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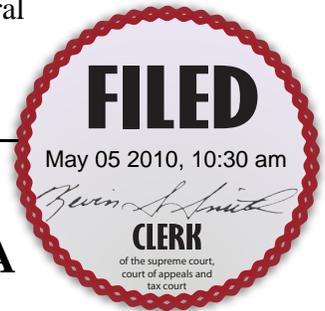
ATTORNEY FOR APPELLANT:

MATTHEW G. GRANTHAM
Bowers, Brewer, Garret & Wiley, LLP
Huntington, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

RICKY LEE LINES,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 35A05-0910-CR-583

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Jennifer E. Newton, Judge Pro Tempore
The Honorable Jeffrey R. Heffelfinger, Judge
Cause No. 35D01-0905-CM-340

May 5, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Ricky Lee Lines (Lines), appeals his conviction for trafficking with an inmate, a Class A misdemeanor, Ind. Code § 35-44-3-9(b).

We affirm.

ISSUES

Lines raises one issue for our review, which we restate as the following two:

- (1) Whether the trial court abused its discretion when it gave preliminary instruction number 8; and
- (2) Whether there was sufficient evidence that he intended to deliver the tobacco to an inmate.

FACTS AND PROCEDURAL HISTORY

On May 25, 2009, at approximately 11:50 p.m., Lines went to the Huntington County Jail to turn himself in on an outstanding warrant. As part of the standard procedure for processing inmates, Jail Officer Skyler Beard (Officer Beard) confiscated Lines' personal property and placed those items in a locked area. In addition, Officer Beard conducted a strip search to ensure that Lines was not hiding contraband in his body cavity. During the strip search, Officer Beard instructed Lines to squat with his arms out to the side and cough. As Lines coughed, a condom containing tobacco, rolling papers, and matches was ejected from his rectum. Officer Beard asked Lines what he planned to do with the tobacco and Lines replied that he was not going to smoke it because he did not smoke; rather, he was going to

sell it and use the money to purchase food because “times were tough.” (Transcript p. 123). Officer Beard took custody of the condom and its contents.

On May 27, 2009, the State filed an Information, charging Lines with trafficking with an inmate, a Class A misdemeanor, I.C. § 35-44-3-9(b). On September 10, 2009, a one-day jury trial was held. At trial, the trial court read preliminary instruction number 8 concerning culpability to the jury. Lines objected to the instruction on the grounds that it misstated the law and that it could confuse the jury. The trial court overruled Lines’ objection. Lines also objected to final instruction number 1 to the extent that it referred back and incorporated preliminary instruction number 8, and the trial court also overruled this objection. The jury found Lines guilty as charged. The trial court sentenced Lines to 365 days incarceration in the Department of Correction.

Lines now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Jury Instruction

Lines argues that the trial court abused its discretion when it improperly instructed the jury. Specifically, he contends that preliminary instruction number 8 gave the jury the choice to apply the “knowingly or intentionally” level of culpability to every material element of the offense.

The decision to give a jury instruction is generally within the trial court’s discretion, and we will therefore review such a decision for an abuse of discretion. *Baker v. State*, 922 N.E.2d 723, 729 (Ind. Ct. App. 2010). On appeal, we consider (1) whether the instruction

correctly states the law; (2) whether the evidence in the record supports the giving of the instruction; and (3) whether the substance of the tendered instruction is covered by other instructions that are given. *Id.* We consider jury instructions not in isolation, but as a whole, with reference to each other. *Id.* To obtain a reversal, a defendant must affirmatively demonstrate that the instruction error prejudiced his substantial rights. *Hall v. State*, 769 N.E.2d 250, 254 (Ind. Ct. App. 2003). Any error in giving jury instruction is subject to a harmless error analysis. *Randolph v. State*, 802 N.E.2d 1008, 1011 (Ind. Ct. App. 2004), *trans. denied*. Errors in refusing of instructions are harmless where a conviction is clearly sustained by the evidence and the instruction would not likely have impacted the jury’s verdict. *Id.* at 1013.

The record reflects that the trial court initially advised jurors to “consider all the instructions as a whole and are to regard each with the others given to you. Do not single out any certain sentence or any individual point or instruction and ignore the others.” (Appellant’s App. p. 30).

The trial court then gave preliminary instruction No. 6, which closely tracks I.C. § 35-44-3-9 trafficking with an inmate, which is set out as follows:¹

A person who, without the prior authorization of the person in charge of the penal facility knowingly or intentionally delivers, or carries into the penal facility with the intent to deliver, an article to an inmate of the facility; commits trafficking with an inmate, a Class A misdemeanor.

