nickell noticed a wad of partially burnt coffee filters and more cans with holes popped out in the bottom. Jamie consented to Trooper Nickell entering the garage. Inside the garage, Trooper Nickell observed an air tank with staining on its fittings consistent with anhydrous ammonia exposure, unopened syringes, a glass vial containing a white residue, a glass jar containing a clear liquid, a can of solvent, and cans of starter fluid. Trooper Nickell saw a letter addressed to Daugherty on top of a tool box. Trooper Nickell exited the garage and summoned Trooper Howard Ayres with the Indiana State Police's Methamphetamine Suppression Team to the property. Trooper Nickell also began to apply for a search warrant.

In the meantime, Trooper Nickell asked Jamie for permission to search her purse, and he found methamphetamine inside. Jamie also executed a written consent to search her house. Troopers found methamphetamine and items used to manufacture methamphetamine in the kitchen cabinet and Jamie's bedroom closet. At this point, the search was suspended until a search warrant for all of the property, including the camper, was obtained and the Methamphetamine Suppression Team arrived.

Further searches revealed additional items associated with a methamphetamine lab in the garage and in Jamie's bedroom closet. On a table in Daugherty's camper, they found pseudoephedrine pills and lithium batteries. Crystal's purse, which was also in the

camper, contained methamphetamine as well. Daugherty, Crystal, and Jamie were arrested.

The State ultimately charged Daugherty with Class B felony manufacturing methamphetamine, Class D felony neglect of a dependent, Class D felony possession of methamphetamine, and Class B felony conspiracy to manufacture methamphetamine. A jury trial was held in 2010. Although Daugherty did not testify at trial, his defense was that he had no knowledge of the methamphetamine activities occurring on the property. *See, e.g.*, Tr. p. 83 ("[Daugherty] didn't know what was going on. He didn't know what . . . Ms. Copeland was doing. He didn't know that there's parts of a meth lab sitting in her closet. Parts of a meth lab sitting in her barn. These items were not his. It's not his house. It's not his home."), 85 ("This case is not about finding my client guilty for being associated with people that manufactured methamphetamine. This case is not about my client being found guilty for associating with people that possessed methamphetamine."). Both Crystal and Jamie, however, testified that Daugherty manufactured methamphetamine in the garage and in his camper with their assistance. In line with this theory, the State offered into evidence several letters Daugherty wrote Jamie after his May 30, 2008, arrest. Daugherty made an Indiana Evidence Rule 404(b) objection. The trial court admitted into evidence only a small portion of one of the letters over Daugherty's Rule 404(b) objection. *Id.* at 379. That letter provides:

> My Dude Mike got caught stealing Anhydrous from the CoOp rite up the road from the farmhouse. Me and him walk for hours some time talking about ways we cook. and he has learned me alot. little tricks, I will have to try. lol. and when we get out we are gonna have our selfs a little cook off. lol.

State's Ex. 71A. The trial court found that this letter "show[ed] knowledge on the part of [Daugherty] which is an exception to Rule [404(b)]." Tr. p. 379. The State had made this very argument to the court. *Id.* at 372.

After the jury retired for deliberations, it sent a note to the trial court asking, among other things, when State's Exhibit 71A was written and whether Daugherty and Jamie were incarcerated at the time. The jury was instructed to refer to their notes for the first question but the second question could not be answered. Later, the jury informed the trial court that it had reached verdicts on two counts but an impasse on the other two. When the court inquired about the impasse, a juror explained that the jury was "hung up" on State's Exhibit 71A, that is, it wondered how long ago Daugherty had actually cooked the methamphetamine. *Id.* at 485. In addition, "a lot of the members of the jury" could not take into consideration Crystal's and Jamie's testimony because they found them to be "unbelievable" or "uncredible." *Id.* The court explained that it could not do anything for the jury. The jury found Daugherty guilty of conspiracy to manufacture methamphetamine and not guilty of possession of methamphetamine but hung on neglect of a dependent and manufacturing methamphetamine. Daugherty did not show up for the last day of trial and therefore missed the reading of the verdicts. A warrant was issued for his arrest.

