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FILED
Jul 29 2009, 8:40 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

MYRAN D. MCKNIGHT, SR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A05-0812-CR-729
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0705-FB-31

July 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Myran D. McKnight appeals his convictions for dealing in cocaine[1] and conspiracy to deal in cocaine,[2] both class B felonies. McKnight raises seven issues, which we revise and restate as:

I. Whether the trial court erred by denying McKnight's motion for discharge under Indiana Criminal Rule 4(C);

II. Whether the jury selection process violated McKnight's rights under the Sixth Amendment to the United States Constitution;

III. Whether the prosecutor engaged in prosecutorial misconduct during voir dire;

IV. Whether the prosecutor violated McKnight's due process rights by allowing perjured testimony from State witnesses;

V. Whether McKnight's due process right to a fair trial was violated by the testimony of State witnesses;

VI. Whether the trial court's limitation of McKnight's cross examination violated his rights under the Sixth Amendment to the United States Constitution; and

VII. Whether the evidence is sufficient to sustain McKnight's convictions.

We affirm. The relevant facts follow. On May 9, 2007, McKnight called confidential informant CS-06-038 ("the informant") and asked him if he wanted to buy crack cocaine. The informant agreed to purchase seven grams of crack cocaine for $200.00. The informant later met with an undercover officer ("UC 120") and traveled to a home in Elkhart, Indiana. When they arrived, McKnight told them that only the informant could enter the house. The informant went into the house with McKnight and

[1] Ind. Code § 35-48-4-1 (Supp. 2006).

[2] Ind. Code § 35-41-5-2 (Supp. 2006).

purchased $200.00 worth of crack cocaine using money that had been supplied by police officers. McKnight gave the informant a bag containing .827 grams of crack cocaine, far less than the seven grams the informant agreed to purchase.

On May 22, 2007, the informant spoke with McKnight and agreed to purchase more crack cocaine from him. The informant again picked up UC 120. They drove to a house on Main Street and McKnight appeared from the residence. UC 120 asked if McKnight was "going to rip [him] off again" and McKnight said "no." Transcript Volume II at 43-44. UC 120 asked what he would get for $50.00 and McKnight said "you will get that," as he pointed to the $50.00. Id. at 46. After taking the $50.00, McKnight went back into the residence. He returned to tell UC 120 that his associates would not "bring the s*** here" and walked away with the $50.00. Id. at 57-60.

On May 30, 2007, the State charged McKnight with two counts of dealing in cocaine, each as class B felonies. On June 6, 2007, attorney James D. Stevens entered his appearance on behalf of McKnight. In August 2007, the State amended its information to include an habitual substance offender allegation and to clarify that Count II involved a conspiracy to deal in cocaine. On August 23, 2007, the parties appeared before the trial court and a jury trial was set for February 4, 2008.

On August 28, 2007, and November 5, 2007, McKnight submitted handwritten requests for a speedy trial, but because he was represented by counsel, the trial court did not accept the motions. The trial court did send a copy of McKnight's requests to his counsel. On November 8, 2007, McKnight's attorney, Mr. Stevens, withdrew as McKnight's counsel.

On January 23, 2008, the State moved to continue the trial due to court congestion. Finding that an older case was scheduled for the same date, the trial court granted the motion for a continuance, found that the delay was not attributable to the State, and reset the case for a pre-trial conference.

On February 6, 2008, McKnight filed a motion for discharge pursuant to Criminal Rule 4(B). After conducting a hearing, the trial court denied McKnight's motion. During the hearing, the trial court offered McKnight a first choice trial setting in July 2008, but he declined the offer. The trial was set for April 21, 2008, but there were twelve other cases also set for trial on that date.

On April 7, 2008, the State asked the trial court to continue the April 21st trial date due to court congestion. Finding the calendar congested, the trial court granted the motion for a continuance, found the delay was not attributable to the State, and reset the case for a pre-trial conference.

On May 20, 2008, McKnight filed a "Motion To Object To Belated Trial and Lack of Trial Setting." Appellant's Appendix at 137-139. A hearing on that motion was held on May 29, 2008, and a trial was set for July 21, 2008. McKnight then filed a motion for discharge pursuant to Indiana Criminal Rule 4(C) on June 5, 2008. On July 17, 2008, the trial court allowed the State to delay response to this motion until after the trial.

