

DARDEN, Judge

STATEMENT OF THE CASE

Anthony Price, Jr. appeals his convictions and sentences for two counts of class A felony dealing in cocaine;¹ and class A felony conspiracy to commit dealing in cocaine.²

We affirm.

ISSUES

1. Whether the trial court abused its discretion in admitting evidence.
2. Whether the evidence was sufficient to support Price's convictions.
3. Whether the trial court erred in sentencing Price.

FACTS

During the summer of 2009, Price, who went by the nickname "Dred,"³ Eric Nevels, and Nevels' girlfriend, Esther Harris, lived at 1416 Alabama Street in Lafayette. Only Nevels' and Harris' names, however, were on the lease for 1416 Alabama Street.

On or about August 20, 2009, Detective Brad Curwick, an undercover police officer with the Lafayette Street Crimes Unit, contacted Misty Carey. Claiming to have gotten Carey's telephone number from a mutual acquaintance, Detective Curwick asked Carey to obtain crack cocaine for him. Carey agreed and arranged a drug buy with Nevels.

¹ Ind. Code § 35-48-4-1.

² I.C. §§ 35-41-5-2; 35-48-4-1.

³ Price's nickname is spelled both as "Dread" and "Dred" in the transcript.

After Carey obtained “a hundred dollars worth of crack” from Nevels, Detective Curwick met Carey at her apartment and completed the drug buy. (Tr. Vol. 1 at 138). In return for arranging the drug buy, Carey took some of the crack cocaine. “About an hour later,” Carey telephoned Detective Curwick and arranged a second drug buy for him. *Id.* at 139.

The next evening, officers arrested Carey at her home. Officers informed Carey that “if [she] could help them, then [she] wouldn’t go to jail at that time.” *Id.* at 141. Carey therefore agreed to act as a confidential informant (“CI”).

At approximately 11:00 p.m. on August 24, 2009, officers with the Street Crimes Unit prepared Carey for a controlled drug buy. In so doing, they searched Carey to confirm that she had no illegal contraband or narcotics on her person, fitted her with a body wire transmitter, and gave her buy money. Carey then telephoned Nevels. Nevels agreed to sell Carey “a hundred dollars worth of crack,” *id.* at 124, and told her to meet him near the intersection of 14th and Grove Streets, “one block south of 14th and Alabama.” (Tr. Vol. 2 at 233). After undercover officers drove Carey to the meeting place, she again telephoned Nevels, who instructed her to exit the vehicle and wait for him.

Nevels and Price arrived shortly thereafter in a red Pontiac Grand Prix. Price sat in the front passenger’s seat. Carey could not see the driver’s face because it was dark, but when he spoke, she recognized Nevels’ voice. Another person sat in the vehicle’s back seat; Carey, however, could not identify the person.

Carey walked up to the front passenger side and “dropped the money on [Price’s] lap[.]” (Tr. Vol. 1 at 125). Nevels “handed Dread the crack, Dread handed it to [Carey],” and then they “took off.” *Id.* Carey returned to the undercover officers’ vehicle and gave them “two knotted plastic corner baggies” containing 1.07 grams of crack cocaine. (Tr. Vol. 2 at 7).

Approximately one hour later, during the early morning of August 25, 2009, undercover officers prepared Carey for a second controlled drug buy. Carey again telephoned Nevels and asked for “another hundred dollars worth of crack.” (Tr. Vol. 1 at 126). Nevels told her “to come on through.” *Id.* Shortly thereafter, undercover officers dropped Carey off near Nevels’ residence and watched her walk toward the back of the residence. Officers also observed a red Pontiac Grand Prix parked behind the residence.

Price let Carey into the kitchen. After Carey told Nevels that she wanted “[a] hundred dollars worth of crack,” he took two baggies of crack cocaine out of the freezer and gave one to Carey. *Id.* at 128. Carey then returned to the officers’ waiting vehicle and gave them a “knotted plastic corner baggie” containing 1.30 grams of crack cocaine. (Tr. Vol. 2 at 9). Carey subsequently identified both Nevels and Price from photographic arrays.

