

**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

ATTORNEY FOR APPELLANT:

**MATTHEW JON McGOVERN**  
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**JUSTIN F. ROEBEL**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

VELVET VAUSHA, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 13A01-0607-CR-280  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

---

APPEAL FROM THE CRAWFORD CIRCUIT COURT  
The Honorable R. Michael Cloud, Special Judge  
Cause No. 13C01-0407-FA-1

---

**September 11, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Velvet Vausha appeals her convictions on two counts of Dealing in Methamphetamine,<sup>1</sup> a class A felony. Specifically, Vausha contends that the evidence was insufficient to support her convictions because the State failed to prove that she delivered or financed the delivery of methamphetamine. In the alternative, Vausha argues that even if the evidence is sufficient, she could not be convicted of both offenses in light of double jeopardy principles. Finally, Vausha argues that her thirty-year aggregate sentence was inappropriate when considering the nature of the offenses and her character.

While we conclude that the evidence was sufficient to support Vausha's convictions on both counts of dealing in methamphetamine, we find that double jeopardy principles precluded a judgment of conviction on both counts. We also conclude that Vausha's sentence was not inappropriate. Thus, we affirm in part, reverse in part, and remand this cause to the trial court with instructions to vacate Vausha's conviction on one of the dealing counts.

### FACTS

Sometime late in 2000, Martin Domeck purchased a home in Taswell next to the residence of Vausha and her husband, John. Sometime thereafter, Domeck and John entered into various business transactions that related to auto mechanic work. At some point, John approached Domeck and asked if he would be interested in selling methamphetamine that John was producing. After Domeck talked with his wife about John's proposal, Domeck "decided to go to the police." Tr. p. 519, 617.

---

<sup>1</sup> Ind. Code § 35-48-4-1.

During the afternoon of August 29, 2003, Domeck met with two undercover officers from the Indiana State Police Department. At that time, the officers told Domeck that he should not receive any drugs until he could be placed under surveillance. Later that day, Domeck told John that he had found several customers who were “interested in buying large quantities” of methamphetamine. Id. at 560. John began to quote prices, and he retrieved a coffee can from a shelf that was full of “rock” methamphetamine. Id. at 560-61. John poured some of the substance onto a piece of plastic and measured out twelve grams of the drug on a scale. Vausha retrieved a plastic bag, and John bagged the drugs. John then handed the bag to Domeck and told him to “take that to your people and show them that’s what my product is” and “[t]ell them I want a thousand dollars for it.” Id. at 561-62. However, Domeck responded that he did not want to be responsible for that much methamphetamine. John again told Domeck to take the drugs, but Domeck stated that he would rather bring the customers to John. At that point, Vausha commented, “why are you pressuring [Domeck] to take it . . . you shouldn’t even do that, you know, why do you want to even send that much anyhow? We can take it to Indianapolis and get rid of it.” Id. at 563-64. However, Domeck ultimately accepted the bag of methamphetamine and left the residence.

Later that evening, Domeck met with the Indiana State Police Officers and gave them the drugs. Although the officers were upset that Domeck had taken the bag, they field-tested

the substance and initially determined that it was methamphetamine. Subsequent laboratory testing confirmed that the substance was 11.74 grams of methamphetamine.

On September 2, 2003, the police officers outfitted Domeck with recording and transmitting equipment and sent Domeck back to the Vaushas' residence. The officers directed Domeck "to get a recording . . . [of] how [the previous transaction] went down." Id. at 578. In particular, the officers wanted John to acknowledge the weight of the drugs on the recording, and they encouraged Domeck to negotiate a lower price with the Vaushas. When Domeck arrived at the Vaushas' house, he explained to them that his buyers suggested using acetone in the manufacturing process to clean the product "because looks is everything." Ex. B at 8. John replied that he did not know how to perform such a procedure, and Vausha commented that John was "dead set in [his] ways." Id. The Vaushas then explained that when pieces were shaved from the methamphetamine, the substance "turns white." Id. Vausha removed a "sizeable size ball" of methamphetamine from her purse, shaved some of it off, and cut it up with a razor blade. Id. at 583. Domeck noticed that the methamphetamine turned from brown to white during the process. Vausha then offered the resulting line of methamphetamine to Domeck, but he declined. John then snorted the drug.

