

# MEMORANDUM DECISION

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## ATTORNEY FOR APPELLANT

Clifford M. Robinson  
The Law Office of Clifford M.  
Robinson, LLC  
Rensselaer, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Nicole D. Wiggins  
Deputy Attorney General  
Indianapolis, Indiana

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# IN THE COURT OF APPEALS OF INDIANA

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Billie J. Minix,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

July 26, 2023

Court of Appeals Case No.  
22A-CR-191

Appeal from the Pulaski Circuit  
Court

The Honorable Mary C. Welker,  
Judge

Trial Court Cause No.  
66C01-1811-F3-16

## Memorandum Decision by Judge Pyle

Judges Bradford and Kenworthy concur.

**Pyle, Judge.**

## Statement of the Case

[1] Billie J. Minix (“Minix”) appeals, following a jury trial, his convictions for Level 3 felony aggravated battery,<sup>1</sup> Level 3 felony criminal confinement,<sup>2</sup> and Level 5 felony intimidation.<sup>3</sup> He argues that the trial court abused its discretion when it admitted evidence obtained during a warrantless search of the trailer where the offense occurred. Concluding that Minix has waived his challenge to the admission of the evidence by affirmatively stating that he had no objection to the admission of the evidence when it was introduced at trial, we affirm the trial court’s judgment.

[2] We affirm.

## Issue

Whether Minix has waived appellate review of his challenge to the admission of evidence obtained during a warrantless search of the trailer where the offense occurred.

## Facts<sup>4</sup>

[3] During the early evening on November 16, 2018, Jennifer Smith (“Smith”) and a friend, Russell Hendron (“Hendron”), who both were living in Starke County

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<sup>1</sup> IND. CODE § 35-42-2-1.5.

<sup>2</sup> I.C. § 35-42-3-3.

<sup>3</sup> I.C. § 35-45-2-1.

<sup>4</sup> We note that Minix has cited to and relied upon the probable cause affidavit in his Statement of Facts section of his appellate brief, and he has referenced facts in the probable cause affidavit that were not

at the time, went to a trailer in Pulaski County (“the trailer”). Melvin Zeiters, Jr. (“Zeiters”) owned the trailer and had agreed to rent it to Smith. Smith had been doing renovation work on the trailer for approximately two months and had planned to soon move into the trailer. The trailer had no heat and no water, and Smith and Hendron were going to work on the thermostat and furnace that evening. After arriving at the trailer, Hendron realized that he had forgotten his work light, and he left Smith at the trailer while he returned to Starke County to get the light.

[4] As Smith was in the living room and preparing to work on the thermostat, Minix “attacked” Smith from behind. (Tr. Vol. 3 at 228). Minix struck Smith on the head with a steel-toed boot. Minix “drug or manhandled” Smith and ordered her to sit on the couch. (Tr. Vol. 3 at 230). Minix continued to beat Smith by kicking her face with his steel-toed boots and by striking her head with a baseball bat, a broomstick, and a metal sign that Smith had had hanging on her wall. The broom broke off the broomstick after Minix had hit Smith with it a few times. When Minix kicked Smith’s face, she “started pouring blood everywhere out [her] nose” and had blood all over her face. (Tr. Vol. 3 at 238). Minix was “really angry” and was “ranting and raving about things that made no sense to” Smith. (Tr. Vol. 3 at 231). Minix “kept calling [Smith] a bitch” and struck her on her head “[a]t least a hundred” times. (Tr. Vol. 3 at 234).

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introduced at trial or during the motion to suppress hearing. We direct Minix’s attention to Indiana Appellate Rule 46(A)(6), regarding the proper content for a Statement of Facts.

Smith tried to protect her head and face by raising up her arms and legs. At one point, Minix hit Smith's leg with a baseball bat and broke her leg. Smith "thought for certain [that she] was getting murdered . . . [b]ecause [she] was being told that [she] was going to get wrapped in plastic." (Tr. Vol. 4 at 2).

