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IN THE
COURT OF APPEALS OF INDIANA

RONALD LEE PHARES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 73A04-1008-CR-523
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE SHELBY SUPERIOR COURT
The Honorable Jack A. Tandy, Judge
Cause No. 73D01-0909-FA-15

May 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Ronald Phares appeals his two convictions for Class A felony dealing in cocaine and his conviction for Class C felony corrupt business influence. We affirm in part, reverse in part, and remand.

Issues

Phares raises three issues, which we consolidate and restate as:

I. whether there is sufficient evidence to support his convictions; and

II. whether the trial court properly rejected his request to move his chair so he could view a video with the jury.

Facts

In September 2009, Phares regularly drove from Shelbyville to Indianapolis, where he would use money provided by other people to purchase cocaine. In exchange for his travels, Phares would use the purchased cocaine with the people he had bought it for.

On September 11, 2009, a confidential informant ("CI") contacted Mike Polston, a narcotics investigator with the Shelbyville Police Department, indicating he had made arrangements to purchase cocaine from Phares. In the meantime, Phares, who had been to Indianapolis earlier in the day to purchase cocaine with Victoria Theobald, made arrangements with Theobald for her to sell $20 worth of her cocaine to the CI. During a controlled buy, the CI purchased $20 worth of cocaine from Theobald within 1,000 feet of a housing complex. Theobald retained the $20.

On September 13, 2009, Phares and Nicole Root went to Indianapolis, where Phares used Root's money to purchase cocaine. When Root indicated she wanted to get rid of some of the cocaine they had purchased, Phares made arrangements with the CI for him to purchase cocaine from Root. On September 14, 2009, during a controlled buy, the CI purchased $100 of cocaine from Phares at Root's house, which was within 1,000 feet of a school. Root retained the $100.

On September 15, 2009, Phares made a statement to police in which he admitted to repeatedly driving to Indianapolis to buy cocaine for other people, including Theobald and Root, and admitted to making arrangements with the CI on behalf of Theobald and Root. Phares also explained that no money went into his pocket as a result of the transactions; he was "[j]ust getting high." Ex. 10 p. 22.

On September 17, 2009, the State charged Phares with two counts of Class A felony dealing in cocaine and one count of Class C felony corrupt business influence. A jury found Phares guilty as charged. He now appeals.

Analysis

Phares argues there is insufficient evidence to support his convictions. The standard of review for claims of insufficient evidence is well settled. We do not reweigh the evidence or judge the credibility of the witnesses, and we respect the jury's exclusive province to weigh conflicting evidence. Jackson v. State, 925 N.E.2d 369, 375 (Ind. 2010). We consider only the probative evidence and reasonable inferences supporting the verdict and affirm if the probative evidence and reasonable inferences drawn from the

evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

As charged, to convict Phares of Class A felony dealing in cocaine, the State was required to prove that he knowing or intentionally manufactured, financed the manufacture of, delivered, or financed the delivery of cocaine within 1,000 feet of school property or a family housing complex. See Ind. Code §35-48-4-1. The State pursued a theory of accomplice liability on both of the dealing charges. "A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense . . . ." I.C. § 35-41-2-4.

An accomplice can be held criminally liable for everything done by his or her confederates that is a probable and natural consequence of their common plan. Hauk v. State, 729 N.E.2d 994, 998 (Ind. 2000). "One can be charged as a principal and convicted on proof that he aided or abetted another in committing the crime." Hoskins v. State, 441 N.E.2d 419, 425 (Ind. 1982). In determining whether a defendant aided another in the commission of the crime, we consider his or her: (1) presence at the scene of the crime; (2) companionship with another at the scene of the 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. Kelly v. State, 719 N.E.2d 391, 396 (Ind. 1999). "There is no bright line rule in determining accomplice liability; the particular facts and circumstances of each case determine whether a person was an accomplice." Vitek v. State, 750 N.E.2d 346, 353 (Ind. 2001).

Regarding the September 11, 2009 charge, the State alleged that Phares knowingly or intentionally delivered cocaine within 1000 feet of a family housing complex and/or did aid, cause, or induce Theobald to do the same. In challenging the sufficiency of the evidence to support this conviction, Phares points out that Theobald was given the cocaine by another man who had gone to Indianapolis with Theobald and Phares that day, that she had contact with the CI and agreed to meet him, that she met the CI and sold him the cocaine, and that she kept the money from the sale.

According to the CI's testimony, the CI texted and talked to Phares that day about buying cocaine. They set up a meeting and, as the CI was walking toward Phares's house, Theobald met him on the street and sold him $20 worth of cocaine. Theobald testified that earlier that day she and Phares had driven to Indianapolis at least four times in her car to buy cocaine, that Phares arranged the deal with the CI, that another man handed her the cocaine she sold to the CI, that Phares forced her to make the deal, and that she got the money from the sale.

In his statement to police, Phares indicated that the CI contacted him about buying cocaine and that he referred the CI to Theobald. He stated that he "might have" told the CI "yeah, I'm here in town. And my girls got something." Ex. 10. p. 19. Phares went on to explain:

> I said, [Theobald] the boy's wanting to buy something off of ya. Well, tell him I'll sell him a twenty. I said here you tell him. I was in there getting high with David. She went and stood on the porch and . . . called him or text him by her self. Me and Dave sat inside the house. I was smoking. I get paranoid. So, I didn't even go out on the porch. Well, when

> she came back in fifteen to twenty minutes later she said she took care of it.

Id. Phares also indicated that Theobald texted the CI from Phares's phone.

From this evidence it is clear that Phares's participation was critical in obtaining the cocaine and facilitating the exchange between Theobald and the CI. There is sufficient evidence to support the dealing conviction based on a theory of accomplice liability regarding the September 11, 2009 incident.

