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IN THE
COURT OF APPEALS OF INDIANA

ROBERTA M. IULI,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 84A01-0810-CR-482
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Michael H. Eldred, Judge
Cause No. 84D01-0705-FA-01566

July 21, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Roberta Iuli ("Iuli") was convicted in Vigo Superior Court of Class A felony possession of cocaine with intent to distribute. She was ordered to serve twenty-five years executed in the Department of Correction. Iuli appeals and raises three issues, which we restate as:

> I. Whether the trial court abused its discretion when it admitted the chain of custody report, the State Police Laboratory's certificate of analysis, and the cocaine into evidence;
>
> II. Whether the evidence was sufficient to support Iuli's conviction; and
>
> III. Whether Iuli's twenty-five year sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On May 1, 2007, the Vigo County Drug Task Force received information from a confidential informant that cocaine was being sold at the Econo Lodge Motel in Terre Haute. Two days later, Detective Denzil Lewis arranged a controlled buy with a confidential informant. The transaction, recorded by a hidden camera, occurred in room 523 at the Econo Lodge. Both Iuli and her fiancé, Tony Mays ("Mays"), were present.

Mays and Iuli were arrested when they left the motel room shortly thereafter. During a search incident to arrest, officers found a set of digital scales, a hotel room key, and $251 in cash inside of Iuli's coat pocket. The officers also obtained a search warrant for the motel room and, during that search, found the buy money hidden under a mattress, thirty-two grams of cocaine, baking soda, two handguns, a digital scale, and cocaine on a microwave plate.

On May 9, 2007, Iuli was charged with Class A felony possession of cocaine with intent to distribute. A two-day jury trial commenced on July 21, 2008. During trial, Iuli objected to the admission of the chain of custody report for the cocaine found in the motel room (Exhibit 33), the State Police Laboratory's certificate of analysis (Exhibit 34), and the cocaine found in the motel room (Exhibit 30). The trial court overruled Iuli's objections. Iuli was found guilty as charged.[1] A sentencing hearing was held on August 21, 2008. After weighing Iuli's involvement in the offense and her criminal history, the trial court sentenced her to twenty-five years executed in the Department of Correction. Iuli now appeals. Additional facts will be provided as necessary.

I. Admission of Evidence

Iuli argues the trial court abused its discretion when it admitted the chain of custody report for the cocaine found in the motel room (Exhibit 33), the State Police Laboratory's certificate of analysis (Exhibit 34), and the cocaine found in the motel room (Exhibit 30). The decision to admit or exclude evidence is within a trial court's sound discretion and is afforded great deference on appeal. Carpenter v. State, 786 N.E.2d 696, 702 (Ind. 2003). We will not reverse the decision unless it represents a manifest abuse of discretion that results in the denial of a fair trial. Id. An abuse of discretion in this context occurs where the decision is clearly against the logic and effect of the facts and circumstances before the court or it misinterprets the law. Id. at 703.

[1] In a separate trial, Mays was convicted of two counts of Class B felony possession of cocaine with intent to distribute and was ordered to serve an aggregate eighteen-year sentence. However, the jury was hung on the Class A felony charge that arose from the controlled buy at issue in this case. See Mays v. State, 907 N.E.2d 128 (Ind. Ct. App. 2009), trans. denied.

Iuli argues that these exhibits were inadmissible because the State failed to establish a proper chain of custody for the thirty-two grams of cocaine found in the motel room. It is well established in Indiana that an exhibit is admissible if the evidence regarding its chain of custody strongly suggests the exact whereabouts of the evidence at all times. Culver v. State, 727 N.E.2d 1062, 1067 (Ind. 2000). To substantiate a chain of custody, the State must give reasonable assurances that the property passed through various hands in an undisturbed condition. Id. We have also held that the State need not establish a perfect chain of custody, and any gaps go to the weight of the evidence and not to admissibility. Id. Moreover, the United States Supreme Court recently stated:

> [W]e do not hold . . . that anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution's case. While the dissent is correct that "[i]t is the obligation of the prosecution to establish the chain of custody" . . . this does not mean that everyone who laid hands on the evidence must be called. As stated in . . . United States v. Lott, "gaps in the chain [of custody] normally go to the weight of the evidence rather than its admissibility." It is up to the prosecution to decide what steps in the chain of custody are so crucial as to require evidence; but what testimony *is* introduced must (if the defendant objects) be introduced live.