The jury trial began on July 21, 2008, and ended on July 23, 2008. The jury found McKnight guilty of dealing cocaine and conspiracy to deal in cocaine, each as class B felonies. On August 18, 2008, the State responded to the June 5, 2008, motion for discharge. The trial court denied McKnight's motion for discharge on October 9, 2008.

That same date, the trial court sentenced McKnight to concurrent twenty-year terms of incarceration. Five years were added to McKnight's sentence for dealing in cocaine as a result of the habitual substance offender adjudication.

Before addressing the merits of McKnight's arguments, we note that he appealed pro se. Such litigants are held to the same standard as trained counsel and are required to follow procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), trans. denied. McKnight's appellate brief balances precariously close to the edge of waiver for lack of coherence. See Ind. Appellate Rule 46(A)(8)(a) (requiring argument be supported by coherent reasoning with citations to authority); Cooper v. State, 854 N.E.2d 831, 842 (Ind. 2006) (observing that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review). With this in mind, we will attempt to address the merits of McKnight's arguments.

I.

The first issue is whether the trial court erred by denying McKnight's motion for discharge under Indiana Criminal Rule 4(C). The right of an accused to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and by Article 1, Section 12 of the Indiana Constitution. Alter v. State, 860 N.E.2d 874, 876 (Ind. Ct. App. 2007) (citing Clark v. State, 659 N.E.2d 548, 551 (Ind. 1995)). The provisions of Indiana Criminal Rule 4 implement the defendant's right to a speedy trial by establishing time deadlines by which trials must be held. Id. Indiana Criminal Rule 4(C) provides:

> No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from

> the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as under subdivision (A) of this rule. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

The duty to bring the defendant to trial within one year of being charged or arrested is an affirmative one which rests with the State. Alter, 860 N.E.2d at 877 (citing Cook v. State, 810 N.E.2d 1064, 1065 (Ind. 2004)). Indiana Criminal Rule 4 authorizes trial courts to exceed the deadlines when required to do so by congestion of the court's calendar. Id. Delay based on a continuance citing court congestion is not chargeable to the State. Decker v. State, 528 N.E.2d 1119, 1123 (Ind. 1988), overruled on other grounds by Wright v. State, 658 N.E.2d 563, 569 (Ind. 1995).

Upon appellate review, a trial court's finding of congestion will be presumed valid and need not be contemporaneously explained or documented by the trial court. Alter, 860 N.E.2d at 877 (citing Clark, 659 N.E.2d at 552). However, a defendant may overcome this presumption by demonstrating that the finding of congestion was factually or legally inaccurate. James v. State, 716 N.E.2d 935, 939 (Ind. 1999) (citing Clark, 659 N.E.2d at 552). Such proof establishes a *prima facie* case adequate for discharge unless the trial court sets forth an explanation for the congestion finding. Id. If the trial court provides further findings which explain the congestion and justify the delay, the appellate court will give reasonable deference to the trial court's explanation. Id. The burden then

shifts back to the defendant to establish that he is entitled to discharge by showing that the trial court's explanation was clearly erroneous. Id.

We have previously stated that "to determine whether a trial court's finding of congestion was accurate, it is necessary to view the trial court's calendar *on the date that the court granted the trial continuance*." Truax v. State, 856 N.E.2d 116, 121 (Ind. Ct. App. 2006) (emphasis added). If a defendant fails to present evidence that the trial court's finding of congestion is clearly erroneous on the date that the court granted the continuance, the defendant's discharge motion will fail. Id.

On appeal, McKnight challenges the trial court's congestion orders from January 31, 2008, and April 10, 2008, and argues that his case should have been discharged under Indiana Criminal Rule 4(C). The trial court granted the congestion order on January 31, 2008. At that time, another case with first priority, State v. Cedillo, 20D03-0701-FC-01, was scheduled for February 4, 2008, the same day as McKnight's trial. Although the Cedillo trial did not take place because the defendant pled guilty on February 4, 2008; on the date when the congestion order was granted, January 31, 2008, the court's finding of congestion was accurate. As we stated in Truax, it is the date the continuance is granted that matters in determining whether a congestion order is accurate. 856 N.E.2d at 121. The trial court's finding of congestion was not clearly erroneous.