Regarding the September 14, 2009 incident, the State alleged that, between September 11, 2009, and September 14, 2009, Phares did knowingly or intentionally deliver cocaine within 1,000 feet of a school and/or did aid, cause, or induce Root to do the same. Phares argues there is insufficient evidence to support the conviction because, during her testimony, Root admitted that she was high when the transaction took place and that she initially lied to police about where she got the drugs. Phares also points out that the video footage of the transaction was not conclusive and that the CI did not know whether he communicated with Phares by text or over the phone. This is nothing more than a request to reweigh the evidence.

The CI testified that on September 13, 2009, he made arrangements with Phares to buy $100 worth of cocaine the next morning. Root testified that she had traveled to Indianapolis with Phares to buy cocaine, that she bought too much and asked Phares to get rid of it, and that Phares made arrangements for the CI to purchase it. Root stated that on the morning of September 14, 2009, the CI came to her house, where she had been getting high with Phares, that Phares exchanged the cocaine for $100, and that Phares

gave her the $100. In his statement to police, Phares confirmed that he made arrangements for the CI to buy $100 worth of Root's cocaine and that he was there when the CI bought the cocaine.

Again, Phares was instrumental in obtaining the cocaine and facilitating the sale. This is sufficient evidence to support the dealing conviction based on a theory of accomplice liability regarding the September 14, 2009 incident.

Phares next argues that there is insufficient evidence to support his conviction for Class C felony corrupt business influence. The corrupt business influence statute provides:

> A person:
>
> > (1) who has knowingly or intentionally received any proceeds directly or indirectly derived from a pattern of racketeering activity, and who uses or invests those proceeds or the proceeds derived from them to acquire an interest in property or to establish or to operate an enterprise;
> >
> > (2) who through a pattern of racketeering activity, knowingly or intentionally acquires or maintains, either directly or indirectly, an interest in or control of property or an enterprise; or
> >
> > (3) who is employed by or associated with an enterprise, and who knowingly or intentionally conducts or otherwise participates in the activities of that enterprise through a pattern of racketeering activity;
>
> commits corrupt business influence, a Class C felony.

I.C. § 35-45-6-2.[1] "'Enterprise' means: (1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or (2) a union, an association, or a group, whether a legal entity or merely associated in fact." I.C. § 35-45-6-1(c).

The State argues, "Certainly the purpose of Phares' enterprise was small-time and limited to his own enjoyment and profit. But the statute defining corrupt business influence does not set a minimum standard for criminal ambition." Appellee's Br. p. 8. Regardless of Phares's criminal ambition, there is not sufficient evidence to support his conviction.

There is no evidence that Phares actually retained cash from the drug transactions or acquired cocaine separate from that which he used personally while with the individuals he took to Indianapolis. Nor is there evidence of any sort of business structure or enterprise separate from Phares's personal use of cocaine. Thus, we are not convinced that he acquired or maintained an interest in or control of property or an enterprise as required by Indiana Code Section 35-45-6-2(2). Further, there is no evidence that he received proceeds and used or invested those proceeds to acquire an interest in property or to operate an enterprise as required by Indiana Code Section 35-45-6-2(1). As such, there is insufficient evidence to support Phares's conviction for corrupt business influence.

II. Request to Move During Trial

[1] The charging information is not based on Indiana Code Section 35-45-6-2(3).

The September 14, 2009 transaction was recorded by the CI using a pen equipped with a video camera provided by police. However, the angle of the camera was such that the video revealed little detail of the transaction. During the trial, the State admitted the video of the transaction into evidence. When the video was played to the jury, Phares requested "to move over here to watch the video[.]" Tr. p. 207. The trial court denied the request, stating "I'd prefer you just stay, stay over there." Id. Defense counsel responded, "Okay. Thank you." Id.

Referring to the confrontation clauses of the United States and Indiana constitutions, Phares argues that he had a right to confront witnesses against him and had a right to observe the video as it was being played to the jury. "To preserve an error for appeal, a party must specifically identify the grounds for the objection at trial." McDowell v. State, 885 N.E.2d 1260, 1262 (Ind. 2008). "The purpose of the requirement for a specific and timely objection is to alert the trial court so that it may avoid error or promptly minimize harm from an error that might otherwise require reversal and result in a miscarriage of justice and a waste of time and resources." Id. Because Phares did not make specific objection based on his confrontation rights, this issue is not preserved.

Waiver notwithstanding, "not all constitutional error requires reversal." Stephenson v. State, 864 N.E.2d 1022, 1056 (Ind. 2007), cert. denied, 552 U.S. 1314, 128 S. Ct. 1871. On appeal, Phares provides no analysis of how showing the video to the jury while he remained at his location in the courtroom prejudiced him. Even assuming Phares could not see the video from his location, he does not contend that he was unaware of the content of the video or that the video shown to the jury was somehow

altered. Moreover, in the fact section of his brief, Phares acknowledges that the video "did not show any evidence of a transaction or that drugs were exchanged[.]" Appellant's Br. p. 5. In light of the overwhelming evidence of Phares's participation in the drug transactions, including his own statement, any error in manner in which the video was shown to the jury was harmless beyond a reasonable doubt. See Koenig v. State, 933 N.E.2d 1271, 1274 (Ind. 2010) (holding that a confrontation error was harmless beyond a reasonable doubt).

Conclusion

Although there is sufficient evidence to support Phares's convictions for dealing in cocaine, the evidence is insufficient to support his conviction for corrupt business influence. Phares did not preserve the issue of the manner in which the video was shown to the jury. Even if he had, any error was harmless beyond a reasonable doubt. We affirm in part, reverse in part, and remand.

Affirmed in part, reversed in part, and remanded.

RILEY, J., and DARDEN, J., concur.