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**IN THE
COURT OF APPEALS OF INDIANA**

TERRI COLE,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0708-CR-660
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0607-FC-123331

April 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Terri Cole appeals her conviction for Class C felony welfare fraud stemming from her receipt of Section 8 housing assistance. Specifically, Cole contends that the evidence is insufficient to prove that she knew her son was involved in criminal activity and let him live with her anyway and to prove that the amount of public assistance involved is \$2500 or more, which elevates the offense to a Class C felony. Finding that the State proved both elements, we affirm Cole's conviction.

Facts and Procedural History

Cole applied for Section 8 housing assistance in 1999. In 2000, the Indianapolis Housing Authority ("IHA") began assisting Cole with the rent on a residence located at 2705 North Parker Avenue in Indianapolis. Cole's son, Anthony Cole ("Anthony"), initially lived with her at the residence. Section 8 recipients are required to abide by various rules. Some of these rules are that the recipients must disclose all persons living at the residence and that the residents cannot engage in any drug-related criminal activity. In addition, Cole was informed that all recipients and residents must follow the Department of Housing and Urban Development's "One Strike, You're Out" rule, under which one may not engage in criminal activities.

On October 13, 2003, Anthony submitted a notarized document to the IHA, which provided that as of October 4, 2003, he no longer resided at 2705 North Parker. At some point, IHA welfare fraud investigator Marytza Toy received a tip that Anthony continued to live at 2705 North Parker despite his notice to the IHA that he had moved out, and Detective Toy began an investigation into the matter. Detective Toy discovered that

Anthony had been arrested numerous times both before and after October 13, 2003, including arrests for murder and drug possession, and that all of the police reports list his address as 2705 North Parker.

On July 7, 2006, the State charged Cole with Welfare Fraud as a Class C felony, and Theft as a Class D felony. The charging information for welfare fraud provides:

Terri Cole, on or about or between July 01, 2002 and May 30, 2006, did knowingly obtain public relief or assistance that is: Section 8 subsidized housing assistance payments, in an amount more than two thousand five hundred dollars (\$2,500), by concealing information from the Indianapolis Housing Agency, that is: household composition and/or income, and concealing criminal arrests of Anthony Cole, for the purpose of receiving public relief or assistance to which she was not entitled.

Appellant's App. p. 21, 31. In the same information, the State also charged Anthony and Cole's husband, Chekina Sylla, with welfare fraud and theft. A bench trial against Cole and her co-defendants was held on April 26, 2007. After the State presented its case in chief, Cole's attorney moved for judgment on the evidence, which the trial court denied. Cole was ultimately found guilty as charged. Thereafter, Cole filed a motion to reconsider, which the trial court also denied. Specifically, the trial court noted that although the State proceeded against Cole under two theories (one relating to her marriage to Sylla and the other relating to her son Anthony), the trial court convicted Cole based on the theory involving Anthony¹: "I convicted [Cole] because her son lived there when he should not and he lived there when she clearly knew he shouldn't have been because she left his name off of the paperwork." Tr. p. 200. At the sentencing hearing, the trial court merged Cole's theft conviction into her welfare fraud conviction,

¹ In fact, Sylla was acquitted of welfare fraud. Anthony, however, was convicted of welfare fraud. Anthony appealed his conviction for welfare fraud, and we affirmed. *Cole v. State*, No. 49A05-0708-CR-431 (Ind. Ct. App. Mar. 31, 2008).

sentenced Cole to two years for welfare fraud, and suspended the entire sentence to probation. In addition, the court ordered Cole to pay restitution to the IHA in the amount of \$2341.00. Cole then filed a motion to correct error, which was denied. Cole now appeals.

Discussion and Decision

Cole appeals her conviction for welfare fraud as a Class C felony. Specifically, she contends that the evidence is insufficient to support it. “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 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.” *Id.* “To preserve this structure, when appellate courts are confronted with conflicting evidence, 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 147 (quotation omitted). “It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence.” *Id.* (quotation omitted). “[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Id.* (quotation omitted).

In order to convict Cole of welfare fraud as a Class C felony as charged in this case, the State had to prove that she knowingly or intentionally concealed information for the purpose of receiving public relief or assistance to which she was not entitled in an

amount of \$2500 or more. Ind. Code § 35-43-5-7(a)(5), (b)(2). Cole argues that the evidence is insufficient to prove the following elements: that she concealed information for the purpose of receiving public assistance to which she was not entitled and that the amount of the public assistance involved is \$2500 or more.

