

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kriston Lamar Barbee,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 24, 2023

Court of Appeals Case No.
23A-CR-306

Appeal from the Lake Superior
Court

The Honorable Gina L. Jones,
Judge

Trial Court Cause No.
45G03-2208-F2-65

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Following a jury trial, the Lake Superior Court convicted Kriston Lamar Barbee of Level 3 felony dealing in cocaine, and Barbee admitted to being a habitual offender. The court ordered Barbee to serve an aggregate fourteen-year sentence executed in the Department of Correction. Barbee appeals his conviction, arguing that the State failed to present sufficient evidence to prove that he committed dealing in cocaine.

[2] We affirm.

Facts and Procedural History

[3] In January, February, and March 2022, officers with the Porter County Multi-Enforcement Group, a drug task force, set up and monitored controlled buys between Anthony Vottero, the confidential informant, and Barbee. In each instance, the officers picked Vottero up at his home, searched him for money and contraband, and outfitted him with video and audio recording devices. The officers then gave Vottero money to purchase crack cocaine. The officers took Vottero to the prearranged buy location, a house located on East 32nd Avenue in Gary, and Vottero and Barbee exchanged money for crack cocaine. Vottero then gave the cocaine to the officers facilitating the controlled drug buy.

[4] Specifically, on January 25, the officers gave Vottero \$100. Vottero met with Barbee at the house and gave him the money. Barbee gave Vottero 0.66 gram of crack cocaine, which Vottero gave to the officers, who then returned Vottero to his home. On February 16, the officers gave Vottero \$200. Vottero met with

Barbee at the same house and exchanged \$200 for 1.39 grams of crack cocaine. Finally, on March 1, the officers gave Vottero \$200 to purchase crack cocaine but also gave him \$200 to purchase heroin. When Vottero arrived at the same residence where he and Barbee had met previously, there were several people inside the house. Vottero attempted to buy heroin, but Barbee told him to wait because the heroin was in another location. Vottero did not want to wait at Barbee's house so he told him he would take "two orders of the girl," meaning cocaine. Tr. Vol. 2, p. 232; Ex. Vol., State's Ex. 4. Vottero gave Barbee \$400 and Barbee gave Vottero two bags of crack cocaine. Each bag weighed over two grams, but the combined weight was less than five grams.

[5] As a result of the three controlled buys, the State charged Barbee with two counts of Level 4 felony dealing in cocaine for the February and March controlled buys and one count of Level 5 felony dealing in cocaine for the January controlled buy. In addition, because Barbee had prior convictions for dealing in cocaine, the State filed charges enhancing the underlying charges to two counts of Level 3 dealing in cocaine and one count of Level 4 dealing in cocaine. The State also alleged that Barbee was a habitual offender.

[6] Barbee's jury trial commenced on December 12, 2022. The jury found Barbee guilty of the two Level 4 felony dealing counts resulting from the February and March controlled buys but not guilty of Level 5 felony dealing from the January controlled buy. The jury was dismissed, and the trial court held a guilty plea hearing on the Level 3 felony charges based on Barbee's prior dealing

convictions. Barbee pleaded guilty to those enhanced charges. Barbee also admitted to being a habitual offender.

[7] The trial court entered judgment of conviction on only Count I, the Level 3 felony dealing in cocaine charge from the March controlled buy. By agreement of the parties, the court vacated Barbee’s conviction on Count II. The court also adjudicated Barbee a habitual offender. The court ordered Barbee to serve an aggregate fourteen-year sentence in the Department of Correction.

[8] Barbee now appeals, arguing that the evidence is insufficient to support his conviction.

Standard of Review

[9] Our Supreme Court recently restated our well-established standard of review:

On a fundamental level, sufficiency-of-the-evidence arguments implicate a “deferential standard of review,” in which this Court will “neither reweigh the evidence nor judge witness credibility,” but lodge such matters in the special “province” and domain of the jury, which is best positioned to make fact-centric determinations. *See Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018). In reviewing the record, we examine “all the evidence and reasonable inferences supporting the verdict,” and thus “will affirm the conviction if probative evidence supports each element of the crime beyond a reasonable doubt.” *Id.*

Carmack v. State, 200 N.E.3d 452, 459 (Ind. 2023).

Discussion and Decision

[10] Barbee argues that the evidence is insufficient to support his conviction because Vottero's testimony was incredibly dubious. Specifically, he claims that Vottero's testimony identifying him as the person who sold him cocaine is incredibly dubious because the video of the March controlled buy is ambiguous and his testimony "was undoubtedly presented under coercive circumstances." Appellant's Br. at 8.

The incredible dubiousity rule allows the reviewing court to impinge upon the factfinder's responsibility to judge the credibility of witnesses when confronted with evidence that is "so unbelievable, incredible, or improbable that no reasonable person could ever reach a guilty verdict based upon that evidence alone." *Moore v. State*, 27 N.E.3d 749, 751 (Ind. 2015). The rule is applied in limited circumstances, namely where there is "[(1)] a sole testifying witness; [(2)] testimony that is inherently contradictory, equivocal, or the result of coercion; and [(3)] a complete absence of circumstantial evidence." *Id.* at 756. Application of the incredible dubiousity rule is "rare[,] and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). "[W]hile incredible dubiousity provides a standard that is 'not impossible' to meet, it is a 'difficult standard to meet, [and] one that requires great ambiguity and inconsistency in the evidence.'" *Moore*, 27 N.E.3d at 756 (quoting *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001)).

Smith v. State, 163 N.E.3d 925, 929 (Ind. Ct. App. 2021).

[11] At trial, Vottero unequivocally identified Barbee as the person he purchased cocaine from during the March controlled buy. Tr. Vol. 2. pp. 221-22, 225, 232-

33; Tr. Vol. 3, p. 5. Also, the video recording of the March controlled buy was admitted into evidence. Ex. Vol., State's Ex. 4. The video is direct evidence of Barbee's presence during the dealing transaction. *See* Appellant's Br. at 8 (conceding that the video established Barbee's presence in the home during the controlled buy). The video shows Barbee responding to Vottero's request to take "two orders of the girl" after Vottero decided he did not want to wait for heroin. Ex. Vol., State's Ex. 4.

[12] Vottero agreed to be a confidential informant after he was arrested for operating a vehicle while intoxicated and possession of paraphernalia by the State Police. In exchange for Vottero's cooperation with the drug task force, the State agreed not to file any charges for those offenses. Vottero's motive for participating in the controlled buy and giving testimony at trial does not render his testimony incredibly dubious. Vottero and the law enforcement officers who participated in the controlled buys testified about Vottero's arrest and the benefit he would receive for acting as a confidential informant and testifying at Barbee's trial. It was within the province of the jury to consider this evidence as they weighed the credibility of Vottero's testimony and it does not make his testimony incredibly dubious.

[13] Vottero's testimony was not equivocal or contradictory. And his testimony was corroborated by the law enforcement officer who participated in the March controlled buy and by the video and audio recording of that controlled buy.

[14] For all of these reasons, we conclude that sufficient evidence supports Barbee's conviction for Level 3 dealing in cocaine.

[15] Affirmed.

Vaidik, J., and Pyle, J., concur.