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IN THE
COURT OF APPEALS OF INDIANA

JULIAN BROOKS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0903-CR-115
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0706-FB-39

September 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Julian Brooks appeals his convictions for two counts of dealing in cocaine as Class B felonies. Specifically, Brooks contends that the trial court erred in instructing the jury that a person may be convicted of a crime upon the uncorroborated testimony of a witness. Although we find that the instruction is erroneous, we conclude that the error is harmless in light of the evidence of Brooks's guilt. We therefore affirm.

Facts and Procedural History

In June 2007 an informant notified the Interdiction Covert Enforcement Unit of Elkhart County that he could purchase crack cocaine at a specific apartment building from two people who went by the street names "Big Mama" and "J.B." Vol. I Tr. p. 67. Detective James Anderson, working undercover, later met the informant and drove him to the location. As Detective Anderson and the informant walked toward the apartment building, the informant indicated that he saw Brooks, the man he knew as "J.B." *Id.* at 80-81. When Detective Anderson and the informant met Brooks, the informant indicated that he wished to purchase crack cocaine from him. The informant then gave Brooks forty dollars in exchange for two rocks of crack cocaine. After the transaction occurred, Detective Anderson asked Brooks for his phone number, implying that he wanted to engage in a similar transaction later. Brooks gave Detective Anderson his phone number and identified himself as "J.B." *Id.* at 83-85.

The next day, Detective Anderson, without the informant, met with Brooks at the same apartment building. After indicating that he wanted to purchase crack cocaine,

Detective Anderson gave Brooks forty dollars in exchange for two rocks of crack cocaine.

Brooks was later arrested and charged with two counts of dealing in cocaine as Class B felonies.[1] At his jury trial, both Detective Anderson and an undercover police officer testified. Detective Anderson identified Brooks both from his physical appearance and his voice as the drug dealer in both transactions. The undercover police officer testified that he was placed as one of several police officers monitoring both transactions. For both transactions, the police officer was located no more than a block away from the apartment building and listened through an audio-transmitting device. The jury heard the audio recording from the first transaction. Brooks testified on his own behalf. He admitted that he lived at the apartment building but denied that he sold crack cocaine or was even at the apartment building at the time the transactions took place.

At the close of the jury trial, the State proposed an instruction which informed the jury that "[a] person may be convicted of a crime upon the uncorroborated testimony of a witness." Appellant's App. p. 41. Brooks's attorney objected. Although he acknowledged the instruction as a correct statement of the law, he argued that it unduly emphasized a particular witness and that its content was already covered by other instructions. The court overruled the objection and gave the instruction. After deliberation, the jury found Brooks guilty of both counts. The trial court sentenced Brooks to fifteen years on each count, to be served concurrently. Brooks now appeals.

Discussion and Decision

[1] Ind. Code § 35-48-4-1(a)(1)(C).

Brooks contends that the trial court erred in instructing the jury that a person may be convicted of a crime upon the uncorroborated testimony of a witness. Instructing a jury is left to the sound discretion of the trial court, and we review its decision only for an abuse of that discretion. *Jackson v. State*, 890 N.E.2d 11, 20 (Ind. Ct. App. 2008). Before a defendant is entitled to a reversal, he must affirmatively show that the instructional error prejudiced his substantial rights. *Glenn v. State*, 884 N.E.2d 347, 357 (Ind. Ct. App. 2008), *trans. denied*.

Any error in giving jury instructions is subject to a harmless error analysis. *Randolph v. State*, 802 N.E.2d 1008, 1011 (Ind. Ct. App. 2004), *trans. denied*. Errors in the giving or refusing of instructions are harmless where a conviction is clearly sustained by the evidence and the instruction would not likely have impacted the jury's verdict. *Id.* at 1013. An instruction error will result in reversal when the reviewing court "cannot say with complete confidence" that a reasonable jury would have rendered a guilty verdict had the instruction not been given. *Id.* (citing *Dill v. State*, 741 N.E.2d 1230, 1233 (Ind. 2001)).

Brooks argues that the trial court erroneously instructed the jury that "[a] person may be convicted of a crime upon the uncorroborated testimony of a witness." Appellant's App. p. 58. The Indiana Supreme Court found a similar instruction erroneous in *Ludy v. State*, 784 N.E.2d 459 (Ind. 2003). In *Ludy*, the instruction provided, "A conviction may be based solely on the uncorroborated testimony of the alleged victim if such testimony establishes each element of any crime charged beyond a reasonable doubt." *Id.* at 460. The Court held that the instruction was error for three

reasons: (1) it unfairly focused the jury's attention on a single witness's testimony, (2) it presented a concept used in appellate review that is irrelevant to a jury's function as fact-finder, and (3) by using the technical term "uncorroborated," the instruction may have misled or confused the jury. *Id.* at 461. However, the Court found the error was harmless because aside from the victim's testimony, there was substantial probative evidence establishing the crimes. *Id.* at 463.

In light of *Ludy*, we find that the trial court erred in giving the challenged instruction. However, as in *Ludy*, the error is harmless. In the present case, Detective Anderson identified Brooks from both his appearance and his voice as the drug dealer in both transactions. However, the jury did not have to rely solely on Detective Anderson's identification. An undercover police officer testified that he was located a short distance away from the apartment building and listened through an audio-transmitting device to both transactions. Furthermore, the jury heard the audio recording of the first transaction, wherein Brooks identified himself as "J.B." The recording served to confirm the facts related by Detective Anderson and allowed the jury to compare Brooks's voice on the recording with his voice when he testified on his own behalf at trial. The jury therefore did not have to rely solely on Detective Anderson's identification of Brooks.

Although the instruction is erroneous, in light of the evidence in this case, it did not affect Brooks's substantial rights and thus does not require reversal. *See id.* We therefore affirm the trial court.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.