

# MEMORANDUM DECISION

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.



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# IN THE COURT OF APPEALS OF INDIANA

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Ryan D. Davis,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 3, 2021

Court of Appeals Case No.  
20A-CR-1895

Appeal from the Howard Circuit  
Court

The Honorable Lynn Murray, Judge

Trial Court Cause No.  
34C01-1911-F2-3530

**Baker, Senior Judge.**

[1] Appellant Ryan D. Davis appeals from his conviction for dealing in methamphetamine, a Level 2 felony,<sup>1</sup> following a jury trial. Davis argues that the trial court erred in admitting a video recording and still photographs of the drug buy. Concluding that the trial court's admission of this evidence was not reversible error, we affirm the trial court's judgment.

## Facts and Procedural History

[2] On May 30, June 3, June 5, and June 10, 2019, officers from the Kokomo Police Department worked with a confidential informant (CI) to conduct controlled drug buys from Davis. In charging Davis, the State alleged that on May 30 Davis sold heroin to the CI; on June 3 he sold methamphetamine and heroin to the CI; on June 5 Davis sold methamphetamine to the CI; and on June 10 he sold to the CI a substance represented to be methamphetamine. On each occasion, the CI was equipped with an audio and video recording device to capture the transaction. Based upon these incidents, the State charged Davis with Count 1 dealing in a narcotic drug, a Level 5 felony;<sup>2</sup> Count 2 dealing in methamphetamine, a Level 2 felony; Count 3 dealing in a substance represented to be a controlled substance, a Level 6 felony;<sup>3</sup> Count 4 dealing in

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<sup>1</sup> Ind. Code § 35-48-4-1.1 (2017).

<sup>2</sup> Ind. Code § 35-48-4-1 (2017).

<sup>3</sup> Ind. Code § 35-48-4-4.5 (2014).

methamphetamine, a Level 2 felony; and Count 5 dealing in a narcotic drug, a Level 5 felony.

- [3] At trial, the State introduced the video recordings of the May 30, June 5, and June 10 drug deals as well as still photos generated from the videos. The court admitted the still photos from the June 5 and June 10 buys over Davis' objection, and the remaining photos and videos were admitted without objection. A jury found Davis guilty of Counts 1, 2, and 3, and the court sentenced him to an aggregate sentence of twenty years. Davis now appeals his conviction of Count 2 dealing in methamphetamine on June 5.

## Discussion and Decision

- [4] Initially, Davis frames his issue on appeal as whether the trial court abused its discretion by admitting the video recordings of the controlled buys. However, in the argument section of his brief, Davis limits his argument to only the video of the June 5 controlled buy as well as expanding his argument to include the still photographs from that date. *See* Appellant's Br. pp. 9-10.
- [5] The trial court's ruling on the admission or exclusion of evidence is reviewed for an abuse of discretion. *Cherry v. State*, 57 N.E.3d 867, 875 (Ind. Ct. App. 2016), *trans. denied*. An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the court. *Paul v. State*, 971 N.E.2d 172, 175 (Ind. Ct. App. 2012).
- [6] Exhibit 9 is the still photos generated from the video recording of the controlled buy on June 5. Upon the State's motion to admit Exhibit 9, defense counsel

objected to the exhibit's foundation because "we've not had the law enforcement officers indicate that they were the ones who provided that particular video or audio recording equipment to this particular witness and that they were the ones who downloaded the information" and then the additional reason of "hearsay on top of hearsay." Tr. Vol. 2, pp. 102-03.

[7] Now on appeal, Davis has abandoned those arguments and instead points to instances in the CI's testimony where she could not recall details, arguing that "[a]lthough the CI authenticated every detail of the offered video and still photographs as true and accurate, the Trial Court should have considered her authentication in light of 'details' she could not remember." Appellant's Br. p. 9. A party may not object on one ground at trial and raise a different ground for error on appeal. *Fry v. State*, 25 N.E.3d 237, 246 (Ind. Ct. App. 2015), *trans. denied*. Davis has failed to establish the trial court abused its discretion by admitting Exhibit 9.

[8] We turn now to Exhibit 18, which is the video recording of the June 5 controlled drug buy. When the State moved for the admission of Exhibit 18, defense counsel responded, "No objection." Tr. Vol. 2, p. 166.<sup>4</sup> This Court will not review claims of error in the admission of evidence when a defendant expressly declares at trial that he has no objection. *Halliburton v. State*, 1 N.E.3d 670, 679 (Ind. 2013) ("The appellant cannot on the one hand state at trial that

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<sup>4</sup> We note that defense counsel gave the same response to the video recordings from the other two controlled buys. See Tr. Vol. 2, pp. 89, 173.

he has no objection to the admission of evidence and thereafter in this Court claim such admission to be erroneous.’”) (quoting *Harrison v. State*, 258 Ind. 359, 281 N.E.2d 98, 100 (1972)).

[9] The judgment of the trial court is affirmed.

Riley, J., and Vaidik, J., concur.