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IN THE
COURT OF APPEALS OF INDIANA

DUSTIN NEVIL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A05-0901-CR-33
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Pigman, Judge
Cause No. 82D02-0711-FD-1070

August 7, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Dustin Nevil appeals his convictions for Resisting Law Enforcement,[1] a class D felony, and Criminal Recklessness,[2] a class A misdemeanor. Nevil argues that the trial court erred in denying his motion for a mistrial and that the evidence was insufficient to support his convictions. Finding no error and concluding that the evidence was sufficient, we affirm the judgment of the trial court.

FACTS

On November 26, 2007, Deputy Chad Ferguson of the Vanderburgh County Sheriff's Department was patrolling an area commonly known as the "river bottoms" in his marked police vehicle. Tr. p. 13. Deputy Ferguson knew that there had been "[occasional] problems down there." Id. at 14.

At approximately 2:00 a.m., Deputy Ferguson noticed a black Chevrolet truck in the area. Believing that it was suspicious for a vehicle to be in that area at such a late hour, Deputy Ferguson began to follow the truck. At some point, the vehicle—which Nevil was driving—started to speed away. As Deputy Ferguson approached the vehicle, he noticed that there was no license plate and two fifty-five-gallon drums were in the bed of the truck. As Deputy Ferguson continued to follow the truck, Nevil did not slow down and he ignored various lights and stop signs. As a result, Deputy Ferguson activated his lights and sirens. Nevil continued driving and crossed the line into Posey County. Deputy Ferguson believed

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[1] Ind. Code § 35-44-3-3(a)(3).

[2] Ind. Code § 35-42-2-2(b)(1).

that the chase reached a speed of nearly 100 miles per hour. At one point, Nevil encountered a slower vehicle and tailgated the driver before finally passing it on a hill crest.

Nevil eventually returned to Vanderburgh County and drove into a farm field. Because it was rainy and muddy, Deputy Ferguson stopped his police vehicle and attempted to chase Nevil on foot after realizing that he could not pursue him through the field in the vehicle without becoming stuck. However, Deputy Ferguson returned to his vehicle after he was unable to keep up with Nevil. Deputy Ferguson then radioed other officers about his location and told them where he believed that Nevil might re-enter the roadway.

Officer Jacob Taylor of the Evansville Police Department heard the description over the radio and joined in the pursuit. Just before Nevil reached the highway, he turned into a cornfield to avoid several stop sticks that other officers had placed on the road. Officer Taylor was able to view Nevil's profile during the pursuit. Nevil eventually stopped the truck in a driveway and fled on foot into a field.

Vanderburgh County Sheriff's Deputy Heath Stewart arrived at the scene and ran a police computer check on the vehicle's identification number (VIN). Deputy Stewart learned that Nevil was the registered owner of the vehicle. Deputy Stewart then drove to Nevil's address and spoke with several of Nevil's family members.

At some point, Nevil's brother made a telephone call and told Nevil to contact Deputy Stewart. Nevil called back almost immediately and asked Deputy Stewart what kind of trouble he was in and what charges might be filed. Deputy Stewart responded that he was not sure because he had not been involved in the entire incident. However, he assured Nevil

that it would be in his best interest to surrender.

After the telephone call, Nevil appeared and surrendered to Deputy Stewart. Deputy Stewart noticed that Nevil was "cold, wet, and muddy." Tr. p. 43. During a patdown search, Deputy Stewart retrieved a set of keys from Nevil's pockets. Shortly thereafter, Officer Taylor arrived at the scene and identified Nevil as the driver of the truck during the chase. Deputy Ferguson then arrived at the scene, took the keys, and went to the truck and unlocked it. The deputies recovered a license plate from the truck that was registered to Nevil.

While en route to the jail, Nevil told Deputy Stewart that he had driven to the river bottoms following an argument with his girlfriend. As they passed the point where Nevil's truck had become stuck in the mud, Nevil asked Deputy Stewart if they could stop by a nearby campsite and get his jacket.

On November 27, 2007, the State charged Nevil with resisting law enforcement, a class D felony, and criminal recklessness, a class A misdemeanor. At a jury trial that commenced on November 20, 2008, Nevil moved for a mistrial after Deputy Ferguson testified that Nevil's address had been entered into the police computer system when Nevil was a juvenile. The trial court denied the motion for mistrial and admonished the jury that it should not infer anything from the fact that Nevil's address was in the computer system. The trial court informed the jury that such a fact is "not indicative of any kind of proof that [Nevil] had a prior record." Appellant's App. p. 57.

Following the presentation of the evidence, Nevil was found guilty as charged. Nevil was subsequently sentenced on December 17, 2008, and he now appeals.

