

DARDEN, Judge

STATEMENT OF THE CASE

James Mason appeals his conviction for dealing in cocaine as a class A felony.¹

We affirm.

ISSUE

Whether there is sufficient evidence to rebut Mason's defense of entrapment.

FACTS

On September 24, 2009, South Bend Police Officer Paul Moring, an undercover police officer with the South Bend Police Department's Metro Special Operations Section, was conducting a "bust-buy operation, for open air drug dealing" by "people that are either on foot or standing [on] the street corner, riding bicycles, sitting in vehicles" and "selling narcotics to individuals that flag them down or walk up to them." (Tr. 108). As part of the operation, Officer Moring was driving an unmarked vehicle in an area known for drug dealing. Other officers were posted outside the vehicle and monitoring the vehicle with video and audio recording devices. Minnie Franklin, an informant, was in the passenger seat.

As he drove around the area, Officer Moring observed Mason standing in an alley. Officer Moring had not seen Mason before, and it appeared as if he were loading items from a garage into a van. As Officer Moring drove toward Mason, Franklin asked "if he

¹ Ind. Code § 35-48-4-1(b)(3)(B).

had a 2-0,” which is “street slang for twenty dollars of crack cocaine.” (Tr. 112). Mason nodded, indicating they were to drive down the alley.

Officer Moring slowly drove down the alley while Mason followed on foot. Once Officer Moring parked on the nearest cross-street, Mason approached the front passenger side of the vehicle and began talking with Franklin, who again told him that she was “looking for a twenty.” (Tr. 114). Mason then walked over to the driver’s side of the vehicle and asked for a ride to a place where he could get some cocaine. Mason “was persistent in needing a ride to Indiana Street to obtain the drugs.” (Tr. 117). Officer Moring declined and told Mason that he needed to pick up his child. Mason therefore gave Officer Moring his cell phone number, and Officer Moring told him that he would be back “in a few minutes.” (Tr. 117).

Shortly thereafter, Officer Moring returned to the alley. Mason got in his van and told Officer Moring to follow him. Officer Moring followed Mason to East Dubail Street, where Mason parked less than 100 feet from Studebaker School. Following Mason’s directions, Officer Moring parked behind the van. Officer Moring watched as Mason walked northbound. Other officers conducting surveillance reported that Mason appeared to be obtaining cocaine.

Mason then returned to Officer Moring’s vehicle and “asked for the money.” (Tr. 127). Officer Moring gave Mason twenty dollars, in return for which Mason gave Officer Moring .16 grams of “loose crack cocaine.” (Tr. 127). Officers arrested Mason after Officer Moring left the scene.

On September 28, 2009, the State charged Mason with class A felony dealing in cocaine.² The trial court commenced a two-day jury trial on November 16, 2010, after which the jury found Mason guilty as charged. Following a sentencing hearing on January 5, 2011, the trial court sentenced Mason to twenty years.

DECISION

Masons asserts that the evidence is insufficient to support his conviction for dealing in cocaine. Specifically, he argues that “he was induced into committing the crime of dealing in cocaine” by the police “and that the State failed to provide sufficient evidence by which a trier of fact could have concluded that [he] was predisposed to commit the offense.” Mason’s Br. at 3.

“We review a claim of entrapment using the same standard that applies to other challenges to the sufficiency of evidence.” *Dockery v. State*, 644 N.E.2d 573, 578 (Ind. 1994). Thus, “we do not reweigh the evidence or judge the credibility of the witnesses, and we respect a fact-finder’s ‘exclusive province to weigh conflicting evidence.’” *Joslyn v. State*, 942 N.E.2d 809, 811 (Ind. 2011) (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). We will consider only the probative evidence and reasonable inferences supporting the verdict. *Id.*

Regarding entrapment, Indiana Code section 35-41-3-9 provides as follows:

(a) It is a defense that:

² We note that the information cites to Indiana Code section 35-48-4-6, which delineates the offense of possession of cocaine. The State, however, charged that Mason delivered cocaine and instructed the jury accordingly.

(1) the prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in the conduct; and

(2) the person was not predisposed to commit the offense.

(b) Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

The State may rebut the defense of entrapment “either by disproving police inducement or by proving the defendant’s predisposition to commit the crime.”

Espinoza v. State, 859 N.E.2d 375, 386 (Ind. Ct. App. 2006) (emphasis added).

“Whether a defendant was predisposed to commit the crime charged is a question for the trier of fact.” The State must prove the defendant’s predisposition beyond a reasonable doubt. “If the defendant shows police inducement and the State fails to show predisposition on the part of the defendant to commit the crime charged, entrapment is established as a matter of law.”

Jordan v. State, 692 N.E.2d 481, 484 (Ind. Ct. App. 1998) (internal citations omitted).

Factors showing a defendant’s predisposition to deal in controlled substances include familiarity with drug jargon and prices, knowledge of drug sources and suppliers, engagement in multiple transactions, and solicitation of future transactions. *Id.*

Here, Mason argues that the State failed to prove that he was predisposed to dealing in cocaine as he “was not observed engaging in dealing, there had been no prior buys, . . . he did not have the drugs on him,” and “[t]here was no discussion of future transactions.” Mason’s Br. at 5. The evidence, however, shows that Mason was familiar with both drug jargon and prices and that he had a source for the cocaine. Furthermore,

Mason gave Officer Moring his cell phone number so that Officer Moring could return at a later time to finalize the drug buy. We find the evidence was sufficient to negate Mason's claim of entrapment, where it shows a clear predisposition to commit dealing in cocaine.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.