A sentencing hearing was later held. Daugherty, who was thirty-three years old at the time, testified that he started consistently using methamphetamine in 2006, which is when his criminal history also started to pick up. Daugherty testified that he knows how to cook meth and that he did so "[t]o feed [his] own habit pretty much." *Id.* at 497.

Daugherty testified that he still struggles with this habit "to this day" because he has never received treatment. *Id.* Daugherty admitted to being on probation at the time of this offense, committing a new offense while out on bond in this case, and not showing up for the last day of his trial because he "was using meth and was going to get high." *Id.* at 500. In addition, the State had filed seven petitions to revoke Daugherty's probation, and he had a $30,000 child support arrearage. The trial court noted:

> The Court has reviewed the [PSI] and frankly, Mr. Daugherty there's not a lot in here that leads me to believe that uh probation is a good thing for you. I have to agree with [the State]. I am at somewhat of a loss as to why the probation department after seven (7) attempts at revoking your probation, seven (7) violations, they think that probation is a good idea. [W]hile Mr. Daugherty's criminal history may not be all that severe it is lengthy and indicates . . . that along with the fact that he by his own admission never paid child support and is in arrears in some [$30,000] indicates he doesn't have a lot of respect for the authority of the Court or the legal system. I think in addition to the aggravating factors of the criminal history, the fact that he was on probation when he committed this offense; the fact that he was picked up [on] an additional charge while he was on bond on this charge are additional aggravating factors. . . . There was testimony in the trial, one additional thing that enters into the Court's consideration and I failed to mention. You indicated it was to feed your own habit yet the testimony in here was that you supplied at least three (3) other people with methamphetamine as a result of your operations. How many more, I don't know.

Id. at 509-11. In its order, the trial court identified the following aggravators: (1) Daugherty's criminal history; (2) he was on probation when he committed this offense; and (3) he committed another offense while on bond for this offense. The court found no mitigating factors. The court sentenced Daugherty to fifteen years for Class B felony conspiracy to manufacture methamphetamine. Daugherty now appeals his conviction and sentence.

Discussion and Decision

Daugherty raises two issues on appeal. First, he contends that the trial court erred in admitting a portion of a letter he wrote Jamie while he was in jail. Second, he contends that his fifteen-year sentence is inappropriate.

I. Admission of Jail Letter

Daugherty first contends that the trial court erred in admitting the following portion of a letter he wrote Jamie while he was in jail:

> My Dude Mike got caught stealing Anhydrous from the CoOp rite up the road from the farmhouse. Me and him walk for hours some time talking about ways we cook. and he has learned me alot. little tricks, I will have to try. lol. and when we get out we are gonna have our selfs a little cook off. lol.

State's Ex. 71A. He argues that this letter is inadmissible pursuant to Evidence Rule 404(b) because it is "uncharged misconduct." Appellant's Br. p. 4. He also argues that the letter shows his knowledge of how to make methamphetamine only after May 30, 2008, and "his knowledge *after* the crime does not bear on whether he knew how to make the drug when the crime was committed." *Id.*

The admission or exclusion of evidence rests within the sound discretion of the trial court, and generally we review its rulings for an abuse of that discretion. *Hinds v. State*, 906 N.E.2d 877, 879 (Ind. Ct. App. 2009). An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.*

Evidence Rule 404(b) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity

therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . . ." Evidence is excluded under Rule 404(b) when it is introduced to prove the "forbidden inference" of showing the defendant's propensity to commit the charged crime. *Clark v. State*, 915 N.E.2d 126, 129-30 (Ind. 2009), *reh'g denied*. Evidence of extrinsic offenses poses the danger that the jury will convict the defendant because he is a person of bad character generally or has a tendency to commit crimes. *Bassett v. State*, 795 N.E.2d 1050, 1053 (Ind. 2003). The rationale for the prohibition against bad-act and character evidence is "predicated upon our fundamental precept that every defendant should only be required to defend against the specific charges filed." *Oldham v. State*, 779 N.E.2d 1162, 1173 (Ind. Ct. App. 2002), *trans. denied*; *see also* 12 Robert L. Miller, Jr., *Indiana Practice: Indiana Evidence*, § 404.201 (3d ed. 2007) ("Principles of American jurisprudence insist that a person be tried for what he has done, rather than for what he is.").

