

Case Summary

Christopher Cowans appeals his conviction for dealing in cocaine, a Class B felony. We affirm.

Issue

The issue before us is whether Cowans's conviction for dealing cocaine on September 8, 2005, is fatally inconsistent with his acquittal of alleged dealing on July 18, 2005, and the hung jury regarding alleged dealing on August 19, 2005.

Facts

Anissa Tyler, while serving as a confidential informant, participated in three controlled drug buys under the direction of the Anderson Police Department Drug Task Force. Tyler had worked with Detective Clifford Cole of the Drug Task Force in the past. She contacted Detective Cole on July 18, 2005, and told Cole that she "knew somebody who was dealing in crack cocaine and that I could probably have a chance to make a buy from him." Tr. p. 282. Tyler identified this seller as Cowans.

Detective Cole and other officers gave Tyler fifty dollars and outfitted her with an audio transmitter. After she made a call to the seller and officers resolved an electronics issue with the transmitter, officers drove Tyler to an area near Cowans's home and dropped her off. Tyler walked with a male subject down into a nearby alley. Detective Cole observed the interaction from approximately one half of a block away. Following the interaction, Tyler returned to the police vehicle and turned over two bags of cocaine to the officers. Detective Jake Brooks and Detective Cole testified that they did not see

an exchange of money for drugs. Both detectives also testified that Tyler was out of sight of their surveillance for a few minutes.

Tyler contacted officers again on August 19, 2005, and participated in another buy as a confidential informant. Officers provided \$100 for the buy and again outfitted her with an audio transmitter. Tyler was dropped off near Cowans's home. This time Tyler spent a few minutes inside the residence. When she emerged, she rode with Cowans on a yellow scooter. Tyler testified that the drug transaction was made while riding with Cowans on his yellow scooter. While on the scooter, Tyler was out of the visual range of Detective Cole and his partner. Tyler turned over a bag of cocaine to the officers when she returned.

The final buy, for which Cowans was convicted, occurred on September 8, 2005. Detective Cole photographed the bills with the serial numbers visible before providing Tyler with \$100 of buy money. The audio transmitter was put in place and Tyler used Detective Cole's cell phone to call Cowans. Shortly after the phone call, detectives dropped Tyler off near Cowans's home. Tyler rode with Cowans on his yellow scooter to a nearby alley. Officers briefly lost visual contact with the pair. During this time, the scooter noise disrupted the clarity of the audio surveillance. Tyler turned over a bag of cocaine to the officers when they picked her up.

Following the buy on September 8, 2005, officers executed a search warrant for Cowans's home. Officers found forty dollars of the buy money on Cowans's person. The other sixty dollars was recovered from a toy doll in the home. Officers also

recovered marijuana plant material and stems, blunts, and a digital scale with white residue.

The State charged Cowans with three counts of dealing in cocaine for the three buys, maintaining a common nuisance, and possession of marijuana. A jury found Cowans guilty of dealing in cocaine on September 8, 2005, maintaining a common nuisance, and possession of marijuana, but acquitted him of dealing in cocaine on July 18, 2005. The jury could not reach a verdict regarding the dealing in cocaine charge for the alleged buy on August 19, 2005.

Analysis

Cowans argues that his guilty verdict for dealing in cocaine on September 8, 2005, under Count I is not reconcilable with the acquittal for dealing in cocaine on July 18, 2005, under Count IV, and inability of the jury to render a verdict for dealing in cocaine on August 19, 2005, under Count V. Our supreme court has stated that “perfectly logical verdicts should not be demanded” and that “only extremely contradictory and irreconcilable verdicts warrant corrective action.” Marsh v. State, 271 Ind. 454, 393 N.E.2d 757, 761 (1979). We have explained that each count is treated and weighed separately by the jury at trial. Simmons v. State, 828 N.E.2d 449, 455 (Ind. Ct. App. 2005). A trial may result in convictions for some charges and acquittals on other charges. Id. Acknowledging that we will not engage in speculation regarding the jury’s rationale, even a seemingly inconsistent result will survive when the conviction is sufficiently supported by evidence. Id.

Here, testimony of Tyler, the officers, and physical evidence found at Cowans's residence sufficiently supported the conviction for dealing in cocaine on September 8, 2005. This challenged verdict is not extremely contradictory or irreconcilable and does not require any corrective action.

Cowans reliance on Owsley v. State, 769 N.E.2d 181 (Ind. Ct. App. 2002), trans. denied, is misplaced. In that case, acquittals for the possession of and dealing in cocaine and a conviction for conspiracy to commit dealing in cocaine were based on identical evidence and the same alleged drug buy. The only evidence offered to support these charges was the testimony of an undercover detective regarding what he observed of Owsley's actions during one alleged drug deal. Id. at 185-86. Essentially, the jury found that Owsley did not possess or deal in cocaine during an alleged drug buy on October 24, 2000, but that he was guilty of conspiracy to commit dealing in cocaine regarding the same alleged buy. Such a result could not be reconciled and we reversed Owsley's conspiracy conviction. Id. at 188.

Unlike the situation in Owsley, Cowans was tried for three different alleged drug sales on three different days. More importantly, the State presented different and additional evidence for the charges stemming from the September 8, 2005 buy. Following the September 8, 2005 buy, officers executed a search warrant and recovered drug paraphernalia and the buy money from Cowans's home. This type of corroborating evidence was not recovered or presented to support the charges for the buys on July 18 and August 19. Instead, the State relied on the testimony of Tyler and detectives who

admittedly only observed the buys from a distance. Physical evidence in the form of the cocaine in the plastic bags turned over by Tyler was also presented.

In considering the outcomes of these charges, it is logical to presume the jury wanted some corroborating evidence of Cowans's dealings in cocaine. The first two buys were supported mainly by Tyler's testimony. The third buy, however, which resulted in the guilty verdict, was corroborated by evidence recovered in the search. Additionally, the jury was free to believe some, but not all, of Tyler's testimony. Gantt v. State, 825 N.E.2d 874, 878 (Ind. Ct. App. 2005). The jury heard sufficient evidence to convict Cowans of dealing in cocaine on September 8, 2005 and this result does not require corrective action.

Conclusion

Cowans's conviction for dealing in cocaine on September 8, 2005, was not inconsistent with the acquittal and the hung jury for the other charged dealing in cocaine offenses on July 18, 2005 and August 19, 2005. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.