Likewise, the trial court's congestion order issued on April 10, 2008, is not clearly erroneous. On April 10, 2008, the case of State v. Rowlison, 20D03-0705-FB-29, had first priority over McKnight's trial scheduled for April 21, 2008. Although Rowlison pled guilty on April 14, 2008, the trial court's calendar was congested as of the date of

the trial court's congestion order. Therefore, the trial court's finding of congestion was not clearly erroneous.

Thus, the delays caused by the court congestion orders on January 31, 2008, and April 10, 2008, are not chargeable to the State. See Decker, 528 N.E.2d at 1123. The days chargeable to the State include only the 250 days between May 30, 2007, the day McKnight was formally charged, and February 4, 2008, the date McKnight's trial was initially set. The other 168 days between February 4, 2008, and the date the trial began, July 21, 2008, were tolled by the congestion orders. Thus, the number of days chargeable to the State falls short of the 365 days required for discharge under Indiana Criminal Rule 4(C).[3]

We cannot say that the trial court erred in denying McKnight's discharge motion under Indiana Criminal Rule 4(C) because the State was not chargeable with the delays caused by court congestion. Because the delays caused by court congestion are not

[3] McKnight's Indiana Criminal Rule 4(C) argument relies on a footnote in Alter which cites the dissenting opinion in Bridwell v. State, to say that a "finding of court congestion does not satisfy the dictates of Indiana Rule of Criminal Procedure 4(C) if the case at issue is not given meaningful priority." Appellant's Brief at 7 (citing Bridwell v. State, 640 N.E.2d 437, 440 (Ind. Ct. App. 1994) (Sullivan, J., dissenting), trans. granted, affirmed in part and vacated in part by Bridwell v. State, 659 N.E.2d 552 (Ind. 1995)). Aside from the problematic nature of relying on a dissent as precedent, even under the dissent's opinion in Bridwell, this case is distinguishable on its facts.

In Bridwell, the dissent stated that "[a]ny postponement of a case scheduled for trial lower than a first choice setting does not qualify as a 'court congestion' cause for continuance." 640 N.E.2d at 440. In Bridwell, the defendant's case was reset numerous times as a non-first choice setting. Id. In McKnight's case, during the hearing on February 21, 2008, to reschedule his trial for another date, McKnight was offered the first available first priority trial setting (July 7, 2008).

Instead of accepting the first setting for that date, McKnight selected April 21, 2008, as a trial setting, even though the court warned him that his trial might be continued again because of congestion if he chose that date. Unlike Bridwell, where it was not clear whether the defendant was ever offered a first choice setting, 640 N.E.2d at 440, here the trial court tried to convince McKnight to accept the first available first choice setting, and McKnight refused. So, even under the logic of the dissent in Bridwell, the delay in this case cannot be charged to the State, because the State and the trial court made every attempt to assign McKnight's case meaningful priority, and McKnight instead chose an earlier date with a non-first-choice trial setting, thus accepting the risk that his case might be continued again.

chargeable to the State, the number of days between the day McKnight was formally charged and the trial date fall short of the 365 days required for discharge under Indiana Criminal Rule 4(C). Thus, the trial court properly denied McKnight's motion for discharge under Indiana Criminal Rule 4(C). See, e.g., May v. State, 793 N.E.2d 1157, 1163-1164 (Ind. Ct. App. 2003) (holding that because the delays due to court congestion were not chargeable to the State under Indiana Criminal Rule 4(C), only 229 days were chargeable to the State, leaving the State 136 days to try the defendant), reh'g denied, trans. denied.

II.