On August 26, 2009, officers with the Street Crimes Unit collected the trash from 1416 Alabama Street. They discovered several plastic baggies with missing corners, which was indicative of crack cocaine being packaged by “twist[ing] it into the bottom of the bags” and then tying and tearing off the corners. (Tr. Vol. 1 at 86). Some of the

baggies later tested positive for crack cocaine. Officers also found what appeared to be marijuana leaves, stems, and seeds.

At approximately 6:20 a.m. on August 28, 2009, officers executed a search warrant for 1416 Alabama Street. Officers found and secured Price and Harris in the downstairs living room. While securing Price, Officer Brandon Withers noticed a handgun sticking out from under the sofa. A search revealed a second handgun under the sofa. A search of Price revealed \$592.00 in his pockets. Officers located and secured Nevels in an upstairs bedroom.

In the kitchen, officers discovered a digital scale on top of a cabinet. The scale “appeared to have cocaine residue” on it. (Tr. Vol. 2 at 180). Officers also found a “small amount of loose marijuana” near the scale. *Id.* at 183. A search of the freezer revealed twelve plastic baggies, containing 8.18 grams of “crack cocaine inside a plastic freezer bag full of frozen hamburger patties.” *Id.* at 10. Officers also discovered three plastic baggies, containing a total of “16.88 grams of crack cocaine,” hidden inside of a man’s Polo-brand shoe. *Id.* at 14. Officers discovered the shoe in the closet of an upstairs bedroom used by Price. A map of the area later revealed that an elementary school was located within 1,000 feet of 1416 Alabama Street and the area of 14th and Grove Streets.

On October 29, 2009, the State charged Price with Count 1, dealing in cocaine as a class A felony; and Count 2, possession of cocaine as a class A felony; Count 3, dealing in cocaine as a class A felony; Count 4, possession of cocaine as a class B felony; and

Count 5, conspiracy to commit dealing in cocaine as a class A felony. The State charged Nevels with two counts of dealing in cocaine as a class A felony; possession of cocaine as a class A felony; possession of cocaine as a class B felony; maintaining a common nuisance as a class D felony; and conspiracy to commit dealing in cocaine as a class A felony. On April 12, 2010, the trial court granted the State's motion to join Price's and Nevels' cases.

On April 16, 2010, Price's counsel filed a motion to compel the State to "provide the identity of the [CI]"; and "information regarding plea negotiations, criminal history, pending criminal charges and other negative contacts with law enforcement by [the CI]." (Price's App. 36). According to the chronological case summary ("CCS"), the trial court scheduled a hearing on the motion for April 23, 2010. There is no indication, however, that the hearing was held.

On April 23, 2010, several days prior to the trial's commencement, the State disclosed Carey's identity and other pertinent information to counsel for Price's co-defendant. Due to a miscommunication, however, counsel did not receive the information until the day before trial, on April 26, 2010. Therefore, on April 26, 2010, counsel for Nevels filed a motion to exclude Carey's testimony, or in the alternative, to continue the trial because he had not obtained Carey's information until the morning of April 26, 2010.

The trial court commenced a three-day jury trial on April 27, 2010, and heard counsels' arguments regarding the motion to exclude. The State asserted that counsel for

Price's co-defendant represented prior to trial that he knew the CI's identity. The trial court denied the motion to exclude but granted a continuance of the trial to allow Carey's deposition. Nevels' counsel deposed Carey, but Price's counsel did not.

During the trial, Carey testified regarding her role as a CI. Harris testified that Price stayed at the house on Alabama Street "[t]here to four days out of the week." *Id.* at 51. Her testimony also confirmed that Price's bedroom was the one where the officers discovered the crack cocaine in the shoe. Also during the trial, the trial court admitted into evidence two photographs taken from Nevels and Harris' bedroom during the search.

The jury found Price guilty as charged. The trial court entered judgment of conviction on Counts 1, 3, and 5; ordered a pre-sentence investigation report ("PSI"); and held a sentencing hearing on June 8, 2010.

