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**IN THE  
COURT OF APPEALS OF INDIANA**

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CORY DEVONN BEAVERS, )

Appellant-Defendant, )

vs. )

No. 20A03-0911-CR-523

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE ELKHART CIRCUIT COURT  
The Honorable Terry C. Shewmaker, Judge  
Cause No. 20C01-0811-FA-52

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**May 13, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Cory Devonn Beavers appeals his two convictions for Class A felony dealing in cocaine and aggregate sentence of forty-five years. He contends that the evidence is insufficient to support his convictions. He also contends that the trial court abused its discretion in sentencing him, his sentence is inappropriate, and Indiana should recognize the doctrine of sentencing entrapment. Finding the evidence sufficient to support his convictions, no abuse of discretion in sentencing, that Beavers has failed to persuade us that his sentence is inappropriate, and that Indiana does not recognize the doctrine of sentencing entrapment, we affirm.

## **Facts and Procedural History**

On November 5, 2008, a cooperating source, identified at trial as CS99023 (“CS”), contacted an undercover officer, identified at trial as UC193 (“UC”), with the Elkhart County Interdiction and Covert Enforcement Unit and told him that he could buy two eight balls of cocaine from an individual known to him only as “T.” UC met with CS and searched him to confirm that he had no money or contraband on his person. UC then gave CS \$300 in pre-recorded buy money and fitted him with an audio recording device. CS called T and arranged to meet him at a Kroger parking lot in Elkhart. Before the meeting, however, T moved the meeting place to Stevens Avenue, which was a few blocks away. UC drove CS to the meeting place in his van and parked near a street light.

Shortly after they parked, a green car arrived. T exited the passenger side of the green car. CS exited the van and met T in the middle of Stevens Avenue. T was upset because CS had brought UC, whom he did not know, to the exchange, but CS assured T

that it was okay. CS and T then walked to the passenger side of the van, where CS handed T the \$300 and T handed CS cocaine packaged in three baggies. The cocaine was later weighed and totaled 3.18 grams. CS entered the van, and T returned to the green car. CS then handed the cocaine to UC, and they drove to another location, where UC again searched CS and found no money or contraband.

On November 10, CS again contacted UC and told him that he could buy two more eight balls of cocaine from T. As before, CS called T and arranged to meet him at Kroger. UC searched CS and gave him \$300 of pre-recorded buy money. Again, T changed the meeting place to a different intersection on Stevens Avenue. UC and CS were the first to arrive and parked the van near a street light. A red truck arrived shortly thereafter. T exited the passenger side of the truck and walked directly to UC in the driver's seat of the van. UC rolled down his window, and T reached across UC to hand CS cocaine. The cocaine was later weighed and totaled 5.04 grams. CS handed T the \$300, and T left. CS then gave the cocaine to UC, and they drove to a separate location, where UC again searched CS and found no money or contraband.

After further investigation, the State charged Beavers with two counts of Class A felony dealing in cocaine. Ind. Code § 35-48-4-1(a)(1)(C), (b)(1) (three grams or more). The initial charging information, however, lists the defendant as "Darrell E. Phillips" because Beavers provided a false name to the police. His true name was not discovered until a December 2008 pretrial conference. The charging information was then amended to reflect his real name. A jury trial was held in August 2009, during which both UC and

CS identified Beavers as the person who sold them the cocaine. Beavers was found guilty as charged.

At the sentencing hearing, the trial court identified the following aggravators: (1) Beavers has two misdemeanor convictions in Michigan as well as one misdemeanor conviction which is considered a felony under Indiana law; (2) there are between two and four bench warrants for Beavers' arrest, and he has three pending cases; (3) Beavers committed this offense while on probation in Michigan; (4) Beavers used a false name to hinder the investigation in this case and has used the same false name in Ohio and Michigan; (5) there is at least one hold on Beavers from another jurisdiction; (6) Beavers is a gang member; and (7) Beavers gave false information to the preparer of his Presentence Investigation Report, which required corroboration and postponement of his sentencing hearing. The court identified the following mitigators: (1) Beavers' age of twenty-six years and (2) all statements of Beavers and his counsel. The court indicated it would have been willing to consider Beavers' addiction issues as a mitigator; however, Beavers said he had none. The trial court sentenced Beavers to forty-five years on each count and ordered the sentences to be served concurrently. The court ordered the sentence in this case to be served consecutive to any sentence imposed by the trial court in Saginaw County, Michigan. Beavers now appeals.

### **Discussion and Decision**

Beavers raises several issues on appeal, which we reorder as follows. First, he contends that the evidence is insufficient to support his convictions for dealing in cocaine. Second, he contends that the trial court abused its discretion in sentencing him.

Third, he contends that his sentence is inappropriate. Finally, he contends that Indiana should recognize the doctrine of sentencing entrapment.

### **I. Sufficiency of the Evidence**

Beavers contends that the evidence is insufficient to support both of his dealing in cocaine convictions because the “evidence fails to establish Beavers as the individual actually perpetrating these crimes.” Appellant’s Br. p. 8. When reviewing the sufficiency of the evidence, appellate courts must only consider the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). 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. *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.* Appellate courts affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* at 146-47 (quotation omitted). It is therefore not necessary that the evidence “overcome every reasonable hypothesis of innocence.” *Id.* at 147 (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 Beavers of dealing in cocaine, the State had to prove that he knowingly or intentionally delivered three or more grams of cocaine. I.C. § 35-48-4-1(a)(1)(C), (b)(1). The only element Beavers challenges on appeal is identity. Although both UC and CS identified Beavers at trial as the person who delivered 3.18 and 5.04 grams of cocaine on November 5 and 10, 2008, Beavers argues on appeal that the

controlled buys occurred in the evening when the lighting conditions were poor, Beavers was wearing a hooded sweatshirt, and the controlled buys were short in duration. Beavers also notes that neither the green car nor the red truck were registered to him and the phone he used did not trace back to him.