We first address whether the State proved that Cole knowingly or intentionally concealed information for the purpose of receiving public assistance to which she was not entitled. As noted above, Section 8 recipients are required to abide by various rules, including disclosing all persons living at the residence and that residents cannot engage in criminal activity. At Cole's bench trial, the State argued that after Anthony allegedly moved out of his mother's residence at 2705 North Parker in October 2003, he was arrested numerous times and continued to live there. Specifically, the State introduced Exhibit 2, which contains, among other things, police reports from Anthony's arrests. Exhibit 2, which was admitted into evidence without objection, shows that Anthony was arrested on December 17, 2003, for driving while suspended, possession of cocaine, and possession of marijuana, and the police report lists his address as 2705 North Parker. On December 30, 2003, Anthony was again arrested for driving while suspended. Cole was present during this arrest, and she was allowed to drive the vehicle away from the scene. The police report for this incident lists 2705 North Parker as Anthony's address. On January 19, 2004, Anthony was shot and taken to the emergency room. The police report for the shooting lists 2705 North Parker as Anthony's address. On March 2, 2004, Anthony was arrested for driving while suspended, and the police report lists 2705 North Parker as his address. On March 23, 2004, Anthony was arrested for driving while

suspended, reckless driving, and operating a vehicle never having received a license, and the police report lists 2705 North Parker as his address. On May 14, 2004, Anthony was arrested on some outstanding warrants as well as for murder (based on an April 18, 2004, shooting), and the police report lists his address as 2705 North Parker. On May 25, 2005, Anthony was arrested for possession of marijuana and criminal trespass, and the police report lists his address as 2705 North Parker. On June 4, 2005, Anthony was again arrested for criminal trespass, and the police report lists his address as 2705 North Parker. On January 18, 2006, Anthony was arrested on an outstanding warrant, and the police report lists his address as 2705 North Parker. Finally, on March 30, 2006, Anthony was arrested for carrying a handgun without a license, and the police report lists his address as 2705 North Parker.

Exhibit 2 also contains several documents created by the Justice Information System of Indianapolis/Marion County. According to all of these documents, Anthony was interviewed on various dates (which appear to correspond with the dates of his arrests), at which time he stated that he lived at 2705 North Parker with Terri Cole and that he had lived there for various lengths of time. *See* Ex. p. 146, 155, 158, 167, 172, 174, 177. For example, during an interview on March 31, 2006, Anthony reported his address as 2705 North Parker and indicated that he had lived there for sixty months. *See id.* at 177. In addition, in response to Cole's motion for judgment on the evidence, the deputy prosecutor pointed out to the judge that when bond was considered in this case for Anthony, his address was given as 2705 North Parker. The judge then confirmed with the prosecutor that Anthony did indeed give his address as 2705 North Parker in this case.

See Tr. p. 129.² Cole, on the other hand, testified at trial that Anthony moved out of her residence in 2003 and that she was unaware of his criminal activity. We conclude that the evidence is sufficient to prove that Anthony lived at 2705 North Parker and that Cole knew about his criminal activity and let him live there anyway. That is, the record shows that for a period of over two years, each time Anthony was arrested, his address was listed in the police report as 2705 North Parker. And when Anthony was interviewed for these arrests, he gave his address as 2705 North Parker. In addition, Cole was present during one of Anthony's many arrests, which casts doubt on her assertion that she was unaware of her son's criminal activity.

As for Cole's argument that the State failed to prove that the amount of public assistance involved is \$2500 or more, which elevates this to a Class C felony, the record shows that the State introduced Exhibit 3, which was admitted into evidence without objection. Specifically, Exhibit 3 itemizes how much money the IHA paid on behalf of Cole from February 1, 2002, to May 1, 2006. Adding together those amounts from October 1, 2003 (Anthony allegedly moved out on October 4, 2003), to May 1, 2006, the IHA paid well over \$2500 on behalf of Cole. The evidence is sufficient to prove that the amount of public assistance involved is \$2500 or more. We therefore affirm Cole's conviction for welfare fraud as a Class C felony.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.

² Although this was a joint trial, because this is an appeal from Cole's conviction for welfare fraud and not Anthony's conviction for welfare fraud, we do not have the CCS from Anthony's case, which would presumably confirm this.