According to the PSI, Price, who was twenty-four years old at the time of sentencing, had been adjudicated a delinquent child in 2002 for having committing an act which, if committed by an adult, would have constituted residential burglary. The PSI also showed that Price had the following convictions arising out of Cook County, Illinois: possession of marijuana in 2005; domestic battery in 2005; residential burglary, a felony, in 2006; and domestic battery in 2007. The PSI further showed that Price had five additional charges that had been either dismissed or "Stricken Off Leave." (State's App. 3, 4).

Price presented several mitigating factors, including his age; the hardship his imprisonment would impose on his family, including his three children; his family's

support; and the murder of his father in 2000. As to aggravating and mitigating circumstances, the trial court found as follows:

Two aggravating factors are Defendant's history of criminal activity, the seriousness of the crime and mainly evidenced by the large quantities of drugs found in the house and the presence of firearms in the house. The mitigating factors are the hardship that will occur to the Defendant's children on the other hand there's several things to be said about that. First of all you had children when you undertook . . . these crimes and you had to know that one of the risks is that you go to prison. Secondly, the best example you can set for the children is showing them there are consequences for illegal activities and . . . if you're continuing to engage in illegal activities as loving as you are to the children you're not a good role model, you're setting a bad example. . . . I'm going to disregard your age, it's not a mitigating factor. You're old enough to take full responsibility and to be fully mature in your decision making. I will acknowledge the family support and treat that as a mitigating factor. And I will acknowledge your difficult childhood and in particular the loss of your father and the way that that has affect your life I think the aggravating circumstances outweigh the mitigating circumstances. . . . I'm not satisfied that the Defendant has positive ties to the community so I'm going to take lack of community ties as another aggravating factor. Certainly you were not engaged in gainful employment here in Tippecanoe County and all of your convictions up until this point have been in another location in Chicago . . . and so again the aggravating factors outweigh the mitigating factors.

(Tr. Vol. 4 at 47-48). The trial court sentenced Price to forty years on each count, to be served concurrently.

Additional facts will be provided as necessary.

DECISION

1. Admission of Evidence

Price asserts that the trial court abused its discretion in admitting certain evidence. Specifically, he argues that the trial court improperly admitted Carey's testimony and the

two photographs discovered in Nevels' bedroom during the execution of the search warrant.

[T]he admission or exclusion of evidence is within the sound discretion of the trial court, and we will reverse the trial court's determination only for an abuse of that discretion. An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the trial court. In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court's ruling and any unrefuted evidence in the appellant's favor. As a rule, errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party. In determining whether an evidentiary ruling affected a party's substantial rights, we assess the probable impact of the evidence on the trier of fact.

Redding v. State, 844 N.E.2d 1067, 1069 (Ind. Ct. App. 2006) (internal citations omitted).

a. *Carey's testimony*

Price maintains that the late-disclosure of Carey's identity required the exclusion of her testimony at trial. We disagree.

Several specific factors have been deemed helpful in determining whether to exclude witness testimony: (1) the point in time when the parties first knew of the witness; (2) the importance of the witness's testimony; (3) the prejudice resulting to the opposing party; (4) the appropriateness of instead granting a continuance or some other remedy; and (5) whether the opposing party would be unduly surprised and prejudiced by the inclusion of the witness's testimony.

Rohr v. State, 866 N.E.2d 242, 245 (Ind. 2007).

Generally, a continuance is the proper remedy for a discovery violation. *Warren v. State*, 725 N.E.2d 828, 832 (Ind. 2000). "Exclusion of evidence as a remedy for a discovery violation is only proper where there is a showing that the State's actions were

deliberate or otherwise reprehensible, and this conduct prevented the defendant from receiving a fair trial.” *Id.*

Here, the trial court therefore granted a short continuance of the trial, allowing counsel to depose Carey. Counsel also cross-examined Carey extensively regarding her drug use, prior convictions, charges against her, and her motives for cooperating with the State. We therefore cannot say that inclusion of Carey’s testimony prejudiced Price. Accordingly, we find no abuse of discretion in admitting her testimony.

b. *Photographs*

Price also argues that the trial court abused its discretion in admitting the two photographs discovered in Nevels and Harris’ bedroom. He contends that the photographs “were irrelevant, misleading, extremely prejudicial and unnecessary given the evidence presented.” Price’s Br. at 10.

Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” Ind. Evidence Rule 401. ““Generally speaking, relevant evidence is admissible, and irrelevant evidence is inadmissible.”” *Southern v. State*, 878 N.E.2d 315, 321 (Ind. Ct. App. 2007) (quoting *Sandifur v. State*, 815 N.E.2d 1042, 1048 (Ind. Ct. App. 2004)).

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, or needless presentation of cumulative evidence.

Evid. R. 403. “The trial court has wide latitude in weighing these factors, and we review its decision only for an abuse of discretion.” *Prewitt v. State*, 761 N.E.2d 862, 869 (Ind. Ct. App. 2002).

Both of the photographs admitted into evidence depict Nevels and Price. In one of the photographs, both men are holding cash, and Nevels is making an obscene hand gesture. The other photograph shows Price making an ambiguous hand gesture while Nevels again is making an obscene hand gesture. Price maintains that the photographs’ prejudicial effect outweighs their probative value because “the uncontroverted evidence at trial . . . was that the defendants knew one another well,” and although one of the photographs shows money in the hands of Price and Nevels, “it is impossible to know how much money they are holding.” Price’s Br. at 9, 10.

Even if the trial court improperly admitted the photographs, we conclude that any error in the admission of the evidence was harmless. ““The improper admission of evidence is harmless error when the conviction is supported by substantial independent evidence of guilt sufficient to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction.”” *Wertz v. State*, 771 N.E.2d 677, 684 (Ind. Ct. App. 2002) (quoting *Headlee v. State*, 678 N.E.2d 823, 826 (Ind. Ct. App. 1997)).

In this case, the State presented substantial evidence of Price’s guilt. Carey testified regarding Price’s participation in the controlled drug buys, and a search of Price’s residence, including his bedroom, revealed large quantities of drugs and drug

paraphernalia. In light of this evidence, any error in admitting the photographs was harmless.

2. Sufficient Evidence

Price asserts that there is insufficient evidence to support his 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. 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. The 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) (quotations and citations omitted).

a. *Count 1*

Price alleges that the evidence was insufficient to convict him of Count 1, possessing, with intent to deliver, three or more grams of cocaine on August 28, 2009, where "Harris testified that only she and Nevels leased the home and that Price would spend the night there," and "[h]e did not have his personal effect at the home[.]" Price's Br. at 17. We disagree.

Circumstantial evidence showing possession with intent to deliver may support a conviction for dealing in a controlled substance. *Hershey v. State*, 852 N.E.2d 1008,

1015 (Ind. Ct. App. 2006). Possession of a large amount of a narcotic substance is circumstantial evidence of intent to deliver. *Id.* Furthermore,

[t]his court has long recognized that a conviction for possession of contraband may be founded upon actual or constructive possession. Constructive possession is established by showing that the defendant has the intent and capability to maintain dominion and control over the contraband.

In cases where the accused has exclusive possession of the premises on which the contraband is found, an inference is permitted that he or she knew of the presence of contraband and was capable of controlling it. However, when possession of the premises is non-exclusive, the inference is not permitted absent some additional circumstances indicating knowledge of the presence of the contraband and the ability to control it. Among the recognized “additional circumstances” are: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the contraband; (5) contraband is in plain view; and (6) location of the contraband is in close proximity to items owned by the defendant.

Holmes v. State, 785 N.E.2d 658, 660-61 (Ind. Ct. App. 2003) (citations omitted).

“These circumstances apply to show constructive possession even where the defendant is only a visitor to the premises where the contraband is found.” *Collins v. State*, 822 N.E.2d 214, 222 (Ind. Ct. App. 2005) (citing *Ledcke v. State*, 260 Ind. 382, 296 N.E.2d 412, 416 (1973)).

In this case, the State presented evidence that Price lived at 1416 Alabama Street; specifically, he occupied the bedroom in which the officers discovered three plastic baggies, containing more than sixteen grams of crack cocaine. Officers also discovered a large amount of cash in Price’s pockets. Additionally, officers found a large amount of crack cocaine, individually packaged, in the freezer at 1416 Alabama Street. Carey

testified that when Nevels retrieved the crack cocaine from the freezer, Price “was standing there” in the kitchen. (Tr. Vol. 1 at 127).

