

STATEMENT OF THE CASE

Adrian Johnson appeals his conviction for Dealing in Cocaine, as a Class B felony, following a jury trial. He presents two issues for our review:

1. Whether the trial court abused its discretion when it denied his motion to strike a portion of the charging information.
2. Whether the State presented sufficient evidence to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 23, 2006, Fort Wayne Police Department undercover Detective Craig Wise and a confidential informant (“CI”) drove to a motel in Fort Wayne. Once inside the lobby, the CI telephoned room number 219 in the motel, and a man who identified himself as “Dray” answered the phone. The CI asked whether he and Detective Wise could buy crack cocaine, and Dray responded that they should “swing on through.” Transcript at 95.

When Detective Wise and the CI knocked on the door of Room 219, Jason Crozier answered the door and invited them inside. Once inside, Detective Wise observed Johnson, who was known as “Dray,” exiting the bathroom accompanied by a woman holding a white tissue. The woman thanked Johnson and left the room. Crozier then asked Detective Wise how much crack cocaine he and the CI wanted to buy, and they responded “forty” and “twenty,” respectively, indicating how much money’s worth of crack cocaine they each wanted to purchase. They gave Crozier the money, and Crozier and Johnson entered the bathroom.

Detective Wise could hear Crozier talking in the bathroom, but he could not make out what he was saying. A short time later, Crozier exited the bathroom and handed the CI two baggies of crack cocaine. Johnson also exited the bathroom, and he was holding \$60 in cash. As Detective Wise and the CI were leaving, Johnson told the CI not to “bring any new people” to the motel room again. *Id.* at 100.

The State charged Johnson with dealing in cocaine, as a Class B felony. A jury found Johnson guilty as charged, and the trial court entered judgment accordingly. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Information

Johnson first contends that the trial court abused its discretion when it denied his motion to strike a portion of the charging information. The information read as follows:

On or about the 23rd day of February, 2006, in the County of Allen and in the State of Indiana, said defendant, Adrian Lemont Johnson, did, while acting in concert with Jason Crozier, knowingly or intentionally deliver to CI 596 and/or Craig Wise . . . Cocaine, pure or adulterated[.]

Appellant’s App. at 9. At the beginning of trial, Johnson moved the trial court to strike the language, “while acting in concert with Jason Crozier.” Transcript at 6. In support of his motion to strike, Johnson’s counsel argued:

There is no statutory basis that I know of for language of that kind trying to define by statute if it’s accomplice liability theory. The statute—I.C. 35-41-2-4(a)—inducing and causing, that is the accomplice liability standard. “In concert,” it seems to me, is a lesser standard and as such should be stricken. I understand that the theory of the case is that Mr. Johnson and another individual were there on February 23, 2006, but the words “while acting in concert with Jason Crozier” has no statutory basis in terms of charging someone with an offense.

Transcript at 6-7.

But Johnson did not object to the information prior to trial. As the State correctly points out, a defendant alleging a deficient information must move to dismiss the information prior to the omnibus date, or the issue is waived. See Brown v. State, 442 N.E.2d 1109, 1114 (Ind. 1982). Our supreme court explained the reasons for the rule: “If the indictment is defective there will be an opportunity to amend before trial, and expense and time-consuming efforts in a trial will thus not be lost.” Id. (quoting Brown v. State, 254 Ind. 504, 260 N.E.2d 876, 877 (1970)). Here, Johnson’s motion to strike alleges that the information is deficient in that it does not conform to the accomplice liability statute. Because he waited until trial to make that challenge, the issue is waived.

Waiver notwithstanding, Indiana Code Section 35-34-1-2(a)(2) provides that an information shall allege the commission of an offense by stating the name of the offense in the words of the statute “or any other words conveying the same meaning[.]” There was nothing misleading about the language “in concert with Jason Crozier.” Moreover, the State was not required to allege accomplice liability in the information. See Wise v. State, 719 N.E.2d 1192, 1199 (Ind. 1999). We hold that the information was not deficient. The trial court did not abuse its discretion when it denied Johnson’s motion to strike.

Issue Two: Sufficiency of the Evidence

Johnson next contends that the evidence is insufficient to support his conviction. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind.

2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Johnson maintains that “only by speculation could the jury have concluded that Johnson, alone or with Crozier, was the source of the cocaine that Crozier delivered to the confidential informant and Detective Wise.” Brief of Appellant at 15. And Johnson asserts that a conviction cannot be based on speculation. But, in his closing statement, the Prosecutor argued that Johnson and Crozier “acted together” in dealing the cocaine. Transcript at 149. And on appeal, the State points out that the evidence supports, at least, a determination that Johnson was Crozier’s accomplice. We agree with the State.

In Indiana, there is no distinction between the responsibility of a principal and an accomplice. Wise v. State, 719 N.E.2d 1192, 1198 (Ind. 1999). Under the accomplice liability statute, a person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense. Ind. Code § 35-41-2-4. Where evidence indicates an accomplice acted in concert with those who physically committed the elements of the crime, the evidence is sufficient to support a conviction on the accessory theory. Taylor v. State, 578 N.E.2d 664, 666 (Ind. 1991). Factors considered by the factfinder to determine whether a defendant aided another in the commission of a crime include: (1) presence at the scene of the crime; (2) companionship with another engaged in a crime; (3) failure to oppose the commission of the crime; and (4) the course of conduct before, during, and after the occurrence of the crime. B.K.C. v. State, 781

N.E.2d 1157, 1164 (Ind. Ct. App. 2003). The evidence presented at trial clearly supports the first three factors.

With regard to the fourth factor, the State presented the following evidence: Johnson invited the CI and Detective Wise up to the motel room by telephone when the CI stated they wanted to purchase crack cocaine; Johnson was in the bathroom with a woman smoking crack cocaine just before they arrived; the woman was carrying a tissue carefully in her hands, and she thanked Johnson; Johnson was in the bathroom when Crozier went in the bathroom with the \$60 the CI and Detective Wise had given him; Detective Wise heard Crozier talking and the sound of a plastic baggie being handled in the bathroom; after Crozier came out of the bathroom and handed the CI the crack cocaine, Johnson followed, holding \$60 in cash; and Johnson instructed the CI not to “bring any new people” back to the motel. Transcript at 100. We hold that the evidence is sufficient to show that Johnson was, at least, an accomplice to Crozier in conducting the sale of crack cocaine to the CI and Detective Wise. Johnson’s contentions on appeal amount to a request that we reweigh the evidence, which we will not do. The evidence is sufficient to support Johnson’s conviction.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.