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FILED
Jun 14 2011, 9:33 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

DAVID MARSEE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 17A03-1010-CR-520
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEKALB SUPERIOR COURT
The Honorable Kevin P. Wallace, Judge
Cause No. 17D01-1003-FA-7

June 14, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant David Marsee appeals his conviction for Dealing in Methamphetamine,[1] a class A felony, arguing that the evidence was insufficient. More particularly, Marsee argues that the testimony of a State's witness was incredibly dubious. Concluding that the incredible dubiosity rule does not apply under these circumstances, we affirm.

FACTS

On December 16, 2009, Mitchell Bradley was working as an informant for the Indiana Multi Agency Group Enforcement (IMAGE) drug task force after precursors to drugs were found in the vehicle he was driving. On that day, Bradley arranged a meeting to purchase methamphetamine from Marsee at his home in Garrett.

Prior to the purchase, Bradley was prepped by Officer Cory Heffelfinger of the Auburn Police Department. Officer Heffelfinger searched Bradley and fitted him with a recorder and transmitter. Officer Ron Fennell, Jr., of the LaGrange County Sheriff's Department searched Bradley's vehicle. Bradley was also provided with purchase money that had been photocopied. Bradley was instructed by the IMAGE team to drive straight to Marsee's residence.

The IMAGE team followed Bradley to Marsee's residence and parked where they could observe Bradley in addition to having audio communication with him. Marsee was not at his residence when Bradley first arrived, but he eventually returned home. After Bradley left Marsee's residence, he went directly to the predetermined meet location

[1] Ind. Code § 35-48-4-1.1.

where Officer Heffelfinger "g[o]t the narcotics, uh, recorder and any type of leftover money." Tr. p. 144. Officer Heffelfinger placed the methamphetamine in an evidence bag, sealed it, and interviewed Bradley.

On March 16, 2010, the State charged Marsee with class A felony dealing in methamphetamine.[2] After a jury trial, which commenced on August 31, 2010, Marsee was found guilty as charged. On October 4, 2010, the trial court held a sentencing hearing, during which Marsee was sentenced to thirty years in the Indiana Department of Correction. Marsee now appeals.

DISUCSSION AND DECISION

Marsee's sole argument on appeal is that that the evidence was insufficient to convict him. More particularly, Marsee attacks Bradley's testimony, contending that it was incredibly dubious because he had reasons to fabricate and that, ultimately, it was solely Bradley's testimony that the methamphetamine supplied to the IMAGE officers came from Marsee.

The standard of review for sufficiency claims is well settled; this Court will neither reweigh the evidence nor judge the credibility of witnesses. Jackson v. State, 925 N.E.2d 369, 375 (Ind. 2010). Rather, we will consider only the evidence favorable to the trial court's verdict and all reasonable inferences therefrom. Alvies v. State, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009). We will not reverse for insufficient evidence unless no

[2] Marsee was charged by separate information under cause number 17D01-1003-FA-8 for class A felony dealing in methamphetamine for a transaction involving Bradley on November 16, 2009. However, Bradley's recording device failed before Marsee and Bradley met. Marsee was found not guilty of this offense.

rational fact finder could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000).

Notwithstanding these general principles, the doctrine of incredible dubiosity allows a reviewing court to reevaluate the credibility of a witness when "a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence." Fajardo v. State, 859 N.E.2d 1201, 1208 (Ind. 2007). The "[a]pplication of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." Id.

A defendant cannot appeal to this exception by merely showing some inconsistency or irregularity in a witness's testimony. Cowan v. State, 783 N.E.2d 1270, 1278 (Ind. Ct. App. 2003). Rather, a defendant must show that the witness's testimony "runs counter to human experience" such that "no reasonable person could believe [it]." Campbell v. State, 732 N.E.2d 197, 207 (Ind. Ct. App. 2000). Moreover, the rule does not apply when testimony is corroborated by additional witnesses or circumstantial evidence. Thompson v. State, 765 N.E.2d 1273, 1275 (Ind. 2002).

In this case, IMAGE officers had searched and wired Bradley before he arrived at Marsee's residence. Tr. p. 141. Bradley's vehicle was also searched, and IMAGE officers followed Bradley to Marsee's residence. Officer Heffelfinger monitored the transaction through audio surveillance, observed Marsee in his vehicle, and identified Marsee at his trial. Id. at 143, 151. After the transaction was completed, Bradley went directly to the designated location, where Officer Heffelfinger took possession of the

methamphetamine and the digital recorder. Id. at 144. Inasmuch as the State presented additional testimony and circumstantial evidence to corroborate Bradley's testimony, the incredible dubiosity rule does not apply.

Even assuming solely for argument's sake that Bradley's testimony had been the only evidence that the State had put forth, Marsee has failed to persuade us that it was incredibly dubious. More particularly, Marsee does not point to any inherent inconsistencies in Bradley's testimony or argue how it was counter to human experience. Indeed, Bradley maintained throughout his testimony that Marsee sold him methamphetamine. See Edwards v. State, 753 N.E.2d 618, 622 (Ind. 2001) (recognizing that "[t]he 'incredible dubiosity' test is a difficult standard to meet, one that requires great ambiguity and inconsistency in the evidence").

Moreover, motive to fabricate testimony does not make testimony incredibly dubious. See Jenkins v. State, 686 N.E.2d 1278, 1281 (Ind. 1997) (rejecting the defendant's claim that two witnesses had motives to fabricate testimony, thus, rendering their testimony incredibly dubious). And Marsee's counsel thoroughly cross-examined Bradley concerning the arrangement he had made with the IMAGE drug task force. Tr. p. 84-86. In short, this argument is merely a request that we judge the credibility of a witness, which we decline to do, and we affirm the decision of the trial court.

The judgment of the trial court is affirmed.

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