Officers also discovered a scale and plastic baggies in the kitchen. The State presented testimony that baggies are commonly used to package crack cocaine. Such evidence was sufficient to demonstrate a drug manufacturing setting. *See* I.C. § 35-48-1-18 (defining “manufacture” as the “compounding, conversion, or processing of a controlled substance . . . and includes any packaging or repackaging of the substance or labeling or relabeling of its container”).

Given the evidence, the jury could have reasonably inferred that Price knew of the cocaine and was capable of controlling it. Accordingly, there was sufficient evidence to support his conviction for possession of more than three grams of cocaine with the intent to deliver. *See, e.g., Davis v. State*, 791 N.E.2d 266, 270 (Ind. Ct. App. 2003) (holding that the evidence was sufficient to uphold a conviction for dealing in cocaine where the defendant had possession of five grams of cocaine that was individually wrapped); *see also Dandridge v. State*, 810 N.E.2d 746, 750 (Ind. Ct. App. 2004) (holding that the defendant’s possession of \$300 in cash and ten grams of cocaine split among eight baggies was sufficient to uphold his conviction for dealing in cocaine).

b. *Count 3*

Price also alleges that the State failed to establish that he delivered cocaine within 1,000 feet of school property on August 24, 2009. Specifically, he argues that “if [Carey’s] testimony at trial is believed,” his “only role in the drug buy[] is that he was a

passenger in the car . . . and [Carey] ‘dropped’ buy money in his lap, although she testified that she could not identify him because it was dark.” Price’s Br. at 17.

Carey testified that on the night of August 24, 2009, she met Price and Nevels in the area of 14th and Grove Streets. According to Carey, Price gave her two baggies of crack cocaine after she “dropped” the buy money in his lap. (Tr. Vol. 1 at 125). Although Carey testified that it was too dark to see what Price was wearing, she unequivocally identified him as the passenger in the Grand Prix.

Mark Ehle testified that he “maintain[s] computer map data” on behalf of the Tippecanoe County Geographic Information System Administrator. (Tr. Vol. 3 at 14). According to Ehle, he prepared a map showing a “one thousand foot radius around” the area of 14th and Grove Streets, where the drug buy on August 24, 2009 took place. *Id.* at 16-17. Ehle testified that St. Mary’s School is located within 1,000 feet of 14th and Grove Streets.

The State presented sufficient evidence from which the jury could reasonably infer that Price committed dealing in cocaine within 1,000 feet of school property on August 24, 2009. Price’s argument to the contrary amounts to an invitation to reweigh the evidence and the credibility of the witnesses, which we will not do.

c. Count 5

Price further argues that the State “presented no evidence that would prove that there was any agreement or conspiracy to deal drugs with Nevels, Harris or anyone else.” Price’s Br. at 17. We disagree.

Indiana Code section 35-41-5-2(a) provides that a “person conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony.” The three elements needed to prove conspiracy are: (1) the defendant intended to commit the felony; (2) the defendant agreed with another person to commit the felony; and (3) either the defendant or the other person performed an overt act in furtherance of the conspiracy. I.C. § 35-41-5-2.

[T]he State is not required to establish the existence of a formal express agreement to prove a conspiracy. “It is sufficient if the minds of the parties meet understandingly to bring about an intelligent and deliberate agreement to commit the offense.” An agreement can be inferred from circumstantial evidence, which may include the overt acts of the parties in furtherance of the criminal act. Likewise, to determine whether the defendant had the requisite intent to commit the crime alleged, “[t]he trier of fact must usually resort to circumstantial evidence or reasonable inferences drawn from examination of the circumstances surrounding the crime.”

Dickenson v. State, 835 N.E.2d 542, 552 (Ind. Ct. App. 2005) (internal citations omitted).

