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IN THE COURT OF APPEALS OF INDIANA

DARNELL C. MILLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0611-CR-523
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0603-FA-14

September 4, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Darnell C. Miller ("Miller") appeals his convictions for Class A felony dealing in a schedule I, II, or III controlled substance. Specifically, he contends that he was not predisposed to commit the crime; therefore, the State failed to disprove the defense of entrapment beyond a reasonable doubt. Because the State presented sufficient evidence to rebut Miller's defense of entrapment, we affirm.

Facts and Procedural History

Kimberly Seiss ("Detective Seiss"), an undercover narcotics detective with the Fort Wayne Police Department, was working with Confidential Informant #1345 ("CI") to purchase narcotics in controlled transactions. The CI knew Miller sold narcotics and agreed to assist Detective Seiss by arranging narcotics purchases from him.

On February 21, 2006, Detective Seiss, through her CI, purchased marijuana, which she referred to as "weed," from Miller. Tr. p. 202. The CI arranged a transaction at Pontiac Mall, where Miller was working as a barber. Miller came out of the mall with a bag and met the CI. Then, both men entered Detective Seiss' undercover vehicle. Miller produced a bag of marijuana, Miller and the CI discussed the "good" quality of the drug, and Detective Seiss purchased the marijuana for $350.00. *Id*. at 173. The CI discussed purchasing more marijuana from Miller in their next encounter. Also, Miller asked if Detective Seiss had a friend to whom she could introduce him.

One week later, on February 28, 2006, the CI facilitated another purchase of narcotics from Miller at Pontiac Mall, and this time $600.00 was exchanged for one-half pound of marijuana. Detective Seiss asked Miller if he could obtain some ecstasy, which

she referred to as "X." *Id*. at 202. Miller said he could get it. Again, Miller inquired about Detective Seiss' friend and indicated that he wanted to meet her.

The CI arranged for a third purchase of narcotics from Miller on March 3, 2006. Detective Teresa Smith ("Detective Smith") portrayed the female "friend" that Miller wanted to meet and accompanied Detective Seiss and the CI to the mall. Miller arrived in a GMC Jimmy driven by another individual and went into the mall. The CI followed Miller into the mall. Subsequently, the CI left the mall and entered the undercover vehicle. Shortly thereafter, Miller came out of the mall and entered the undercover vehicle. Miller then produced two plastic baggies containing ecstasy that he referred to as "the sex kind." *Id*. at 198. The detectives paid Miller $600.00 for the pills, discussed purchasing more marijuana, and asked if they could get a better price on the ecstasy next time. Miller told Detective Seiss that she could get a better price at their next transaction. *Id*. at 200. Moreover, Miller also said yes when Detective Smith asked if she could get a "jar" of ecstasy next time.[1] *Id*. at 254.

On March 8, 2006, Detective Seiss and the CI made arrangements to purchase a "jar" of ecstasy. Detective Seiss, Detective Smith, and the CI again waited for Miller in the mall parking lot. The CI went into the mall two or three times to locate Miller, but he was busy cutting hair. Subsequently, Miller arrived in an Impala, driven by the same individual from the March 3rd buy. Miller exited the car, went into the trunk of the Impala, and obtained a white plastic grocery bag. Miller then met the CI outside the mall

[1] A jar of ecstasy is 100 pills.

in plain view of Detective Seiss and Detective Smith. Immediately following, both men went directly to and entered the undercover vehicle.

Miller only had nine ecstasy pills in the bag and apologized for not having the 100 that the detectives had ordered. Additionally, Miller had one-half pound of marijuana but asked the detectives to come back later to make the marijuana purchase because the drug was not properly "broken down and weighed" yet. *Id*. at 213. Consequently, Detective Smith purchased the nine ecstasy pills for a total of $220.00. After the purchase, Miller exited Detective Seiss' undercover vehicle and was arrested.

The State charged Miller with two counts of Class A felony dealing in a schedule I, II, or III controlled substance;[2] one count of Class D felony possession of marijuana;[3] and two counts of dealing in marijuana.[4] At his jury trial, Miller testified that he was a marijuana dealer; however, he denied being a pill dealer. *Id*. at 352. Additionally, Miller testified that the CI supplied him with the ecstasy pills that he sold to the detectives. *Id*. at 368. Following trial, Miller was found guilty as charged on all counts. The trial court imposed a sentence of thirty years each on Counts I and III (the controlled substance counts); one and one-half years on Count II; four years on Count IV; and four years on Count V. The trial court ordered the sentences to be served concurrently. Miller now appeals.