The second issue is whether the jury selection process violated McKnight's Sixth Amendment right to a jury of his peers. McKnight argues that because no African-Americans were represented on the jury venire, his due process rights were violated. The U.S. Supreme Court has held that "the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial." Azania v. State, 778 N.E.2d 1253, 1259 (Ind. 2002) (quoting Taylor v. Louisiana, 419 U.S. 522, 528, 95 S. Ct. 692, 697 (1975)). To show a *prima facie* violation of the fair cross section requirement, a defendant must show that: "(1) the group being excluded is a distinctive group in the community; (2) the representation of this group in jury pools from which juries are being selected is not fair and reasonable in relation to the number of such persons in the community; and (3) this underrepresentation is caused by systematic exclusion." Davis v. State, 819 N.E.2d 91, 101 (Ind. Ct. App.

2004) (citing Duren v. Missouri, 439 U.S. 357, 364, 99 S. Ct. 664, 668 (1979)), trans. denied.

Here, McKnight does not point to any evidence which shows that an underrepresentation of African-Americans in the jury venire was caused by a systematic exclusion. Instead, he merely observes that there were no African-Americans in his jury venire and then speculates about the State's system of selecting jurors. McKnight has provided no evidence about the jury selection system in Elkhart County; therefore his claim must fail. See, e.g., Wilder v. State, 813 N.E.2d 788, 793 (Ind. Ct. App. 2004) (holding that although African-Americans may have been under-represented in the defendant's jury pool, the defendant's claim failed because he did not provide evidence that the selection process in that county systematically excluded African-Americans), trans. denied.

III.

The third issue is whether the prosecutor committed prosecutorial misconduct during voir dire. McKnight first complains that the prosecutor denied him the right to a fair trial through his actions during voir dire. Specifically, McKnight argues that the prosecutor (A) improperly indoctrinated the jury to accept the concept of the jury and prosecutor acting as a team and (B) posed improper hypotheticals to the jury during voir dire.

"In reviewing a claim of prosecutorial misconduct, we determine: (1) whether the prosecutor engaged in misconduct, and if so, (2) whether that misconduct, under all of the circumstances, placed the defendant in a position of grave peril to which he or she should

not have been subjected." Coleman v. State, 750 N.E.2d 370, 374 (Ind. 2001). The "gravity of peril" is measured by the "probable persuasive effect of the misconduct on the jury's decision, not on the degree of impropriety of the conduct." Id.

"The purpose of voir dire is to determine whether a prospective juror can render a fair and impartial verdict in accordance with the law and the evidence." Gregory v. State, 885 N.E.2d 697, 706 (Ind. Ct. App. 2008) (quoting Joyner v. State, 736 N.E.2d 232, 237 (Ind. 2000)), trans. denied. More specifically, such examination of prospective jurors is used to discover whether a prospective juror has any opinion, belief, or bias which would affect or control his determination of the issues to be tried, providing a basis to exercise the right of challenge either peremptory or for cause. Id. (citing Holmes v. State, 671 N.E.2d 841, 854 (Ind. 1996), reh'g denied, cert. denied, 522 U.S. 849, 118 S. Ct. 137 (1997)). However, the Indiana Supreme Court has condemned the practice of counsel using voir dire as an opportunity to "'brainwash' or attempt to condition the jurors to receive the evidence with a jaundiced eye." Id. at 706-707 (quoting Robinson v. State, 266 Ind. 604, 610, 365 N.E.2d 1218, 1222 (1977), cert. denied, 434 U.S. 973, 98 S. Ct. 527 (1977)). Questions that examine jurors as to how they would act or decide in certain contingencies or when presented with certain evidence are improper. Id. at 707.

A. The Concept of "Us"

McKnight first argues that the prosecutor indoctrinated the jury to accept the concept of "us" to include the jury, the prosecutor, and the State of Indiana; and that he used an "us" against McKnight concept to bias the jury in favor of conviction. Appellant's Brief at 11-12. He claims that this constitutes prosecutorial misconduct.

However, neither the record of the voir dire nor relevant case law supports McKnight's claim. The record of the voir dire shows that when asked by the prosecutor what the jury thought the State of Indiana was, juror 5 said "Us." Transcript Volume I at 46. The juror explained that he believed the State of Indiana included all the people of Indiana. The prosecutor said that he was a representative of the State and then asked if any other jurors had similar or different interpretations of the meaning of State of Indiana.