Domeck then explained to the Vaushas that his buyers did not believe that they could make an adequate profit if the purchase price for the twelve grams was \$1000 and that they wanted to pay only \$700. In response, Vausha stated, "that's fu\*\*ing ridiculous." Ex. B. at 11. All three of them then discussed the price, but Vausha "kind of took control of the situation." Tr. p. 586. In particular, Vausha suggested that the potential buyer probably had

not previously purchased drugs of such high quality, and stated they would not accept less than \$1000. Vausha also explained to Domeck that there were significant costs and risks associated with the methamphetamine manufacturing process. Vausha also commented that “we’re the ones taking the . . . risk here.” Id. And she specifically complained about how difficult it was for her to purchase the 600 cold pills needed for manufacturing, that it took an entire day to purchase enough pills, and that she was humiliated on one occasion when she was attempting to purchase the pills from the store. Finally, Vausha commented that she risked a twenty-year sentence and forfeiture of their possessions if they were ever caught.

Domeck began to leave because no agreement on the price had been reached. However, John approached Domeck outside of Vausha’s presence and stated that he would take \$800 for the drugs. As a result, Domeck met with police officers and was given \$900 to complete the transaction, with instructions that he was to purchase an additional gram of methamphetamine. Domeck returned to the Vaushas’ residence, paid John the money, and took the extra gram.

On July 23, 2004, Vausha was charged with conspiracy to commit dealing in methamphetamine and maintaining a common nuisance. Thereafter, on May 17, 2005, the State filed an additional charge of dealing in methamphetamine based on financing delivery, which was amended on October 3, 2005. Vausha was also charged on June 3, 2005, in a separate cause stemming from the same drug transaction, with dealing in methamphetamine based on delivery of the drug. The cases were consolidated, and the trial court ultimately

dismissed the conspiracy count. The charging informations for both dealing counts provided as follows:

[O]n or about August 29, 2003 in Crawford County, . . . Velvet Vausha, a person who, without a valid prescription or order of a practitioner acting in the course of his professional practice did knowingly or intentionally deliver methamphetamine, pure or adulterated said methamphetamine having a weight of three (3) grams or more, contrary to the form of the statutes in such cases made and provided by I.C. 35-48-4-1(a)(1) and against the peace and dignity of the State of Indiana.

Appellant's App. p. 147.

On or about September 2, 2003 in Crawford County, . . . Velvet Vausha . . . did knowingly or intentionally finance the delivery of methamphetamine, pure or adulterated, said methamphetamine having a weight of three (3) grams or more, contrary to the form of the statutes in such cases made and provided by I.C. 35-48-4-1(a)(1) and against the peace and dignity of the State of Indiana.

Id. at 201.

Following a jury trial that concluded on October 7, 2005, Vausha was found guilty of all charges. At the sentencing hearing, the trial court entered a judgment of conviction on all counts, but determined that the dealing convictions merged for purposes of sentencing. Thus, the trial court did not impose a separate sentence on the financing delivery count. As a result, Vausha was sentenced to thirty years on the other dealing charge, and to eighteen months for maintaining a common nuisance. Those sentences were ordered to run concurrently with each other.

In support of the sentence, the trial court noted Vausha's criminal history, the likelihood that she will commit another crime, and her failure to respond to prior periods of probation as aggravating circumstances. The trial court identified Vausha's ability to control

her addiction for the previous two years and the fact that she had led a law-abiding life during that period as mitigating factors. Vausha now appeals.

## DISCUSSION AND DECISION

### I. Sufficiency of the Evidence

Vausha argues that the evidence was insufficient to support her convictions for dealing in methamphetamine. Vausha maintains that the State failed to prove that she delivered or transferred the methamphetamine and that the other count of dealing with regard to financing the delivery of the drugs must be set aside because it was impossible for her to have financed the delivery on September 2, 2003, inasmuch as the methamphetamine had already been delivered on August 29, 2003. Moreover, Vausha claims that the conviction must be set aside because the evidence failed to demonstrate that she provided any funding for the delivery of the drugs.

