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**IN THE
COURT OF APPEALS OF INDIANA**

KOREAN U. DANIELS,

Appellant,

vs.

STATE OF INDIANA,

Appellee.

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No. 02A03-0706-CR-298

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth Scheibenberger, Judge
Cause No. 02D04-0512-FB-176

December 3, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Korean Daniels (“Daniels”) was convicted in Allen Superior Court of Class B felony dealing in cocaine and sentenced to eight years executed in the Indiana Department of Correction. Daniels appeals and argues that the doctrine of equitable estoppel requires that his conviction be reversed. We affirm.

Facts and Procedural History

On March 29, 2005, Fort Wayne Police Detective Steven Espinoza (“Detective Espinoza”) attempted to contact an individual named Ed to arrange the purchase of crack cocaine, but instead made contact with Daniels. Detective Espinoza asked Daniels if he could purchase a “forty,” meaning forty dollars of crack cocaine. Daniels arranged to meet Detective Espinoza, and the detective then purchased crack cocaine from Daniels.

Two days later, Detective Espinoza discussed the transaction with another detective who told Detective Espinoza that he had used Daniels as an informant in the past. Daniels was asked and agreed to become an informant again. Detective Espinoza told Daniels that if he produced information that resulted in “some arrests,” his cooperation and assistance would be “presented to the prosecutor and that it was up to the prosecutor to alleviate any kind of charges.” Tr. p. 23. After Daniels was read his Miranda rights and signed a waiver of those rights, he gave the detectives names of four individuals from whom they could purchase crack cocaine. Daniels also took the detective to a location for an introduction to one of these individuals, but no introduction was made. A warrant was issued for Daniels’s arrest after his failure to introduce the detectives to any of the individuals identified.

On December 27, 2005, Daniels was charged with Class B felony dealing in cocaine. A bench trial was held on December 18, 2006. The court found Daniels guilty as charged and ordered him to serve eight years executed in the Department of Correction. Daniels now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Daniels argues that “[p]rosecution of Appellant was illegal and in violation of the Doctrine of Equitable Estoppel” due to his agreement with Detective Espinoza. Br. of Appellant at 5. Estoppel is a “concept by which one’s own acts or conduct prevents the claiming of a right to the detriment of another party who was entitled to and did rely on the conduct.” Brown v. Branch, 758 N.E.2d 48, 52 (Ind. 2001).

In support of his argument, Daniels relies on Bowers v. State, 500 N.E.2d 203 (Ind. 1986). In that case, Bowers entered into an oral agreement with a deputy prosecutor whereby the State would forego filing charges against Bowers if he would “provide information sufficient to obtain a search warrant for the residence of one Davy Williams.” Bowers supplied the requested information, which led to Williams’s arrest, however, the State charged Bowers with burglary. Bowers unsuccessfully moved to dismiss the charges due to his agreement with the deputy prosecutor, and subsequently filed an interlocutory appeal. Id.

Our supreme court agreed with Bowers and ordered the trial court to grant his motion to dismiss, stating, “by renegeing on his promise to abate criminal proceedings, the prosecutor’s conduct impaired the reliability and usefulness of an important prosecutorial tool and tended to undermine the integrity and credibility of the criminal justice system to

an extent compelling reversal in this case.” In so holding, the court noted, “the promise of a state official in his public capacity is a pledge of the public faith and is not to be lightly disregarded. The public justifiably expects the State, above all others, to keep its bond.” Id.

Unlike the facts presented in Bowers, Daniels did not have an agreement with a prosecutor, and Detective Espinoza did not promise that the State would forego filing charges against him. Detective Espinoza told Daniels that if he produced information that resulted in “some arrests,” his cooperation and assistance would be “presented to the prosecutor and that it was up to the prosecutor to alleviate any kind of charges.” Tr. p. 23. The detective’s “promise” is in accord with Indiana law. See Bowers, 500 N.E.2d at 204 (“It is well-settled that the decision whether or not to prosecute lies within the prosecutor’s discretion so long as the prosecutor has probable cause to believe that the accused has committed the offense.”). Moreover, Daniels did not provide any information to the detectives to aid them in arresting individuals engaged in dealing in narcotics or any other criminal activity. For all of these reasons, we reject Daniels’s claim that the doctrine of equitable estoppel requires that his conviction be reversed.¹

Affirmed.

NAJAM, J., and BRADFORD, J., concur.

¹ The State argues Daniels forfeited his right to challenge this issue by failing to file a motion to dismiss. However, Daniels’s entire defense at trial was based on the doctrine of equitable estoppel. See Tr. pp. 34-39.