Melendez-Diaz v. Massachusetts, 2009 WL 1789468, Slip op. at 4 n.1 (U.S. 2009) (citations omitted and emphasis in original).

At trial, Detective Lewis testified that he sealed the cocaine found in the motel room in a plastic bag, which he tagged with the case number, date, his initials, and description of the item, and booked it into the evidence locker at the Terre Haute Police Department. Tr. pp. 62-63. He also testified that a member of the police department is responsible for transporting the item to the State Police Lab in Indianapolis for testing.

Tr. p. 64. Detective Karen Cross testified that she transported Exhibit 30 to the State Police Lab for testing, and that she returned it to the department's evidence locker after it was tested.[2] Tr. pp. 116-17.

Forensic Scientist Jenna Dovyak testified that evidence is brought to the State Lab by the law enforcement agency that requests the examination, and that evidence is given to an evidence clerk "who will ensure that it is in a sealed condition." Tr. p. 110. The evidence is then assigned a laboratory number "which is unique to the evidence that's brought in." The evidence is stored in a secured vault while it is at the lab until an analyst requests it for analysis. Tr. p. 111. Dovyak testified that she was responsible for analyzing the contents of State's Exhibit 30. She stated it appeared to be in the same condition as when she last saw the exhibit except her initials were rubbed off and the seal did not look completely intact. Tr. p. 112. Finally, at trial, Detective Lewis identified Exhibit 30 as the cocaine that he collected from the motel room and booked into the evidence locker at the police department. Tr. pp. 62-63.

Although Detective Cross's testimony was somewhat equivocal as to whether she transported Exhibit 30 to the State Lab for testing, the State did present evidence to establish generally who was responsible for the confiscated cocaine and how it was secured from the time of confiscation until trial. Consequently, the chain of custody was

[2] Detective Cross did not have any direct recollection of taking Exhibit 30 to the State Police Lab, but testified that after her review of the file, "to [her] knowledge" she was responsible for transporting the exhibit for testing. Tr. pp. 116, 121. Out of the presence of the jury, forensic scientist Jenna Dovyak testified that Detective Cross delivered Exhibit 30 to the State Lab. Tr. p. 129. We cannot conclude, as Iuli suggests, that the chain of custody is inadequate because Cross did not mark the exhibit itself to indicate that she transported it to and from the State Lab. This argument goes to the weight of the evidence not its admissibility.

adequate, and any flaws in the chain of custody go to the weight of the evidence, not its admissibility.

For these same reasons, we conclude that the trial court did not abuse its discretion when it admitted State's Exhibit 34, the Certificate of Analysis, which states that the substance contained in State's Exhibit 30 was cocaine with a weight of 32.60 grams. Furthermore, Jenna Dovyak, the forensic scientist who analyzed the substance and prepared the Certificate of Analysis, testified at trial and was subject to cross-examination. Finally, because we reject Iuli's argument that the State failed to establish an adequate chain of custody, we also conclude that the trial court properly admitted the cocaine into evidence.

Even if we assume for the sake of argument that the trial court improperly admitted Exhibits 30, 33,[3] and 34, such error would be harmless. "[A]n error is harmless if the probable impact of the evidence upon the jury is sufficiently minor so as not to affect a party's substantial rights." Turner v. State, 878 N.E.2d 286, 294 (Ind. Ct. App. 2007), trans. denied.

Iuli's defense at trial was that she was merely a bystander at the scene of a crime. She did not dispute that drugs were being sold out of the motel room, but argued that she did not participate in the dealing, and did not possess the cocaine. She claimed that Mays was the dealer and argued that she should not be "held responsible for Mr. Mays' activities because she has the poor judgment to still care about someone who has abused

[3] We agree with Iuli's argument that Exhibit 33, the Chain of Custody Report, contains hearsay statements, and it was possibly error to admit the exhibit at trial. However, given our conclusion that the State established an adequate chain of custody, and that even if it was error to admit Exhibits 30, 33, and 34 into evidence, such error was harmless, we need not address this argument.

her in the past." Tr. p. 206. Moreover, Detective Lewis testified, without objection, that Iuli stated to him that she knew cocaine was being "cooked" in and dealt from the motel room. Tr. p. 74. She described how the cocaine was "cooked" and packaged and stated that probably more than twenty people purchased cocaine in a day. Tr. p. 75. Detective Lewis also field tested the substance found in the motel room, which "tested conclusive as cocaine." Tr. p. 62. Because the evidence established that Iuli was aware that cocaine was being dealt from the motel room and given her bystander defense at trial, any error in the admission of Exhibits 30, 33, and 34 was harmless.