#### A. Standard of Review

Our standard of review for sufficiency of the evidence claims is well settled. We will neither reweigh the evidence nor judge the credibility of witnesses. Snyder v. State, 655 N.E.2d 1238, 1240 (Ind. Ct. App. 1995). We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom, and if there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

#### B. Dealing—Delivery

In addressing Vausha's claim that her conviction for this offense must be set aside, we note that when an individual is committing an offense in concert with others, he or she can be

held criminally liable for the actions of his co-actors. See McGee v. State, 699 N.E.2d 264, 265 (Ind. 1998). More specifically, an “accomplice is criminally responsible for all acts committed by a confederate which are a probable and natural consequence” of their concerted actions. Id.; see also Ind. Code § 35-41-2-4. It is not necessary that the evidence demonstrate that the accomplice personally participated in the commission of each element of the offense. McGee, 699 N.E.2d at 265. Rather, evidence that the accomplice acted in concert with those who physically committed the elements of the crime is sufficient to support a conviction. Porter v. State, 715 N.E.2d 868, 870 (Ind. 1999).

As noted above, the charging information for the delivery offense provided in pertinent part that “on or about August 29, 2003, . . . Vausha, a person who, without a valid prescription or order of a practitioner acting in the course of his professional practice did knowingly or intentionally deliver methamphetamine, pure or adulterated said methamphetamine having a weight of three (3) grams or more.” Appellant’s App. p. 147; see also I.C. § 35-48-4-1(a)(1).

In this case, the evidence established that John delivered approximately twelve grams of methamphetamine to Domeck on August 29, 2003. Tr. p. 231-32. Vausha was present at the time of the delivery and provided John with the baggie used to package the drugs. Id. at 562. Moreover, Vausha argued with John as to whether Domeck should be given the drugs and suggested that “we can take it to Indianapolis and get rid of it.” Id. at 563-64 (emphasis added). Although Vausha contends that her innocence is established by her instructions to John not to deliver the drugs to Domeck, those instructions represent strong evidence of her

guilt, inasmuch as her comments and actions established her involvement with John in selling the drugs. Moreover, Vausha again became actively involved several days later during the price negotiations. Ex. B.

Although Vaushsa argues that her conviction must be reversed because she “resisted the deal at every turn,” appellant’s reply br. p. 9, the evidence also established that she produced a sizable ball of methamphetamine from her purse when Domeck expressed concern about the quality of the drugs. Tr. p. 583-85. Vausha demonstrated that the drugs changed color when cut, and she offered Domeck a “line” of the methamphetamine. Id. Based on the evidence of Vausha’s involvement with John in the sale of drugs—particularly the delivery and sale to Domeck—it was reasonable for the jury to find that Vausha was criminally liable for the delivery of the drug. Thus, we conclude that the evidence was sufficient to support her conviction for dealing with respect to the delivery of the methamphetamine.

### C. Dealing—Financing

As noted above, Vausha also challenges her conviction for the other count of dealing in methamphetamine with regard to her involvement in financing the transaction. Count III of the charging information provided that “on or about September 2, 2003 . . . Vausha did knowingly or intentionally finance the delivery of methamphetamine, pure or adulterated, said methamphetamine having a weight of three (3) grams or more.” Appellant’s App. p. 201.

Vausha initially argues that her conviction must be set aside because the State failed to prove its case because it was alleged that Vausha committed the offense on September 2, 2003, although the evidence at trial established that the delivery actually occurred on August 29, 2003. Appellant's Br. p. 17-18. Notwithstanding Vausha's contention, the charging information provided that the financing occurred "on or about" the alleged date, and it proceeded to identify the underlying transaction. Appellant's App. p. 201 (emphasis added). Moreover, we note that the State is only required to charge a defendant with sufficient specificity to inform him or her of the nature of the charge. Moody v. State, 448 N.E.2d 660, 662 (Ind. 1983). This court has recognized that "a variance between a charging instrument and the proof offered at trial is only fatal when it misleads the defendant in the preparation of his defense or is of such a degree as to likely place him in danger of double jeopardy." Woodfork v. State, 594 N.E.2d 468, 471 (Ind. Ct. App. 1992). In essence, Vausha has made no claim that there was confusion or concern that any alleged discrepancy in the charging information misled her or placed her in danger of future double jeopardy. As a result, Vausha's claim fails.

Vausha also contends that her conviction must be set aside because the evidence merely showed that she argued about the price and did not raise or provide any funds for the delivery of the methamphetamine. Notwithstanding this claim, Vausha's financial interest in the transaction was established by her conversation with Domeck and John. Specifically, as noted above, when Domeck presented the alleged buyer's offer to purchase the drugs at a lower price, Vausha replied "[t]hat's fu\*\*ing ridiculous." Ex. B at 11. All three of them

discussed the price, yet, as noted above, Vausha “kind of took control of the situation.” Id. at 10-12; Tr. p. 586.

