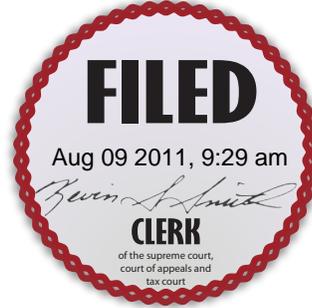


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**ZACHARY A. WITTE**  
Fort Wayne, Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**CYNTHIA L. PLOUGHE**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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ANDRE L. GORMAN,  
Appellant- Defendant,

vs.

STATE OF INDIANA,  
Appellee- Plaintiff,

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No. 02A04-1010-CR-640

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Kenneth R. Scheibenberger, Judge  
Cause No. 02D04-1006-FB-93

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**August 9, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Chief Judge**

## Case Summary and Issue

Following a jury trial, Andre Gorman was convicted of dealing in cocaine or narcotic drug, a Class B felony, possession of cocaine or narcotic drug, a Class D felony, and possession of paraphernalia, a Class A misdemeanor. Gorman appeals his conviction of dealing, raising one issue for our review: whether the State presented sufficient evidence to support his conviction.<sup>1</sup> Concluding there was sufficient evidence that Gorman delivered cocaine to another, we affirm.

## Facts and Procedural History

City of Fort Wayne Police Department undercover officer Sandra Kerschner received a telephone number from a confidential informant that put her in touch with Gorman as a potential source of drugs. Officer Kerschner contacted Gorman, introduced herself as “Mandy,” and asked if he could assist her in buying drugs. Gorman and Officer Kerschner arranged to meet on May 7, 2010. Officer Kerschner and another undercover officer picked Gorman up at his parents’ house on that date, and he advised them that he did not have any drugs on him, but if they drove him to another location, he could get drugs for them. Officer Kerschner testified that Gorman told them “he didn’t like to keep the product at his mother’s house [but] if he were staying at his own residence . . . that normally wouldn’t be a problem.” Transcript at 130. After driving to a couple of different locations, the officers began to feel uncomfortable and ended the encounter. The next day, Gorman left Officer Kerschner a voicemail apologizing for the “boo-boo” and saying that “it wouldn’t be an issue” if they got together again. *Id.* at 131. Officer Kerschner did not immediately return Gorman’s call, and he continued to leave

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<sup>1</sup> Gorman does not challenge his two possession convictions.

her voicemails and send her text messages over the next several days. Sometime between May 8 and May 29, Gorman sent a text asking, “[D]o you want to party? Yes or no.” Id. at 133. Officer Kerschner testified that “often times . . . that[’s] slang for do you want to do drugs” and she felt that was what Gorman meant. Id. On another occasion, Gorman left a voicemail in which he stated he was “in service,” which meant to Officer Kerschner that “he’s [sic] has cocaine and he’s selling it.” Id. at 135.

On May 29, 2010, Gorman told Officer Kerschner that he had drugs with him and they arranged to meet again at his parents’ house. Officer Kerschner told Gorman that she was on the far side of town and it would take her some time to get to him. When Officer Kerschner arrived in an unmarked vehicle wearing a wire to transmit the transaction, Gorman told her he had “used it up” because she had taken too long to get there. Id. at 142. Officer Kerschner told Gorman that she had forty dollars to spend and Gorman offered to “just go down the block to somebody that he knew that would have it.” Id. Gorman made multiple phone calls and instructed Officer Kerschner to drive to multiple locations until he eventually directed her to an address on Queen Street. Gorman motioned for Officer Kerschner to give him the buy money and exited the car for a couple of minutes. He returned with a clear plastic baggie containing an off-white rock-like substance that he said was fifty dollars worth of crack cocaine. Gorman told Officer Kerschner that he had added ten dollars of his own money and told her he was going to “break off a piece for himself.” Id. at 147-48. After taking a small piece, Gorman handed Officer Kerschner the baggie containing the remainder of the cocaine and she put it in her pocket. Gorman took out a pipe, put the cocaine in the pipe, and

began to light it. Officer Kerschner then gave the signal for other officers to move in and make an arrest.

Gorman was charged with dealing in cocaine or narcotic drug, a Class B felony; possession of cocaine or narcotic drug, a Class D felony; and possession of paraphernalia, a Class A misdemeanor. A jury found him guilty as charged, and the trial court ordered him to serve an aggregate sentence of twelve years. Gorman now appeals his conviction of dealing in cocaine or narcotic drug.

### Discussion and Decision

#### I. Standard of Review

Our standard of review for claims challenging the sufficiency of the evidence is well settled: we neither reweigh evidence nor judge witness credibility but consider only the evidence and reasonable inferences most favorable to the verdict. Hyche v. State, 934 N.E.2d 1176, 1178 (Ind. Ct. App. 2010), trans. denied. We will affirm the conviction unless no reasonable trier of fact could find the elements of the crime proven beyond a reasonable doubt. Id.

#### II. Evidence of Dealing

A person commits the crime of dealing in cocaine when he knowingly or intentionally “(A) manufactures; (B) finances the manufacture of; (C) delivers; or (D) finances the delivery of” cocaine, pure or adulterated. Ind. Code § 35-48-4-1(a)(1). “A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” Ind. Code § 35-41-2-2(b). “A person engages in conduct intentionally if, when he engages in the conduct, it is his conscious objective to do so.” Ind. Code § 35-41-2-2(a). The charging information in this case alleged Gorman

“did knowingly or intentionally deliver to Sandra Kerschner . . . [c]ocaine, pure or adulterated” on May 29, 2010. Appendix of Appellant at 8. Gorman contends the evidence is insufficient to prove he intentionally delivered cocaine to Officer Kerschner. Rather, he claims, “[t]he evidence is unmistakable that [he] intended to use drugs with Kerschner, not to sell or deliver drugs to her.” Appellant’s Brief at 10.

“Delivery” is defined as “(1) an actual or constructive transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship; or (2) the organizing or supervising of an activity described in subdivision (1).” Ind. Code § 35-48-1-11. Delivery merely requires the actual or constructive transfer of the controlled substance. Cline v. State, 860 N.E.2d 647, 650 (Ind. Ct. App. 2007). Gorman met with Officer Kerschner on May 29, 2010, to procure drugs for her. He had contacted her after an earlier attempt had fallen through and told her he was “in service.” Tr. at 135. In Officer Kerschner’s training and experience, this meant he had cocaine and was selling it. When she met him, he told her he no longer had the drugs, but she told him how much money she had and he told her he could get more. He directed her to a specific location, took her cash, and returned with a baggie containing crack cocaine. After breaking off a piece for his own use, he handed her the baggie containing the rest of the cocaine. Gorman’s contention regarding his “true intent” is merely a request that we reweigh the evidence in his favor. Regardless of whether he also intended to use the drugs with her, the State presented sufficient evidence that Gorman consciously transferred cocaine to Officer Kerschner. See Wilhelm v. State, 446 N.E.2d 621, 623 (Ind. Ct. App. 1983) (sufficient evidence of dealing by delivery when defendant transferred ten methaqualone tablets to undercover officer in exchange for thirty dollars).

### Conclusion

The State presented sufficient evidence that Gorman intentionally delivered crack cocaine to Officer Kerschner, and his conviction for dealing in cocaine is therefore affirmed.

Affirmed.

NAJAM, J., and CRONE, J., concur.