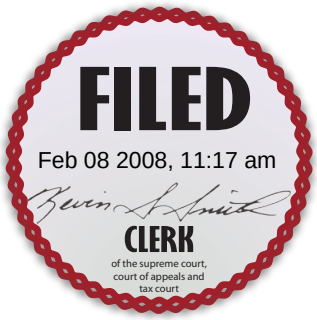

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IN THE
COURT OF APPEALS OF INDIANA

MACEO NEAL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0708-CR-412
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-0606-FA-28

February 8, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MAY, Judge

Maceo Neal appeals his convictions of and sentence for four counts of dealing in cocaine. Concluding the drugs Neal sold were properly admitted and his sentence is appropriate, we affirm.

FACTS AND PROCEDURAL HISTORY

Neal sold cocaine to Officer Michael Banner on four separate occasions between May 16, 2006 and June 19, 2006. Officer Banner was an undercover agent of the Metro Special Operations Section (MSOS), which is the narcotics unit of the South Bend Police Department (SBPD). Neal was charged with one count of dealing cocaine as a Class B felony[1] and three counts of dealing cocaine as Class A felonies.[2]

At trial, Officer Banner testified that after each purchase, he immediately took the drugs to MSOS.[3] At MSOS, he field tested the drugs, sealed them in an evidence bag, and labeled the bag. He left the sealed bags in a secure drop box at MSOS. The bags were admitted as State's Exhibits 1 through 4. Officer Banner identified the exhibits and testified they were in the same condition, except for where the bag had been opened by the forensic scientist at the Indiana State Police Laboratory (ISPL).

Officer Douglas Bagarus of MSOS identified two of the evidence bags, Exhibits 1 and 2. He testified he picked them up from a secure drop box at SBPD. They were sealed when he picked them up for transport to ISPL for testing.

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[1] Ind. Code § 35-48-4-1(a).

[2] I.C. § 35-48-4-1(b)(1).

[3] MSOS is not located within SBPD; the MSOS office is "off site." (Tr. at 205.)

Jerry Hetrick, a forensic scientist for ISPL, testified he retrieved the drugs from the ISPL vault in sealed evidence bags. He cut open each bag and removed the drugs for testing. After he tested the drugs, he returned them to the bags and heat-sealed them. He placed his initials over the heat seals. Hetrick identified Exhibits 1 through 4 and confirmed they were still sealed.

Officer Kathy Fulnecky of MSOS identified Exhibits 3 and 4 and testified she transported them from ISPL to SBPD's drug room, which is a secure location. She testified the evidence bags were sealed when she picked them up from ISPL.

A jury found Neal guilty of all four counts of dealing in cocaine. The trial court sentenced Neal to thirty years for each of the Class A felonies and ten years for the Class B felony.[4] The thirty-year sentences were to be served concurrently with each other, but consecutive to the ten-year sentence, for an aggregate sentence of forty years.

DISCUSSION AND DECISION

1. Chain of Custody

Neal argues the State failed to establish a continuous chain of custody for Exhibits 1 through 4, and therefore, their admission was erroneous. Specifically, he argues there is no evidence of how Exhibits 1 and 2 got from MSOS, where Officer Banner had taken them, to SBPD, where Officer Bagarus picked them up to take them to ISPL. He also argues there is no evidence of how Exhibits 3 and 4 got to ISPL.

[4] The advisory sentence for a Class A felony is thirty years. I.C. § 35-50-2-4. The advisory sentence for a Class B felony is ten years. I.C. § 35-50-2-5.

The decision to admit evidence is within the trial court's discretion. *Bacher v. State*, 686 N.E.2d 791, 793 (Ind. 1997). Physical evidence is admissible if "the evidence regarding its chain of custody strongly suggests the exact whereabouts of the evidence at all times." *Culver v. State*, 727 N.E.2d 1062, 1067 (Ind. 2000).

> That is, in substantiating a chain of custody, the State must give reasonable assurances that the property passed through various hands in an undisturbed condition. We have also held that the State need not establish a perfect chain of custody whereby any gaps go to the weight of the evidence and not to admissibility.

Id. (citations omitted). There is a presumption of regularity in the handling of exhibits by public officers. *Id.*

Although Neal has identified gaps in the chain of custody, those gaps go to the weight and not the admissibility of the evidence. The State offered testimony that Officer Banner took the drugs directly to MSOS, where he sealed them in evidence bags, and they were still sealed when they arrived at ISPL. Officer Bagarus and Hetrick testified ISPL does not accept evidence unless it is sealed. *See id.* (although FBI clerk who received evidence did not testify at trial, State established chain of custody through testimony concerning standard protocol in marking, sealing, and receiving evidence). Officer Banner and Hetrick identified all four bags and testified they were in the same condition. The State's evidence provides "reasonable assurances that the property passed through various hands in an undisturbed condition," *id*., and the trial court did not abuse its discretion by admitting Exhibits 1 through 4.

2. Appropriateness of Sentence

We may revise a sentence if it is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We give deference to the trial court's decision, recognizing the special expertise of the trial court in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied*. The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Neal argues the imposition of consecutive sentences was inappropriate under *Beno v. State*, 581 N.E.2d 922 (Ind. 1991). Beno sold cocaine to a police informant twice within four days. He was convicted of dealing in cocaine as a Class A felony, dealing in cocaine as a Class B felony, and maintaining a common nuisance as a Class D felony. The trial court imposed the maximum sentence for each offense and ordered them to be served consecutively. In sentencing Beno, the trial court stated it wanted to send "a very clear message to every person in the State." *Id*. at 923.

Our Supreme Court reduced Beno's sentence and imposed concurrent sentences. The Court reasoned:

> Beno was convicted of committing virtually identical crimes separated by only four days. Most importantly, the crimes were committed as a result of a police sting operation. As a result of this operation, Beno was hooked once. The State then chose to let out a little more line and hook Beno for a second offense. There is nothing that would have prevented the State from conducting any number of additional buys and thereby hook Beno for additional crimes with each subsequent sale. We understand the rationale behind conducting more than one buy during a sting operation, however, we do not consider it appropriate to then impose maximum and consecutive sentences for each additional violation.

Id. at 924.

Neal's case, however, is more analogous to *Pritscher v. State*, 675 N.E.2d 727 (Ind. Ct. App. 1996). Pritscher sold drugs to a police informant three times within two months. Pritscher pled guilty to three counts of dealing in cocaine as Class B felonies and was sentenced to thirty-eight years in prison and four years of probation. We affirmed the sentence, distinguishing *Beno* on several grounds: Pritscher sold drugs over a longer time frame, he was not given the maximum sentence on each count, and the trial court did not attempt to make an example out of Pritscher. Neal's case is distinguishable from *Beno* for the same reasons.

Neal received the advisory sentence for each offense. However, the trial court decided to order one sentence to be served consecutively to the others because of Neal's criminal history, which includes three felonies and seven misdemeanors. One valid aggravator is sufficient to justify consecutive sentences. *Dixon v. State*, 825 N.E.2d 1269, 1272 (Ind. Ct. App. 2005), *trans. denied* 841 N.E.2d 175 (Ind. 2005). Neal's case is distinguishable from *Beno*, and he has not argued his sentence was inappropriate on any other ground. Therefore, we affirm.

Affirmed.

KIRSCH, J., and RILEY, J., concur.