[5] When Hendron returned to the trailer approximately two hours later, he found Smith crying and sitting on the couch. Smith told Hendron that she had been attacked, that her leg was broken, and that she needed to go to the hospital. Hendron helped Smith to the car and drove her to the Starke County Hospital. As a result of the attack, Smith suffered "extensive injury" to her head, face, and neck. (Tr. Vol. 4 at 189). Smith had multiple lacerations and a "long bone fracture of her tibia[.]" (Tr. Vol. 4 at 189). Smith also had nasal fractures and multiple contusions on her hands and arms.

[6] The Starke County Hospital informed the Starke County Sheriff's Department that there was a battery victim at the hospital. Starke County deputies went to the hospital and spoke to Smith, who informed the deputies that she had been attacked in the trailer in Pulaski County. Smith did not tell the deputies who had attacked her. Smith told the deputies that she had been hit with a baseball bat and steel-toed boots. Upon learning that the offense had taken place in Pulaski County, the Starke County deputies contacted the Pulaski County Sheriff's Department and spoke to Pulaski County Deputy Cody Foust ("Deputy Foust"). The Starke County deputies informed Deputy Foust of the situation and then went to the trailer to secure the perimeter until the Pulaski County deputies arrived.

[7] Once Deputy Foust and Pulaski County Deputy Phillip Foerg (“Deputy Foerg”) arrived at the scene, the deputies saw that the trailer’s front door was slightly ajar, and through the window of the front door, the deputies saw what looked like fresh blood on the couch in the living room. Deputy Foust and the other deputies decided to enter the trailer to do a “welfare check” and to make sure that there were not any other injured people inside the trailer. (Tr. Vol. 4 at 54). Deputy Foust activated his bodycam before entering the trailer. The deputies twice announced their presence and asked that anyone inside the trailer make his or her presence known. No one responded.

[8] After the deputies were inside the trailer, Minix came out of a bedroom and appeared in the hallway. Minix “stumbl[ed] a little bit” and smelled of alcohol. (Tr. Vol. 4 at 57). Minix was naked and wearing only some sort of “girdle” that consisted of straps that crossed his buttocks area and went above and under his penis, leaving his penis exposed. (Tr. Vol. 3 at 148). Minix “shout[ed]” at the deputies and asked them “why the F are you here[?]” (Tr. Vol. 3 at 148). The deputies saw dried blood on Minix’s hands, and Deputy Foust ordered Minix to get on the ground. Deputy Foerg handcuffed Minix, and Deputy Foust tried to look for clothing to dress Minix. Deputy Foust asked Minix where his pants were, and Minix “showed [Deputy Foust] the direction of which his pants were[.]” (Tr. Vol. 4 at 58). Minix told the deputies that his pants were “right in there[.]” indicating that they were in the bedroom. (State’s Ex. 9). When Deputy Foust went into the bedroom to get Minix’s pants, he saw a pair of jeans on the bedroom floor. The jeans “appeared to [have] dried blood” on

them, so Deputy Foust did not dress Minix in those pants. (Tr. Vol. 4 at 58). Deputy Foust left the jeans on the floor. When the deputies asked Minix where his clothes were, he stated that they were “in there, in the bedroom.” (State’s Ex. 9). While Deputy Foust was in the bedroom looking for Minix’s clothes, the deputy saw what he believed to be marijuana and a pipe. Deputy Foust left those items in the bedroom. Eventually, the deputies put underwear, pants, and a sweatshirt on Minix and took him to the living room.