As discussed, the record shows that both Nevels and Price shared a residence; both Nevels and Price participated in the drug buy on August 24, 2009; Price gave Carey access to 1416 Alabama Street on August 25, 2009, and was present when Carey and Nevels exchanged crack cocaine for cash; Price possessed substantially more than three grams of crack cocaine; Price was carrying a large amount of cash when he was arrested; and officers recovered drug paraphernalia, including baggies commonly used to package crack cocaine, from the residence that Price shared with Nevels. Thus, we find sufficient

evidence from which the jury could reasonably infer that Price committed conspiracy to commit dealing in cocaine.

3. Sentencing

Price asserts that the trial court erred in sentencing him. Specifically, he argues that the trial court found improper aggravating circumstances; failed to consider his age as a mitigating circumstance; and that his sentence is inappropriate.

A sentence that is within the statutory range is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). A trial court may abuse its discretion if the sentencing statement

explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law.

Id. at 490-91. However, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion. *Id.*

a. *Aggravating circumstances*

Price maintains that the trial court abused its discretion in finding his lack of community ties and seriousness of the crime as aggravating circumstances. Price, however, does not dispute his criminal history, including a prior felony conviction.

A single circumstance may be sufficient to support an enhanced sentence. *Edwards v. State*, 842 N.E.2d 849, 855 (Ind. Ct. App. 2006). Here, the record clearly supports the finding of Price’s criminal history, including a felony conviction, as an aggravating circumstance.⁴ Accordingly, we find any error in the finding of aggravating circumstances to be harmless.

b. *Mitigating circumstance*

Price also argues that the trial court abused its discretion in not finding age to be a significant mitigating circumstance.

The failure to find a mitigating circumstance clearly supported by the record may imply that the trial court overlooked the circumstance. The trial court, however, is not obligated to consider “alleged mitigating factors that are highly disputable in nature, weight, or significance.” The trial court need enumerate only those mitigating circumstances it finds to be significant. On appeal, a defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record.

Rawson v. State, 865 N.E.2d 1049, 1056 (Ind. Ct. App. 2007) (internal citations omitted).

It is clear from the sentencing statement that the trial court considered Price’s age as a mitigating factor but did not find it to be significant. The trial court stated, “I’m going to disregard your age, it’s not a mitigating factor. You’re old enough to take full responsibility and to be fully mature in your decision making.” (Tr. Vol. 4 at 47). As to

⁴ We note this court has held that lack of community ties “is more properly considered as reflecting the offender’s character for the purpose of sentencing,” as an offender’s community ties “assist[s] the trial court in determining whether the offender is suitable for community corrections or probation and when an offender lacks those ties, the trial court is less able to make an accurate determination of the offender’s character.” *Lamar v. State*, 915 N.E.2d 193, 196 (Ind. Ct. App. 2009).

the weight assigned to this mitigating circumstance, it is not subject to review for abuse of discretion. *See Anglemyer*, 868 N.E.2d at 490. Thus, we find no abuse of discretion.

c. Inappropriate sentence

Price also asserts that his sentence is inappropriate “given the relatively minor amount of drugs seized”; “the fact that [he] was not in possession of, nor used the guns seized at the home”; and “no drugs were found on [his] person.” Price’s Br. at 15. Again, we disagree.

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant’s burden to “persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” *Anglemyer*, 868 N.E.2d at 494 (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

In determining whether a sentence is inappropriate, the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081. The advisory sentence for a class A felony is thirty years. I.C. § 35-50-2-4. The potential maximum sentence is fifty years. *Id.* Here, the trial court sentenced Price to concurrent sentences of forty years for each class A felony conviction.

As to the nature of Price’s offense, the record discloses that he possessed more than twenty-five grams of crack cocaine and actively participated in drug buys. Evidence found in his and Nevels’ home and trash, including several plastic baggies and a scale,

indicated that they dealt drugs on an ongoing basis. Furthermore, this activity took place near an elementary school.

As to Price's character, this is not his first felony conviction. He has a criminal history of convictions, charges, and arrests. Thus, Price clearly has a disregard for the law. *See, e.g., Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) (finding that a defendant's record of arrests "may be relevant to the trial court's assessment of the defendant's character in terms of the risk that he will commit another crime"). We therefore cannot say that his total sentence of forty years is inappropriate.

Affirmed.

NAJAM, J., and BAILEY, J., concur.