¹ Indiana Code section 35-44-3-9 defines trafficking with an inmate in relevant part, as follows:
... [A] person who, without the prior authorization of a person in charge of a penal facility . .
. knowingly or intentionally”
(1) delivers, or carries into the penal facility . . . with intent to deliver, an article to an
inmate

The trial court also gave preliminary instruction number 7, which set out the elements of the crime that the State was required to prove:

1. On or about May 25, 2009
2. in Huntington County, Indiana
3. said Defendant, Ricky Lines
4. did knowingly or intentionally
5. deliver, or carry an article into the penal facility
6. with the intent to deliver the article to an inmate of the facility, to wit: cellophane wrapped, condom encased cylindrical object containing cigarette tobacco, matches and rolling paper.

If the State fails to prove each of these elements beyond a reasonable doubt, you should find the Defendant, Ricky Lines not guilty.

If the State does prove each of these elements beyond a reasonable doubt, you may find the Defendant, Ricky Lines guilty of Count I: Trafficking With an Inmate, Class A misdemeanor.

(Appellant's App. pp. 34-35). The trial court then gave preliminary instruction number 8 concerning culpability, which states:

The culpability required for the offense charged is knowingly or intentionally.

A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

A person engages in conduct "intentionally" if, when he engages in conduct, it is his conscious objective to do so.

The culpability requirement for this offense is required with respect to every material element of the prohibited conduct.

(Appellant's App. p. 36). Lines challenges this preliminary instruction and final instruction number 1 to the extent that it incorporates preliminary instruction 8. He argues that the statute allows only for the intentionally level of culpability as to whether he carried the

tobacco with the intent to deliver, and the instruction allowed for a lower standard of culpability.

We cannot find that the trial court abused its discretion in giving preliminary instruction number 8 nor has Lines demonstrated that the instruction prejudiced his substantial rights.² Preliminary instruction number 8 simply restates I.C. § 35-41-2-2, which requires that a person knowingly or intentionally deliver or carry an item into the penal facility with the intent to deliver to another inmate. Despite the fact that the instruction states that the culpability requirement is required with respect to every material element, we fail to see how this statement was anything but harmless error. As discussed later, the evidence is more than sufficient to support Lines' conviction, as he admitted that he intended to trade the tobacco for money.

In addition, the trial court gave preliminary instruction number 4, which instructed the jury to consider the instructions as a whole and in relation to each other and that the jury was not to single out any certain sentence, individual point, or instruction and ignore the other instructions. The jury instructions repeatedly instructed the jury regarding the intent to deliver. It is presumed that juries follow the trial court's instructions. *Chandler v. State*, 581 N.E.2d 1233, 1237 (Ind. 1991). Thus, Lines has failed to demonstrate that the instruction error prejudiced his substantial rights.

² Because we find that the trial court did not abuse its discretion in giving preliminary instruction number 8, we need not address final jury instruction number 1.

II. *Sufficiency of the Evidence*

Lines also argues that there was insufficient evidence that he actually “delivered” the tobacco within the meaning of I.C. § 35-41-2-2 because Officer Beard retrieved the tobacco before he had an opportunity to sell it. In addition, Officer Beard could not identify an intended buyer. Thus, he contends that “the ‘intent’ component of the statute implies that the ‘intentionally’ state of culpability applies when the State alleges that a defendant carried contraband with the intent to deliver it.” (Appellant’s Br. p. 8).

Our standard of review for sufficiency claims is well established. We do not reweigh evidence nor judge the credibility of witnesses, and we consider only the evidence most favorable to the verdict and the reasonable inferences that can be drawn from that evidence. *Corbin v. State*, 840 N.E.2d 424, 428 (Ind. Ct. App. 2006). We will not disturb the judgment if there is substantial evidence or probative value to support the verdict. *Id.* In reviewing a challenge to the sufficiency of the evidence to support a conviction, we respect “the jury’s exclusive province to weigh conflicting evidence.” *Id.*

Intent is a mental function and, as such, must be inferred from the circumstances surrounding the event. *White v. State*, 772 N.E.2d 408, 412 (Ind. 2002). “[A]bsent an admission, the trier of fact must resort to reasonable inferences based upon an examination of the surrounding circumstances to determine whether, from the person’s conduct and natural consequences thereof, a showing or inference of intent to commit that conduct exists.” *Isom v. State*, 589 N.E.2d 245, 247 (Ind. Ct. App. 1992), *trans. denied*. Circumstantial evidence

showing possession with intent to deliver may support a conviction. *Love v. State*, 741 N.E.2d 789, 792 (Ind Ct. App. 2001), *trans. denied*.

Here, Lines admitted that he told Officer Beard that he brought the contraband into the jail with the intention of trading it with other inmates for money. Despite the fact that he was caught before he had the opportunity to actually deliver the tobacco, it is clear from his own comments that he acted knowingly and intentionally, as he admitted to bringing the tobacco into the jail with the intent to trade for money. Additionally, to the extent that Lines argues that the tobacco “could have been for personal use,” he is asking us to reweigh the evidence, which we will not do. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). Accordingly, there was sufficient evidence to support Lines’ conviction for trafficking with an inmate.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when it gave preliminary jury instruction number 8 and the evidence is sufficient to support his conviction.

Affirmed.

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