In Coy v. State, the prosecutor told the jury that he wanted the defendant to receive a fair trial and prosecutors are ministers of justice representing the State of Indiana. 720 N.E.2d 370, 372 (Ind. 1999). The Court used a two-part inquiry to decide if the prosecutor had committed misconduct. Id. at 373. According to the Court, if a prosecutor: (1) paints himself as a minister of justice, and (2) denigrates the defense counsel; he is guilty of misconduct. Id. (citing Bardonner v. State, 587 N.E.2d 1353 (Ind. Ct. App. 1992), trans. denied). Because the prosecutor in Coy painted himself only as a minister of justice and did not denigrate the defense counsel, the Court did not find prosecutorial misconduct. Id.

Here, the prosecutor did not paint himself as a minister of justice and did not denigrate the defense counsel. Therefore, the prosecutor did not commit prosecutorial misconduct.

B. Hypothetical Scenarios

McKnight also objected to the prosecutor's presentation of hypothetical scenarios to the jury in voir dire. However, in Gregory, the court stated that during voir dire, parties may "[t]o reveal the jurors' attitudes and ideas . . . pose hypothetical questions,

provided they do not suggest prejudicial evidence not adduced at trial." 885 N.E.2d at 707; see also Wells v. State, 848 N.E.2d 1133, 1144 (Ind. Ct. App. 2006); Perryman v. State, 830 N.E.2d 1005, 1008 (Ind. Ct. App. 2005). In this case, the prosecutor used hypothetical scenarios to ensure that the jury understood concepts like "knowingly" and "conspiracy." Transcript Volume I at 53-55, 64-67. McKnight does not suggest that the prosecutor tried to suggest prejudicial evidence through the hypothetical scenarios. Therefore, we cannot say the prosecutor committed prosecutorial misconduct by presenting hypotheticals to the jury in this case. See, e.g., Steelman v. State, 602 N.E.2d 152, 158 (Ind. Ct. App. 1992) (holding that a prosecutor's use of hypothetical scenarios to uncover jurors' preconceived notions about drug dealers, informants, and drug deals near schools was proper for voir dire).[4]

IV.

The fourth issue is whether the prosecutor violated McKnight's right to a fair trial by allowing perjured testimony by State witnesses.[5] McKnight claims that the prosecutor knowingly allowed State witnesses to offer perjured testimony. Due Process prohibits

[4] McKnight appears to argue that the prosecutor's attempt to instruct the jury on the elements of the crime constituted prosecutorial misconduct. However, it is not improper for a prosecutor to discuss the elements of an offense that the State needs to prove during voir dire. See Eguia v. State, 468 N.E.2d 559, 566 (Ind. Ct. App. 1984).

[5] McKnight also charges that the prosecutor denied him due process by bringing him to trial without probable cause to arrest him. On the date McKnight was arrested, May 23, 2007, the police had evidence that he committed two felonies; dealing in cocaine on May 9, 2007, and conspiracy to deal in cocaine on May 22, 2007. A law enforcement officer may arrest someone if he has probable cause to believe the person has committed a felony. Ind. Code § 35-33-1-1. Therefore, there is no issue with the probable cause for McKnight's arrest. The State then properly made a prompt judicial determination of probable cause as required by the United States Constitution. See, e.g., Griffith v. State, 788 N.E.2d 835, 840 (Ind. 2003) (holding that a jurisdiction that provides judicial determinations of probable cause within forty-eight hours of arrest generally complies with the requirement that an individual detained after a warrantless arrest receive a prompt judicial determination of probable cause).

the State from knowingly using false testimony, including the failure to correct testimony known to be false, to obtain a conviction. Timberlake v. State, 690 N.E.2d 243, 253 (Ind. 1997). However, the court in Timberlake also stated that "while the knowing use of perjured testimony may constitute prosecutorial misconduct, contradictory or inconsistent testimony by a witness does not constitute perjury." Id.