DISCUSSION AND DECISION

I. Mistrial

Nevil argues that the trial court erred in denying his motion for a mistrial. Specifically, Nevil contends that his motion should have been granted because the jury was "exposed to a dangerous inference" in light of Deputy Ferguson's testimony that his name and address had previously been entered into the Sheriff's computer system. Appellant's Br. p. 6.

In addressing this claim, we note that a mistrial is an extreme remedy that is warranted only when no other curative measure will rectify the situation. Stokes v. State, 908 N.E.2d 295, 299 (Ind. Ct. App. 2009). Whether to grant a mistrial is within the trial court's discretion, and we will reverse only for an abuse of that discretion. Id. An abuse of discretion has occurred if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. Id. We accord great deference to the trial court's decision, as it is in the best position to gauge the circumstances and the probable impact on the jury. Id. at 299-300. When determining whether a mistrial is warranted, we must consider whether the defendant was placed in a position of grave peril to which he should not have been subjected. Id. The gravity of the peril is determined by the probable persuasive effect of the matter complained of on the jury's decision. Id. An admonishment to the jury is generally presumed to cure any error. Wright v. State, 690 N.E.2d 1098, 1111 (Ind. 1997).

In this case, the record demonstrates that Deputy Ferguson's statement was in direct response to the State's question regarding the significance of the area where Nevil drove off

the road. Deputy Ferguson testified that "I noticed in our old computer system that Dustin Nevil lived at that address as [a] . . . juvenile. [I]t was in our computer system that's where he used to live." Tr. p. 22. Thereafter, Nevil moved for a mistrial, claiming that Deputy Ferguson's statements improperly implied that Nevil was in the computer system because he had done "bad things" in the past." Id. at 23.

As noted above, the trial court admonished the jury and specifically informed it that nothing should be inferred about Nevil's address being in the computer system. Moreover, the trial court confirmed the jurors' understanding of the admonishment. Id. at 24-25. In our view, the trial court's admonishment was sufficient to rectify any prejudice that may have resulted to Nevil as a result of Deputy Ferguson's testimony. Therefore, we conclude that the trial court properly denied Nevil's motion for a mistrial.

II. Sufficiency of the Evidence

Nevil next claims that the evidence was insufficient to support his convictions. Nevil's sole argument in support of his claim is that Officer Taylor's identification testimony of Nevil as the driver of the truck was "unreliable" and "dubious." Appellant's Br. p. 19.

In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or judge the credibility of the witnesses. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. We will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. A conviction may be based upon circumstantial evidence alone. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each

material element of the offense. Bockler v. State, 908 N.E.2d 342, 346 (Ind. Ct. App. 2009).

We also note that for testimony to be so inherently incredible that it is disregarded based on a finding of "incredible dubiosity," the witness must present testimony that is inherently contradictory, wholly equivocal, or the result of coercion and there must be a complete lack of circumstantial evidence of the defendant's guilt. Clay v. State, 755 N.E.2d 187, 189 (Ind. Ct. App. 2001). Reversal under this rule is rare and applicable only where the testimony of a single witness is so convoluted and contrary that it "runs counter to human experience and that no reasonable person could believe it." Edwards v. State, 753 N.E.2d 618, 623 (Ind. 2001).

In this case, Nevil claims that his convictions must be reversed under the incredible dubiosity rule because it was "impossible" for Officer Taylor to have positively identified him as the driver. Appellant's Br. p. 16. Notwithstanding this contention, Officer Taylor was not the sole witness who testified against Nevil.

For instance, Deputy Ferguson testified that he began pursuing Nevil near the "river bottoms" and into Posey County before returning to Vanderburgh County. Tr. p. 14-21. During the pursuit, Nevil left the road and drove into a field. A computer check revealed that Nevil lived in the area as a juvenile. Id. at 21-22.

The evidence also established Nevil was the registered owner of the vehicle when Deputy Stewart ran a computer check of the truck's VIN. Id. at 40. Deputy Stewart knew that Nevil lived approximately 100 from where his truck was abandoned and went to the residence. Id. Additionally, Deputy Stewart spoke to Nevil after talking with Nevil's

brother. When Nevil surrendered he was wet, cold, muddy, and not wearing a jacket. Id. at 43. While en route to the jail, Nevil asked Deputy Stewart to stop so he could get his coat from a campsite near his truck. Id. at 50.

Although Nevil challenges Officer Taylor's testimony only because of the identification testimony, the evidence set forth above placed Nevil at the starting point of the chase and close to the area where his truck was found. And, notwithstanding Officer Taylor's identification of Nevil as the driver, the additional testimony and circumstantial evidence that the State presented at trial established Nevil's guilt. Therefore, the incredible dubiosity rule does not apply in this instance. Edwards, 753 N.E.2d at 623.

Finally, we note that even though Nevil is essentially challenging the credibility of Officer Taylor's testimony, such was a matter for the jury to decide. As a result, Nevil's argument amounts to a request to reweigh the credibility of the witnesses, which must be declined. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007).

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.