Rule 404(b) is inclusionary rather than exclusionary and does not render evidence of other conduct inadmissible unless the evidence is offered to prove a person's character and conforming conduct. Miller, § 404.203. The law governing the admissibility of specific-acts evidence for "other purposes" requires a trial court to make three findings. First, the court must determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the person's propensity to commit the charged act. *Camm v. State*, 908 N.E.2d 215, 223 (Ind. 2009), *reh'g denied*. Second, the court must determine that the proponent has sufficient proof that the person who allegedly

committed the act did, in fact, commit the act. *Id.* And finally, the court must balance the probative value of the evidence against its prejudicial effect pursuant to Evidence Rule 403. *Id.*; *see also* Miller, § 404.202. The party offering the evidence must identify the purpose for which the evidence is offered. Miller, § 404.202. When extrinsic-act evidence is admitted for a permissible purpose, the trial court should instruct the jury as to the limited purpose for which the evidence may be considered but must instruct the jury if a party so requests. *Id.*

Evidence Rule 404(b) specifies knowledge as one of the purposes for which evidence of other crimes, wrongs, or acts may be admitted. Miller, § 404.223. Such evidence is most commonly used to rebut the possibility that the defendant was unaware that a criminal act was being committed. *Id.* Turning to the present case, the record shows that Daugherty denied knowledge of any of the methamphetamine activities occurring on Jamie's rural property. Thus, he put his knowledge at issue. *See Whitehair v. State*, 654 N.E.2d 296, 302 (Ind. Ct. App. 1995) (noting that in order to apply the knowledge exception to Evidence Rule 404(b), the defendant must put his knowledge at issue); *see also Samaniego-Hernandez v. State*, 839 N.E.2d 798, 803 (Ind. Ct. App. 2005) ("[W]e believe that evidence of the controlled buy was not introduced solely to prove the forbidden inference of Samaniego's propensity to commit the charged crime. Rather, Samaniego put his knowledge of the cocaine at issue, thereby 'opening the door' to the admissibility of evidence from the controlled buy. That evidence was admissible to challenge the impression that Samaniego could not have had knowledge of the cocaine found in his home."), *abrogated on other grounds by Anglemyer v. State*, 868 N.E.2d 482

(Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Specifically, defense counsel argued the following during opening statements,

> [Daugherty] didn't know what was going on. He didn't know what . . . Ms. Copeland was doing. He didn't know that there's parts of a meth lab sitting in her closet. Parts of a meth lab sitting in her barn. These items were not his. It's not his house. It's not his home.

Tr. p. 83. When Daugherty later objected to the admission of the various letters, the State responded:

> These, these letters are intrinsically involved in this whole arrest and process. . . . I mean the argument in the opening statement and throughout has been that he did not have knowledge of this stuff and that's an exception within [404(b)] as knowledge. This imputes his knowledge of what was going on . . . . It does not affect the forbidden inference at all. . . . We don't know, is it a prior bad? It is but it shows knowledge of what he was doing here on May [30], 2008. . . . The admissions that he made in multiple letters go primarily to the fact that he knew what was going on that day.

Id. at 372-73. The trial court eventually admitted only State's Exhibit 71A, finding that it fell within the knowledge exception. Daugherty did not request a limiting instruction, and therefore none was given.

We find that State's Exhibit 71A is indeed relevant. That is, Daugherty's letter to Jamie states, "Me and him walk for hours some time talking about *ways we cook*." (Emphasis added). Contrary to Daugherty's argument on appeal, this statement is strong evidence that Daugherty has cooked in the past (because he is obviously not cooking meth in jail). Daugherty then continued in his letter to Jamie that he had learned some cooking tips from "My Dude Mike" while in jail and hoped to have a meth cook off upon his release. This evidence was not introduced to prove the forbidden inference of Daugherty's propensity to commit the charged crimes. Rather, Daugherty's letter was

used to challenge the impression that Daugherty did not know what was going on at Jamie's rural property on May 30, 2008.

