



Appellant-defendant Antonio Phillips appeals his conviction for Dealing in Cocaine<sup>1</sup>, a class A felony. Specifically, Phillips argues that there was insufficient evidence supporting the conviction, and that the trial court erred in denying defense counsel's motion for a mistrial. Finding the evidence to be sufficient and no error in the denial of Phillips's motion for mistrial, we affirm.

### FACTS

Prior to April 16, 2006, a confidential informant ("CI") contacted Detective Miguel Rivera regarding drug trafficking. As he is not typically involved in such cases, Detective Rivera forwarded the caller to Detective Gregory Addison. On April 16, 2008, CI telephoned Detective Addison and arranged for him to meet with Phillips for the purposes of a cocaine purchase. Later that day, Detective Addison drove his car to a motel. He carried with him \$150 in "buy" money. Tr. p. 125.

When Detective Addison arrived at the motel, Phillips got into Detective Addison's car. Detective Addison gave Phillips the buy money and Phillips gave the detective what appeared to be crack cocaine in exchange. Phillips got out of the car and, as Detective Addison was driving away, Detective Addison gave the "take down" signal to other officers waiting in the area. Tr. p. 129. The officers then arrested Phillips. The \$150 in buy money was found in Phillips's jacket pocket and \$367 was found in his pants pocket. A set of scales was found inside Phillips's car. The substance given to Detective Addison was subsequently tested and found to be 3.35 grams of crack cocaine.

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<sup>1</sup> Ind. Code §§ 35-48-4-1(a)(1)(C), -1(b)(1).

On April 22, 2008, Phillips was charged with class A felony dealing in cocaine. At trial, Phillips admitted to being at the motel on the day in question, but denied any involvement in the drug transaction. He claimed that he had never seen Detective Addison, that he had found \$150 in his motel room, and that the person he had spoken with in the car was Detective Rivera. Detective Rivera denied being present at the motel on April 16, 2008. Following Detective Rivera's testimony, Phillips began screaming at the judge and jury, claiming the ineffective assistance of counsel, and caused the court to excuse the jury from the room. Phillips's counsel requested a mistrial, but the motion was denied. When the jury returned, the trial court admonished them to disregard Phillips's outburst.

On November 14, 2008, Phillips was found guilty as charged and sentenced to thirty-five years imprisonment to be served consecutively to a prior sentence that had been imposed on an unrelated matter. Phillips now appeals.

### DISCUSSION AND DECISION

Phillips raises two issues in the appeal of his conviction.

- I. Phillips argues the trial court erred in denying his motion for mistrial following his outburst.
- II. Phillips argues that there was insufficient evidence to convict him of class A felony Dealing in Cocaine.

#### I. Denial of Motion for Mistrial

Phillips argues the trial court improperly denied his motion for mistrial. Specifically, he contends that because part of his outburst was aimed at the jury, the

court's denial of his motion for mistrial placed him in great peril, and the admonishment issued to the jury was not enough to remedy the situation. Granting or denying a motion for a mistrial is within the discretion of the trial court. McManus v. State, 814 N.E.2d 253, 260 (Ind. 2004). This court recognizes that the trial court is in the best position to gauge the impact of the conduct on the jury. Pittman v. State, 885 N.E.2d 1246, 1255 (Ind. 2008). Therefore, we afford great deference to the trial court's decision, and review the trial judge's decision solely for abuse of discretion. Id.; McManus, 814 N.E.2d at 260. "A mistrial is appropriate only when the questioned conduct is 'so prejudicial and inflammatory that [the defendant] was placed in a position of grave peril to which he should not have been subjected.'" Pittman, 885 N.E.2d at 1255 (quoting Mickens v. State, 742 N.E.2d 927, 929 (Ind. 2001)). Further, "the gravity of peril is measured by the conduct's probable persuasive effect on the jury." Id. A mistrial, therefore, is an extreme remedy, and only justified when other remedial measures are insufficient. McManus, 814 N.E.2d at 260.

Here, the conduct in question was Phillips's outburst following the testimony of Detective Rivera. Phillips's outburst implied he was dissatisfied with the level of representation he was receiving from his attorney and included derogatory remarks and cursing aimed at the court, his attorney, and the jury. During this outburst, the court asked that the jury be removed from the room. Phillips's counsel then moved for a mistrial, which was denied by the trial court.

We must begin our analysis of this outburst by determining whether an error has, in fact, occurred. Here, it is clear from the record that the outburst in question was solely

the act of Phillips. The conduct was in no way connected to the actions of the court or the prosecution. Our Supreme Court has held that “[a] defendant who creates his own cause for mistrial presents no error.” Avant v. State, 528 N.E.2d 74, 78 (Ind. 1988). Further, this court has noted the gross unfairness that would result by allowing a defendant to act in such a manner with the intention of securing himself a new trial. Evans v. State, 855 N.E.2d 378, 385 (Ind. Ct. App. 2006). Finding the conduct in question was solely the act of Phillips, we find no error on which a motion for mistrial may be granted.

Moreover, had Phillips’s conduct amounted to error sufficient to warrant a mistrial, he still must prove his conduct had a probable persuasive effect on the jury’s decision. Our Supreme Court has held that “reversible error is seldom found when the trial court has admonished the jury to disregard a statement made during the proceedings.” Warren v. State, 757 N.E.2d 995, 999 (Ind. 2001). Jurors are presumed to follow the court’s admonishments. Morgan v. State, 903 N.E.2d 1010, 1019 (Ind. Ct. App. 2009). Further, where the trial court properly admonishes the jury, it is presumed to cure any error that occurred. Harris v. State, 396 N.E.2d 674, 676 (Ind. 1979).

Here, upon their return to the courtroom, the jury was instructed by the court to disregard Phillips’s outburst when making their decision. Therefore, had Phillips’s conduct had a persuasive effect on the jury’s decision, it is presumed cured by the court’s subsequent admonishment. For these reasons, we cannot find that the trial court’s denial of the motion for mistrial was improper.

## II. Insufficient Evidence

Phillips challenges the sufficiency of the evidence to convict him for class A felony dealing in cocaine. Specifically, Phillips contends there is not enough evidence to establish that he is the individual who sold the crack-cocaine to Detective Addison. When a defendant challenges the sufficiency of the evidence, this court will neither reweigh the evidence nor evaluate witness credibility. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). In reviewing the case, we will consider only the evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We will affirm if the evidence and reasonable inferences could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. McHenry, 820 N.E.2d at 126.

Indiana Code section 35-48-4-1(a) provides that “[a] person who . . . knowingly or intentionally . . . delivers . . . cocaine or a narcotic drug, pure or adulterated, classified in schedule I or II . . . commits dealing in cocaine or a narcotic drug.” The offense is a class A felony if “the amount of the drug involved weighs three (3) grams or more.” I.C. § 35-48-4-1(b)(1).

Here, Phillips was positively identified at trial by Detective Addison as the man who sold him what was later identified as 3.35 grams of crack cocaine. Further, Phillips was arrested immediately following his transaction with Detective Addison. Detective Kirby, the arresting officer, testified that he and other officers maintained constant surveillance of the transaction up until the time of Phillips’s arrest. Finally, prior to the transaction, the \$150 buy money used by Detective Addison had been copied and was verified as the \$150 found in Phillips’s jacket pocket when he was arrested. Based on

this evidence, a reasonable factfinder could have concluded that Phillips knowingly or intentionally sold Detective Addison crack cocaine in an amount equal to or exceeding three grams. Therefore, we find the evidence sufficient to support Phillips's conviction for class A felony dealing in cocaine.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.