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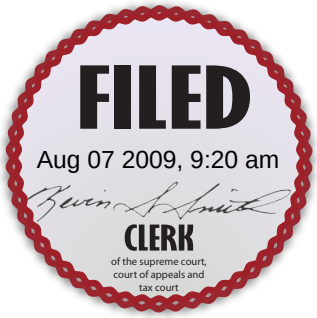

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IN THE
COURT OF APPEALS OF INDIANA

NATHAN ADAM NOFFSINGER,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 82A01-0811-CR-553
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable David Kiley, Judge
Cause No. 82C01-0706-FA-621

August 7, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Nathan Noffsinger appeals his conviction, following a jury trial, of conspiracy to commit dealing in methamphetamine, a Class A felony. For our review, Noffsinger raises a single issue, whether sufficient evidence supports his conviction. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

In November of 2006, Noffsinger began purchasing methamphetamine ("meth") from Nicole Doerr. Doerr would purchase meth from Miguel Espanoza and sell it to Noffsinger at a profit. Later, Noffsinger began purchasing meth directly from Espanoza. However, Noffsinger still relied on Doerr to set up the purchases. Noffsinger would give Doerr some meth in return for setting up purchases with Espanoza. Later in early 2007, Noffsinger began directing Doerr to conduct meth sales on his behalf.

In November of 2006, Noffsinger approached David Conner about purchasing a large amount of meth from Doerr. Noffsinger and Conner went together to Doerr's house. Noffsinger and Doerr went into a different room and Noffsinger came back with meth. Conner gave Noffsinger half of the money for the meth and they split the meth between them. Conner used most of the meth he purchased but also sold some to help defray the cost of purchasing it. The next few times that Conner wanted meth from Doerr, he used Noffsinger to arrange a meeting and purchase the meth. Noffsinger and Conner would transfer meth back and forth between each other depending on who had extra and who needed some. On some occasions, Heather Byers would act as a courier, transferring money or meth between Noffsinger and Conner.

Also in November of 2006, Byers began purchasing meth from Noffsinger and Conner. Byers used some of the meth and sold some. On at least two occasions, Byers delivered meth to Kenneth Youngs at Noffsinger's direction. She "took the [meth] from [Noffsinger] to [Youngs] and brought [Noffsinger] the money back." Transcript at 269. Byers then introduced Youngs to Noffsinger so that Youngs could continue to purchase meth directly from Noffsinger. Byers also delivered meth to Daniel Mickey at Noffsinger's direction, but did not collect any money from Mickey.

On June 12, 2007, the State charged Noffsinger with conspiracy to deal in meth and dealing in meth, both Class A felonies. The jury trial began on August 4, 2007, and concluded on August 6, 2007, after which the jury found Noffsinger guilty of the conspiracy charge, but not guilty of the dealing charge. The trial court held a sentencing hearing on August 26, 2007 and sentenced Noffsinger to a twenty-five year executed sentence. Noffsinger now appeals.

Discussion and Decision

I. Standard of Review

In reviewing sufficiency of the evidence claims:

> [we] must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. [T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations and quotations omitted) (emphasis in original).

II. Conspiracy Charge

In order to convict Noffsinger for conspiracy to commit dealing in methamphetamine, the State had to prove beyond a reasonable doubt that Noffsinger conspired with another person to commit the crime of dealing in meth, with the intent to commit that crime. Ind. Code § 35-41-5-2. The State must also prove either Noffsinger or a co-conspirator performed an overt act in furtherance of the conspiracy. Id. A conspiracy requires an intelligent and deliberate agreement. Woods v. State, 274 Ind. 624, 631, 413 N.E.2d 572, 576 (1980). However, such an agreement need not be proven by direct evidence; rather, it may be inferred from the circumstantial evidence, which may include the overt acts of the parties in furtherance of the criminal act. Id.; Wieda v. State, 778 N.E.2d 843, 847 (Ind. Ct. App. 2002). Concurrence of sentiment and cooperative conduct in the criminal act are the essential ingredients of a conspiracy. Woods, 274 Ind. at 633, 413 N.E.2d at 577.

Here, there is sufficient circumstantial evidence that Noffsinger conspired with Doerr, Conner, and Byers, to deal meth. Noffsinger made arrangements with Doerr to arrange purchases and sales of meth, for which he "paid" Doerr by giving her some of the meth. Noffsinger also combined funds with Conner to purchase meth and transferred meth back and forth with Conner. In addition, Noffsinger directed both Doerr and Byers to conduct meth sales on his behalf. Specifically, Byers testified that she would get the meth from Noffsinger, take it to the buyer, get the payment from the buyer, and take the

money back to Noffsinger. Our supreme court and this court have previously considered this latter conduct alone sufficient evidence of a conspiracy. See Perry v. State, 638 N.E.2d 1236, 1242 (Ind. 1994) (evidence that defendant instructed his girlfriend to deliver cocaine to buyer sufficient to support a conspiracy conviction); Washington v. State, 807 N.E.2d 793, 797 (Ind. Ct. App. 2004) (evidence that buyer contacted seller and requested a sale of crack cocaine, but defendant delivered the crack cocaine to buyer proved an agreement to commit dealing in cocaine).

The evidence at trial demonstrated that Noffsinger agreed with Doerr, Conner, and Byers to deal meth. In addition, there is evidence of many overt acts including actual sales of meth, arranging sales of meth, pooling funds to purchase larger quantities of meth for future sales, and sharing meth when either Noffsinger or Conner had run out. Therefore, the evidence is sufficient to sustain Noffsinger's conviction of conspiracy to commit dealing in meth.

Conclusion

Sufficient evidence supports Noffsinger's conviction of conspiracy to commit dealing in meth.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.