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IN THE
COURT OF APPEALS OF INDIANA

DEREK D. HARDY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0904-CR-231
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0808-FB-143

October 7, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Derek Hardy appeals his convictions of possession of cocaine, a Class D felony,[1] and dealing in cocaine, a Class B felony.[2] Finding the evidence sufficient to support those convictions, we affirm.

FACTS AND PROCEDURAL HISTORY

Greg Addison, an undercover officer with the Fort Wayne Police Department, arranged through a confidential informant to purchase cocaine from Eric White. Officer Addison recorded the serial numbers of eight twenty-dollar bills and went to meet White. Officer Addison located White, who said he was waiting for his supplier to bring the cocaine. Officer Addison and White discussed drug prices, and Officer Addison gave the $160 to White. About five minutes later, Hardy arrived. White went to the driver's side of Hardy's truck, talked to Hardy for approximately three minutes, and then returned to deliver an off-white rock-like substance to Officer Addison.

Hardy drove away from the scene under surveillance of police officers. Fort Wayne Police Officer John Drummer realized Hardy's truck had an altered license plate and ball hitch, so Officer Drummer initiated a traffic stop. Officer Drummer approached the driver's side of Hardy's truck and asked for the truck's registration and for identification from Hardy and his passenger. Officer Drummer noticed Hardy "had something large he was chewing in his mouth." (Tr. at 139.) Officer Drummer asked to see what Hardy was chewing, asked Hardy to open his mouth, and asked Hardy to spit out the object. When Hardy refused to cooperate, Officer Drummer sprayed pepper spray

[1] Ind. Code § 35-48-4-6.
[2] Ind. Code § 35-48-4-1.

in the cab of Hardy's truck.

Hardy and his passenger both fled out the passenger door of the truck. Officer Drummer slid through the truck and chased after Hardy. Hardy ran into traffic and then ran back toward his truck. He then fell on the street near a storm drain and threw a small plastic bag down the drain. Police finally restrained him. Inspection of the drain revealed a small wet bag containing eight smaller bags of cocaine. Hardy had the buy money that Officer Addison had given to White.

The State charged Hardy with possession of cocaine, dealing in cocaine, and two counts of resisting law enforcement.[3] A jury found Hardy guilty of possession, dealing, and one count of resisting law enforcement.[4] The court pronounced the following concurrent sentences: ten years for dealing in cocaine, eighteen months for possession of cocaine, and one year for resisting law enforcement.

DISCUSSION AND DECISION

Hardy asserts the evidence did not support his possession and dealing convictions. "When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (quotation omitted). It is the role of the fact-finder, and not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* "To preserve this structure, when appellate courts are confronted with conflicting evidence,

[3] Ind. Code § 35-44-3-3.
[4] Hardy does not challenge the resisting law enforcement conviction.

they must consider it most favorably to the trial court's ruling." *Id*. (quotation omitted). "Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id*. at 146-47 (quotation omitted). "It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence." *Id*. at 147 (quotation omitted). "[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Id*. (quotation omitted).

1. Possession of Cocaine

"A person who . . . knowingly or intentionally possesses cocaine (pure or adulterated) . . . commits possession of cocaine." Ind. Code § 35-48-4-6.

Hardy notes Officer Drummer's testimony was the only evidence that Hardy put the bag of cocaine in the storm drain, and he suggests we should reverse his possession conviction because no other officer saw, or in-car camera caught, his actions. We are not permitted to assess Officer Drummer's credibility or to reweigh the evidence. *See Drane*, 867 N.E.2d at 146. Rather, we consider only the probative evidence -- Officer Drummer's testimony -- and affirm because it supports the judgment.[5]

[5] We note Officer Drummer's testimony was also supported by circumstantial evidence. The bag containing cocaine was wet with a substance the officers believed was saliva. That is consistent with Officer Drummer's testimony that Hardy had been chewing a large object that Officer Drummer thought might be evidence of a crime. The bag was clean and wet, while the rest of the debris in the storm drain was dry and dirty, indicating the bag was placed in the drain very shortly before it was retrieved. A conviction may be based on circumstantial evidence alone if the evidence "supports a reasonable inference of guilt." *Maul v. State*, 731 N.E.2d 438, 439 (Ind. 2000).

2. Dealing in Cocaine

A person commits dealing in cocaine when he knowingly or intentionally delivers cocaine. *See* Ind. Code § 35-48-4-1. Hardy asserts he should not have been convicted of dealing in cocaine as there was no evidence he delivered any cocaine to White, who gave cocaine to Officer Addison.

In support of this argument, Hardy cites *Watson v. State*, 839 N.E.2d 1291 (Ind. Ct. App. 2005). Watson met a confidential informant at a fast food restaurant. Thereafter, Watson had the buy money and the confidential informant had cocaine. We reversed Watson's conviction for insufficient evidence he had delivered the cocaine to the confidential informant because the informant was not searched prior to the buy and the informant was not at trial to testify she received the cocaine from Watson. *Id.* at 1293 - 1294.

Although White was not at Hardy's trial and was not searched before his meeting with Hardy, we find this situation distinguishable from *Watson*. Most important is the fact that White was not a confidential informant. Thus, he did not know he would be delivering cocaine to a police officer and thereby did not know he could frame Hardy for delivering cocaine. Rather, White was the dealer from whom police were trying to obtain cocaine, and he presumably would have been convicted of dealing cocaine even if a third party brought the cocaine to him at the meeting place. Moreover, Hardy's possession of additional cocaine packaged for sale permits an inference he delivered the cocaine to White.

Because the evidence is sufficient to support Hardy's convictions of possession of cocaine and dealing in cocaine, we affirm the trial court's judgment.

Affirmed.

CRONE, J., and BROWN, J., concur.