II. Sufficient Evidence

Next, Iuli argues that the evidence is insufficient to support her Class A felony possession of cocaine with intent to distribute conviction. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Iuli argues that the State's evidence was insufficient because "the State failed to link Iuli to the cocaine and the evidence established only her mere presence at the scene of a drug transaction." Appellant's Br. at. 19. Iuli correctly observes that "[m]ere presence at the crime scene is insufficient proof to support a conviction[.]" Rohr v. State, 866 N.E.2d 242, 248-49 (Ind. 2007). However, "presence at the scene coupled with other

circumstances tending to show participation in the crime may be sufficient to sustain a guilty verdict." Id. "Such circumstantial evidence is sufficient if it allows for reasonable inferences enabling the jury to determine guilt beyond a reasonable doubt." Id.

To establish that Iuli committed the offense of Class A felony dealing in cocaine, the State was required to prove that Iuli knowingly possessed cocaine in an amount greater than three grams with the intent to deliver. See Ind. Code § 35-48-4-1 (2004); Appellant's App. p. 16. No evidence established Iuli's actual possession of the cocaine, therefore, we consider whether she constructively possessed it.

We have explained the proof necessary to show constructive possession as follows:

> In the absence of actual possession of drugs, our court has consistently held that constructive possession may support a conviction for a drug offense. In order to prove constructive possession, the State must show that the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband.

Jones v. State, 807 N.E.2d 58, 65 (Ind. Ct. App. 2003), trans. denied. (internal quotations and citations omitted). Control in this sense concerns the defendant's relation to the place where the substance is found: whether the defendant has the power, by way of legal authority or in a practical sense, to control the place where the substance is found. Id. Where a person's control is non-exclusive, intent to maintain dominion and control may be inferred from additional circumstances that indicate that the person knew of the presence of the contraband. Allen v. State, 798 N.E.2d 490, 501 (Ind. Ct. App. 2003). These additional circumstances include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of

the defendant to the drugs; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant. Id.; Jones, 807 N.E.2d at 65.

Iuli admitted that she knew cocaine was being "cooked" in and dealt from the motel room. Tr. p. 74. She told Detective Lewis how the cocaine was "cooked" and packaged and stated that probably more than twenty people purchased cocaine in a day. Tr. p. 75. When she was arrested, Iuli had a key to the motel room, digital scales, and $250 in her coat pocket. Iuli was staying in the motel room and helped pay for it. She admitted that she had a key to the room and "would come and go from the room over a period of time." Tr. p. 151. During the search of the motel room, cocaine and evidence of manufacturing was found in plain view. This evidence is sufficient to establish that Iuli possessed cocaine with intent to deliver. Iuli's argument that she was merely present at the scene of the crime amounts to a request to reweigh the evidence and credibility of the witnesses, which we will not do.

III. Inappropriate Sentence

Finally, Iuli argues that her twenty-five year sentence was inappropriate in light of the nature of the offense and the character of the offender. We may revise a sentence if it is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). The defendant bears the burden of persuading us his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Iuli was sentenced to five years less than the thirty-year advisory sentence for a Class A felony. Ind. Code § 35-50-2-4 (2004 & Supp. 2008). In arguing that her

sentence was inappropriate, Iuli continues to argue that she was merely "a bystander to the drug sale." Appellant's Br. at 24. Iuli disregards the jury's determination that she possessed cocaine with intent to deliver. Moreover, with regard to the nature of the offense, Iuli admitted to Detective Lewis that it was likely that more than twenty people came to the motel room to purchase cocaine in one day.

Considering the nature of the offender, we observe that Iuli's criminal history consists of the following misdemeanor offenses: operating a vehicle having never received a license, minor in possession of alcohol, operating vehicle while intoxicated, and false informing. In 2000, Iuli pleaded guilty to Class D felony possession of a controlled substance. Iuli violated her probation on two occasions, and she also has five juvenile adjudications.

Under these facts and circumstances, we cannot conclude that Iuli's twenty-five year sentence for Class A felony dealing in cocaine is inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

The trial court did not abuse its discretion when it admitted Exhibits 30, 33, and 34 into evidence. Iuli's Class A felony dealing in cocaine conviction is supported by sufficient evidence, and her twenty-five year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

RILEY, J., and KIRSCH, J., concur.