Although State's Exhibit 71A is relevant to show knowledge, it may still be inadmissible under the last part of the 404(b) test if its probative value is substantially outweighed by the danger of unfair prejudice pursuant to Evidence Rule 403. Daugherty argues that the letter has "high prejudicial value" because it makes him "look like the kind of person who enjoys making illegal drugs." Appellant's Br. p. 10. "[T]he inquiry is not whether [the] evidence is prejudicial; rather, the inquiry is whether the evidence is unfairly prejudicial since all relevant evidence is inherently prejudicial." *Cadiz v. State*, 683 N.E.2d 597, 600 (Ind. Ct. App. 1997).

In weighing probative value and unfair prejudice, we note that the letter is highly probative to challenge the impression that Daugherty had no knowledge of the methamphetamine activities occurring on Jamie's rural property. The letter was not unfairly prejudicial.

Finally, we note that Daugherty places great weight on the juror's comment to the trial court during deliberations that the jury had reached an impasse on two of the counts because a lot of the members of the jury could not believe Jamie's and Crystal's testimony. However, the unsworn opinion of one member of the jury as to how the rest of the jury evaluated the evidence is not a credible basis for determining the jury's use of the evidence. Evidence Rule 606(b) provides:

> Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent

> from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify (1) to drug or alcohol use by any juror, (2) on the question of whether extraneous prejudicial information was improperly brought to the jury's attention or (3) whether any outside influence was improperly brought to bear upon any juror.

Therefore, we may not take into consideration the juror's comment when evaluating the prejudicial value of the letter. The trial court did not abuse its discretion in admitting State's Exhibit 71A into evidence under the knowledge exception to Evidence Rule 404(b).

II. Inappropriate Sentence

Daugherty next contends that his fifteen-year sentence for Class B felony conspiracy to manufacture methamphetamine is inappropriate. He argues that his sentence is "unduly harsh compared to the few months in jail his co-defendants were required to serve." Appellant's Br. p. 13. He therefore asks us to revise his sentence to the advisory term of ten years with five years suspended to probation.

Our rules authorize revision of a sentence "if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). "[A] defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review." *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

The principal role of Rule 7(B) review "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We "should focus on the forest—

the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Id.* Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case. *Id.* at 1224.

A person who commits a Class B felony shall be imprisoned for a fixed term of between six and twenty years, with the advisory sentence being ten years. Ind. Code § 35-50-2-5. Here, the trial court sentenced Daugherty to fifteen years.

As for the nature of the offense, Daugherty was convicted of conspiring with Jamie and/or Crystal to manufacture methamphetamine. Daugherty argues that because the drug was not actually produced, he did not "unleash[] the harm associated with methamphetamine on the citizens of Ripley County." Appellant's Br. p. 14. This argument, however, does not carry much weight as our legislature has chosen to classify conspiracy to commit a felony in the same class as the underlying felony. *See* Ind. Code § 35-41-5-2(a).

It is true that Daugherty's sentence is longer than both Crystal's and Jamie's sentences. Unlike Daugherty though, Crystal and Jamie both pled guilty to possession of methamphetamine. Crystal served six months. Jamie, whose plea was contingent on her testifying against Daugherty, was sentenced to thirty months but served only nine. Although we need not compare the trio's sentences, *see Dennis v. State*, 908 N.E.2d 209, 214 (Ind. 2009), we find that Daugherty's character distinguishes him from his confederates and more than justifies his fifteen-year sentence.

Daugherty has convictions for Class A misdemeanor battery, Class A misdemeanor criminal mischief, Class A misdemeanor resisting law enforcement, all in 2006, and Class D felony possession of a controlled substance in 2007. As the trial court highlighted, seven petitions to revoke Daugherty's probation have been filed. In fact, Daugherty was on probation at the time he committed this offense. Even more egregious, Daugherty bonded out on this offense, was arrested for a drug-related offense in Jennings County, and then skipped the last day of his trial in this case so that he could get high on methamphetamine—the very drug he was on trial for. The trial court further found that Daugherty's failure to make any child support payments and $30,000 arrearage shows no respect for the legal system. Although the record shows that Daugherty appears to have led a decent life in which he held down a union job for ten years before he got deeply involved in methamphetamine, he has shown no commitment toward turning his life around. Daugherty has failed to persuade us that his fifteen-year sentence is inappropriate.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.