[2] Ind. Code § 35-48-4-2.

[3] Ind. Code § 35-48-4-11.

[4] Ind. Code § 35-48-4-10.

Discussion and Decision

Miller admitted dealing in marijuana and therefore does not challenge those convictions on appeal. Instead, Miller challenges his convictions for dealing in a schedule I, II, or III controlled substance, arguing that the State presented insufficient evidence to rebut his defense of entrapment. When this Court reviews a claim of entrapment, we use the "same standard that applies to other challenges to the sufficiency of evidence." *Ferge v. State*, 764 N.E.2d 268, 270 (Ind. Ct. App. 2002) (citing *Dockery v. State*, 644 N.E.2d 573, 578 (Ind. 1994)). That is, we do not reweigh the evidence or judge the credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id*.

The defense of entrapment is set forth in Indiana Code § 35-41-3-9, which provides:

> (a) It is a defense that:
>
> > (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.

Once the entrapment defense is raised, the State bears the burden of showing that the defendant was predisposed to commit the crime beyond a reasonable doubt. *Dockery*, 644 N.E.2d at 577. Miller argues that the State failed to do so. We disagree.

Factors that indicate a predisposition to sell drugs include "a knowledge of drug prices, knowledge of drug sources and suppliers, uses and understanding of terminology of the drug market, solicitation of future drug sales, and multiple sales." *Jordan v. State*, 692 N.E.2d 481, 484 (Ind. Ct. App. 1998) (citing *Dockery*, 644 N.E.2d at 577).

In the present case, the evidence shows that Miller had ample understanding of drug prices and was able to access both marijuana and ecstasy so as to complete four narcotic transactions in the short time span of two weeks. In fact, Detective Seiss explained that the prices for the narcotics at every purchase were consistent with her experience and knowledge as a detective. Tr. p. 200-01. Additionally, during the buys, Miller discussed future transactions. Miller told the detectives that he could supply them with ecstasy and followed through on that promise. He knew and understood the slang words "X" and "weed." He knew what a "jar" was, he indicated that the ecstasy he sold was "the sex kind," and he described his marijuana as "good." Furthermore, he knew how to "break down" and "weigh" the marijuana.

Thus, the evidence most favorable to the judgment is that Miller was familiar with drug jargon and prices and that he engaged in multiple transactions. These facts are sufficient to show a predisposition to deal in controlled substances. *See, e.g., Riley v. State*, 711 N.E.2d 489, 494 (Ind. 1999) (familiarity with drug jargon and prices, engaging in multiple transactions, and undertaking to arrange future transactions among circumstances which support conviction); *Martin v. State*, 537 N.E.2d 491, 495 (Ind. 1989) (familiarity with drug jargon and two sales to undercover officers sufficient to demonstrate predisposition to sell drugs).

Nevertheless, Miller contends that because the detectives solicited the ecstasy, he was entrapped. However, "[e]ven if the State initiates the transaction, entrapment will not exist if the police informant merely provided an opportunity for the defendant to carry out his natural propensity to commit a crime." *Wallace v. State*, 498 N.E.2d 961, 964 (Ind. 1986). Notwithstanding Miller's argument that he was entrapped and not predisposed to sell pills, the evidence reveals no reluctance whatsoever on his part to sell the ecstasy on March 3rd or March 8th. Thus, the evidence is sufficient to show that Miller was predisposed to sell ecstasy and that the police "merely provided him with the opportunity to do so." *See Moore v. State*, 471 N.E.2d 684, 689 (Ind. 1984) (finding sufficient evidence that the Defendant was predisposed to sell both marijuana and cocaine, despite his contention that he was only predisposed to sell marijuana, because he showed no reluctance to sell the cocaine).

Miller also maintains that the CI provided him with the pills that he sold to the detectives. Although Detective Seiss testified that the CI and Miller were alone in the mall at the same time on March 3rd and March 8th, the jury heard Miller's testimony that the CI supplied him with the ecstasy pills and chose to discredit it. Miller is simply asking us to reweigh the evidence and judge the credibility of the witnesses. This we will not do. The state presented sufficient evidence that Miller was predisposed to commit the crime of dealing in ecstasy, thereby rebutting his entrapment defense. We therefore affirm his convictions for Class A felony dealing in a schedule I, II, or III controlled substance.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.