Here, McKnight alleges that the prosecutor knew the informant did not give McKnight the buy money, but still allowed the informant to testify that he gave McKnight the buy money directly.[6] However, McKnight at most offers evidence that the informant offered contradictory or inconsistent testimony about whether he gave the buy money to McKnight directly or to an unidentified older man. McKnight presented no evidence that (1) the prosecutor knew the informant's testimony at trial was false or (2) that the informant's testimony was false. Because McKnight fails to present evidence that the prosecutor knew the informant was lying, we cannot say that the prosecutor committed prosecutorial misconduct.

V.

The fifth issue is whether McKnight's due process right to a fair trial was violated by the testimony of State witnesses. McKnight claims that his due process rights were violated when State witnesses presented evidentiary harpoons. "To prevail on such a

[6] McKnight also claims that the informant perjured himself by denying that the informant offered McKnight drugs. McKnight does not develop this argument and simply makes the conclusory statement that "it is shown that informant's perjury at trial was material to this cause, verdict, and the credibility of this witness." Appellant's Brief at 29. Because McKnight does not develop a cogent argument, this issue is waived. See, e.g., Cooper v. State, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority"); Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that defendant waived argument on appeal by failing to develop a cogent argument).

claim, the defendant must show that (1) the prosecution acted deliberately to prejudice the jury, and (2) the evidence was inadmissible." Alvies v. State, 795 N.E.2d 493, 504 (Ind. Ct. App. 2003), trans. denied (citing Evans v. State, 643 N.E.2d 877, 879 (Ind.1994)).

McKnight elicited the testimony he contends is an evidentiary harpoon from the informant on cross examination. Therefore, this testimony cannot be charged to the prosecutor, which is a requirement for an evidentiary harpoon. Id. McKnight has not met his burden of proof to show that the prosecution acted deliberately to prejudice the jury, therefore, his evidentiary harpoon claim fails. See, e.g., Conrad v. State, 747 N.E.2d 575, 587 (Ind. Ct. App. 2001) (holding that an evidentiary harpoon claim fails when defendant failed to show how the prosecutor acted to deliberately prejudice the jury), trans. denied.

VI.

The next issue is whether McKnight's rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution were violated because the trial court limited his ability to cross examine witnesses about possible racial bias. The Sixth Amendment to the United States Constitution guarantees the right to cross examine witnesses. Jenkins v. State, 729 N.E.2d 147, 148 (Ind. 2000). However, a criminal defendant's Sixth Amendment right is "subject to reasonable limitations placed at the discretion of the trial court to address concerns about harassment, prejudice, confusion or interrogation on issues only marginally relevant." Standifer v. State, 718 N.E.2d 1107, 1110 (Ind. 1999) (citing Delaware v. Van Arsdall, 475 U.S. 673, 679, 106 S. Ct. 1431,

1438 (White, J., concurring) (1986)). Trial court judges have broad discretion "to impose reasonable limits on the cross-examination of witnesses based on concerns about, among other things, interrogation that is only marginally relevant." Kubsch v. State, 784 N.E.2d 905, 925 (Ind. 2003).

Here, McKnight fails to show that the trial court abused its discretion in granting the State's motion to limit his discussion of racial bias. We review a trial court's decision to admit or exclude evidence using an abuse of discretion standard. Collins v. State, 826 N.E.2d 671, 677 (Ind. Ct. App. 2005), trans. denied, cert. denied, 546 U.S. 1108, 126 S. Ct. 1058 (2006). A trial court abuses its discretion when its decision is "clearly against the logic and effect of the facts and circumstances before it." Id. The subject of racial bias was not relevant to the cocaine charges, had a great chance of prejudicing the jury about the case, and a significant chance of confusing the issues for the jury. We cannot say that the trial court abused its discretion in barring discussion of racial bias. Because the court's limitation of McKnight's cross examination was reasonable, his due process claim fails. See, e.g., Jenkins, 729 N.E.2d at 149 (holding that marginally relevant evidence may be excluded when its probative value is outweighed by possibility of prejudice or confusion).

VII.

The final issue is whether the evidence is sufficient to sustain McKnight's conviction for dealing in cocaine as a class B felony and conspiracy to deal in cocaine as a class B felony. When reviewing the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the verdict.

Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

McKnight appears to argue that the evidence is insufficient to support his conviction of dealing in cocaine. The offense of dealing in cocaine is governed by Ind. Code § 35-48-4-1, which provides that "[a] person who: [1] knowingly or intentionally . . . [2] delivers . . . [3] cocaine . . . commits dealing in cocaine . . . a Class B felony . . . ." Thus, to convict McKnight of dealing in cocaine, the State needed to prove that McKnight knowingly or intentionally delivered cocaine to the informant.

The record reveals that McKnight was involved in a cocaine transaction with UC 120 and the informant on May 9, 2007. The informant testified that on May 9, 2007, McKnight asked him if he wanted to buy cocaine, and that he agreed to buy cocaine from McKnight. The informant also testified that McKnight gave him a bag after the informant paid him $200.00. The bag contained .827 grams of crack cocaine. Based upon our review of the record, we conclude that evidence of probative value exists from which a reasonable jury could have found that McKnight committed the offense of dealing in cocaine as a class B felony. See, e.g., Washington v. State, 902 N.E.2d 280,

289 (Ind. Ct. App. 2009) (holding that the evidence presented by the state was sufficient to support a conviction for dealing in cocaine).

McKnight also argues that the evidence is insufficient to support his conviction for conspiracy to deal in cocaine. The offense of conspiracy is governed by Ind. Code § 35-41-5-2, which provides "[a] person conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony." "The state must allege and prove that either the person or the person with whom he agreed performed an overt act in furtherance of the agreement." Ind. Code § 35-41-5-2. "A conspiracy to commit a felony is a felony of the same class as the underlying felony." Id. The State is not required to prove the existence of a formal express agreement to establish a defendant agreed to deal in cocaine. Simmons v. State, 828 N.E.2d 449, 454 (Ind. Ct. App. 2005). The requisite agreement can be inferred from circumstantial evidence, including overt acts of the parties in furtherance of the criminal act. Wallace v. State, 722 N.E.2d 910, 913 (Ind. Ct. App. 2000). Here, the underlying felony is dealing in cocaine, a Class B felony. Thus, to convict McKnight of conspiracy to deal in cocaine, the State needed to prove that McKnight intended to commit a felony, agreed with another person to commit the felony, and that McKnight or the person with whom he agreed performed an overt act in furtherance of the agreement.

To support the conspiracy to deal in cocaine charge, the informant testified that McKnight arranged another cocaine transaction with the informant on May 22, 2007. When UC 120 and the informant arrived at this second deal, UC 120 asked if he would be ripped off as he was in the May 9, 2007, transaction. McKnight, seemingly

acknowledging this prior transaction, said no. UC 120 then asked what he would get for $50.00 and McKnight told him he would "get that" while pointing at the money. Transcript Volume II at 45-46. After taking the officer's money, McKnight told the officer he was not able to get cocaine at that time. Based upon our review of the record, we conclude that the evidence was sufficient for a reasonable jury to find that McKnight committed conspiracy to deal in cocaine as a class B felony. See, e.g., Simmons, 828 N.E.2d at 455 (holding that the evidence presented by the State was sufficient to support a conspiracy conviction).[7]

For the foregoing reasons, we affirm McKnight's convictions of dealing in cocaine and conspiracy to deal in cocaine.

Affirmed.

CRONE, J., and BRADFORD, J., concur.

[7] McKnight also brings various complaints about discussions missing from the transcript and various parts of the transcript he claims are overly paraphrased. McKnight asks this court to review audio tapes of the trial, but does not provide them. "[A] transcript may sometimes be so deficient as to justify a new trial," Ben-Yisrayl v. State, 753 N.E.2d 649, 660 (Ind. 2001), cert. denied 536 U.S. 918, 122 S. Ct. 2382 (2002), and a "new trial is an appropriate remedy where there is no usable transcript available for appeal." Gallagher v. State, 274 Ind. 235, 239, 410 N.E.2d 1290, 1292 (1980). However, a person making a claim based on the accuracy of the record must "articulate some plausible way in which he was harmed by the lack of record." Ben-Yisrayl, 753 N.E.2d at 660-661. McKnight does not explain how he was harmed by the alleged inadequacies of the record.