After Vausha explained that there were significant costs and risks involved in the manufacturing of the drugs, she stated, “we’re the ones taking the, taking the risk here.” Tr. p. 586. Additionally, Vausha told Domeck that it was difficult for her to purchase the 600 cold pills that were needed to make the drugs, that it took an entire day to buy enough pills, and that she was humiliated in a store when she attempted to buy the cold pills. Ex. B at 18-19. From this evidence, the jury could reasonably infer that Vausha had a financial interest in the transaction and, therefore, committed dealing in methamphetamine based on her financing the delivery. As a result, the evidence was sufficient to support Vausha’s conviction for this offense.

## II. Double Jeopardy

Vausha next argues—and the State agrees—that even if the evidence was sufficient to support the convictions, double jeopardy principles preclude a conviction on both dealing offenses. Thus, Vausha maintains that one of the dealing offenses must be vacated.

First, we note that the trial court properly concluded that a conviction for delivering twelve grams of methamphetamine on August 29, 2003, and a separate conviction for financing the delivery of that same methamphetamine to the same person on September 2, 2003, presented a double jeopardy problem. See Scott v. State, 855 N.E.2d 1068, 1074 (Ind. Ct App. 2006) (holding that two convictions for possessing cocaine with intent to deliver and possessing the same cocaine within 1000 feet of a school violated Indiana’s double jeopardy

prohibition). However, while the trial court also correctly determined that Vausha's two convictions for dealing in methamphetamine had to be "merge[d] for purposes of sentencing," we note that the trial court entered separate judgments of conviction on both counts. Tr. p. 785, 879.

Our Supreme Court recently clarified that double jeopardy violations should be rectified through merger and a judgment of conviction should be entered only on the remaining count. In other words, the trial court should not enter judgment on multiple counts and then merge the sentences. Green v. State, 856 N.E.2d 703, 704 (Ind. 2006). The Green court observed that "a defendant's constitutional rights are violated when a court enters judgment twice for the same offense[.]" Here, because the trial court entered a judgment of conviction on both dealing offenses, we are compelled to remand this case to the trial court with instructions to vacate one of Vausha's dealing convictions.

### III. Sentencing

Finally, Vausha contends that she was improperly sentenced. Specifically, Vausha argues that the thirty-year aggregate sentence was inappropriate in light of the nature of the offenses and her character. As a result, Vausha maintains that her sentence should be revised from the thirty-year advisory sentence for dealing in methamphetamine as a class A felony to the minimum term of twenty years.<sup>2</sup>

---

<sup>2</sup> Indiana Code section 35-50-2-4 provides that "A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years."

In resolving this issue, we note that Indiana Appellate Rule 7(B) provides that this court has the constitutional authority to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender." However, sentence review under Appellate Rule 7(B) is very deferential to the trial court's decision, Martin v. State, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003), and we refrain from merely substituting our judgment for that of the trial court. Foster v. State, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

With regard to the nature of the offense, the record established that Vausha and her husband were operating a significant drug manufacturing operation based on Domeck's observation of an entire coffee can full of methamphetamine, as well as Vausha's possession of a sizable ball of methamphetamine. Tr. p. 560, 585. In our view, the nature of Vausha's offense supports the advisory sentence that the trial court imposed. In other words, Vausha's nature of the offense argument does not aid her claim that the sentence is inappropriate and should be reduced.

As for Vausha's character, the evidence shows that she has prior convictions for driving while intoxicated, possession of a controlled substance, and intimidation. Appellant's App. p. 387-88. Vausha has previously violated periods of probation, and she was on probation when she committed the instant offenses. Tr. p. 387-88, 391. Vausha also has a significant history of substance abuse, and she failed to complete previous court-

ordered substance abuse treatment programs. Moreover, Vausha failed several drug tests while on probation. Id. at 834; Appellant's App. p. 390. Finally, Vausha does not dispute the State's assertion that her nine-year-old daughter was present when the drugs were delivered to Domeck. Tr. p. 869.

In light of this evidence, it is apparent that Vausha has not been deterred from criminal conduct in light of her various contacts with the judicial system. Thus, when considering the nature of the offenses and Vausha's character, we cannot conclude that her sentence was inappropriate.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions to vacate one of Vausha's dealing convictions.

BAILEY, J., and VAIDIK, J., concur.