We find that these arguments are simply an invitation to reweigh the evidence, which we will not do. Two witnesses who personally interacted with Beavers identified him as the person who delivered the cocaine. UC and CS were present on both November 5 and 10. On both occasions, UC was careful to park near a street light. On November 5, Beavers and CS engaged in a heated discussion in the middle of the street before the exchange occurred because Beavers was upset that CS had brought along somebody he did not know. This prolonged the buy and the ability to observe Beavers. In addition, CS had interacted with Beavers three times before these controlled buys, including going on a walk with Beavers and his pit bull. And on November 10, Beavers reached across UC in the van to hand CS the cocaine and had a brief exchange with UC. As for some of Beavers' other arguments, the evidence shows that Beavers was a passenger in both cars, so it is of little significance that the vehicles were not registered to him. In addition, UC testified that it is not uncommon for drug dealers to use other people's phones to transact drug deals. The evidence is sufficient to prove that Beavers is the one who delivered three or more grams of cocaine on both November 5 and 10, 2008.

## **II. Sentencing**

### *A. Abuse of Discretion*

Beavers contends that the trial court abused its discretion in sentencing him to forty-five years, which is fifteen years above the advisory sentence for a Class A felony, for each count of dealing in cocaine. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* We review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id.* at 491.

We first note that Beavers' abuse of discretion argument acknowledges the trial court's long list of aggravators set forth in the facts section above. Significantly, he does not argue that any of the aggravators are improper or that the court failed to find any mitigators. Rather, he simply argues that there was nothing extraordinary about these controlled buys that warrant an above-advisory sentence. Beavers' short argument on this issue, *see* Appellant's Br. p. 19-20, is basically a veiled attempt to reweigh the aggravators and mitigators that the court did find. *Anglemyer* prohibits this. We thus proceed to address Beavers' inappropriate sentence argument.

#### *B. Inappropriate Sentence*

Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which

provides that a court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The burden is on the defendant to persuade us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offenses, Beavers argues that they are simply run-of-the-mill controlled buys, involving neither weapons nor violence, committed by a mid-level dealer. We agree.

However, Beavers’ character speaks volumes and supports his aggregate sentence of forty-five years. At the time of the offenses in this case, Beavers, twenty-six years old, had accumulated misdemeanor convictions in Michigan for malicious destruction of personal property (2000) and domestic battery (2001 and 2005). According to the trial court, the 2005 conviction is considered a felony under Indiana law. In addition, Beavers was on probation for the 2005 conviction at the time of the offenses in this case. A probation violation petition and bench warrant were subsequently issued in Michigan. Finally, Beavers had charges pending against him in Saginaw County, Michigan (felony robbery, misdemeanor domestic violence), and Defiance, Ohio (burglary, fraud, possession of cocaine—all felonies), at the time of the instant offenses. Appellant’s App. p. 120.

The record shows that Beavers routinely uses a false name to hamper investigative efforts. Indeed, he gave a false name to the police when he was arrested and booked in

this case. It was not until a December 2008 pretrial conference that he provided his real name. He also used this name in Michigan and Ohio. At an earlier sentencing hearing in this case, Beavers gave the trial court false information about his criminal history in Michigan and Ohio. The court stated, “And I am particularly disturbed by the fact, Mr. Beavers, that it appears under one scenario that you did, in fact, attempt to mislead the Court as to your identity, as to your criminal history, and as to the existence of outstanding warrants for your arrest, and the Court takes a dim view of that.” Tr. p. 296. Beavers’ easy recourse to dishonesty speaks poorly of his character. Instead of facing up to his crimes, Beavers has fled at least two jurisdictions and used a false name to evade efforts to locate him. In the process, he has managed to commit two Class A felonies in this state. Beavers has failed to persuade us that his sentence is inappropriate.

### *C. Sentencing Entrapment*

Finally, Beavers contends that Indiana should recognize the federal sentencing doctrine of sentencing entrapment and apply it to the facts of his case. Sentencing entrapment occurs in situations when a defendant who lacks a predisposition to engage in more serious crimes nevertheless does so as a result of “unrelenting government persistence.” *United States v. White*, 519 F.3d 342, 347 (7th Cir. 2008), *reh’g and reh’g en banc denied*. This doctrine has apparently been used in some of the federal circuits to authorize a sentence reduction in cases where the defendant, while predisposed to commit a lesser offense, is entrapped into committing a greater offense subject to greater punishment. *See United States v. Stauffer*, 38 F.3d 1103, 1106 (9th Cir. 1994). *But see United States v. Sanchez*, 138 F.3d 1410, 1414 (11th Cir. 1998) (rejecting sentencing

entrapment defense). Beavers argues that there is no evidence “in the record to establish that [he] was predisposed to deal in amounts of cocaine greater than three (3) grams, the threshold amount separating a Class B Felony from a Class A Felony.” Appellant’s Br. p. 21.

Indiana does not recognize this doctrine, and given the differences between the federal sentencing guidelines and our own system, Beavers provides no compelling reason why we should do so. Rather, under our system, the details surrounding the offense are properly considered under the nature of the offense prong of an inappropriate sentence analysis. Here, we properly considered that Beavers was a mid-level drug dealer and that these were State-sponsored buys. And as for Beavers’ argument that he was not inclined to deal over the threshold amount of three grams, he provides absolutely no evidence of that. We decline Beavers’ invitation to recognize this doctrine when Indiana law adequately addresses his concern in our Appellate Rule 7(B) analysis.

Affirmed.

NAJAM, J., and BROWN, J., concur.