[9] The deputies put Minix in a chair in the living room as they attempted to put socks on him. Minix then asked multiple times, “What is it, protect a whore night?” (Tr. Vol. 4 at 59; State’s Ex. 9). Minix also told the deputies “something along th[e] lines” that “he wasn’t going to hurt anyone and that the person [who] deserved it had already been hurt[.]” (Tr. Vol. 3 at 176). Minix then laughed loudly. In the living room, Deputy Foust found a pair of cowboy boots that appeared to have blood on them, so he did not put those on Minix. Instead, Deputy Foust put a pair of black boots on Minix’s feet. While in the living room, Deputy Foust saw blood on the couch, a pillow, and on the floor. He also saw a baseball bat and a wooden stick. Deputy Foust left all items in the living room. Deputy Foust took Minix out to his sheriff’s vehicle and transported him to the sheriff’s office. While at the station, Deputy Foust took photographs of Minix’s hands, which had dried blood on them.

[10] That evening, the Pulaski County deputies obtained a search warrant to search the trailer. Deputy Foust and other deputies executed the search warrant at the trailer and seized evidence. From the bedroom, the deputies seized Minix’s

jeans, a plant-like material that was later tested and determined to be marijuana, a pipe, and a pillow with blood spatter on it. The deputies also seized items found in the living room, such as Minix's boots, a bent broomstick that had blood on it, a baseball bat, a shirt that was covered in blood, and a multi-colored pillow with blood on it. The deputies also found and seized a plant-like substance that field-tested positive for marijuana and a pipe, both of which were on the coffee table.

[11] The State charged Minix with Count 1, Level 3 felony aggravated battery; Count 2, Level 3 felony criminal confinement; Count 3, Level 5 felony intimidation; Count 4, Class B misdemeanor possession of marijuana; and Count 5, Class B misdemeanor possession of paraphernalia. The State obtained a DNA sample from Minix and Smith. The DNA testing conducted on Minix's boot and jeans showed that they contained Smith's DNA, and the testing done on the broomstick showed that it contained Minix's and Smith's DNA.

[12] Prior to trial, Minix filed a motion to suppress, seeking to suppress "all evidence seized" and "all observations made by the arresting officer" during the warrantless search of the trailer. (App. Vol. 3 at 11). Additionally, Minix sought to suppress "all statements" made by Minix at the scene prior to

receiving a *Miranda* warning. (App. Vol. 3 at 11). Minix argued that there was no exception to the warrant requirement that justified the warrantless search.<sup>5</sup>

[13] During the suppression hearing, the State argued that exigent circumstances existed for the deputies to enter the trailer. Specifically, the State argued that there was a safety concern and a reasonable, objective basis to do an initial search to see if there was an injured person or anyone in need of emergency aid inside the trailer. Minix argued that the State had not shown that exigent circumstances existed and that the trial court should suppress any evidence obtained during the warrantless search and suppress the statements Minix had made, including Minix's response to the deputy's question about where Minix's clothes were.

[14] The trial court entered an order denying Minix's motion to suppress, concluding that exigent circumstances existed justifying the initial search of the trailer by the deputies. The trial court determined that the deputy's question to Minix about his clothing was not part of an interrogation and that Minix's clothing would have nevertheless been discovered during the normal course of a search under the search warrant.

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<sup>5</sup> Minix also filed a motion in limine, in which he sought to preclude the admission of evidence of his statements that he had made before receiving a *Miranda* warning. The trial court denied Minix's motion in limine, and Minix "is not appealing the denial of his Motion in Limine related to his pre-Miranda statements[.]" (Minix's Br. 8, n.2).



[15] In November 2021, the trial court held a four-day jury trial. The State presented witnesses, who testified to the facts as set forth above. Minix’s theory of defense was identification. In Minix’s opening statement, his counsel asserted that the State would not be able to meet its burden of proof because Smith was not going to be able to identify Minix as the person who had committed the offenses. During the State’s opening statement, it acknowledged that it would not be presenting eyewitness testimony to identify Minix but asserted that it would be presenting DNA evidence to identify Minix as the perpetrator.

[16] Smith and others testified that they knew Minix by a nickname. Specifically, Hendron testified that he knew Minix as “Tinker” and that he had known Minix for multiple decades. (Tr. Vol. 3 at 196). Hendron testified that, about two weeks before the evening that Smith had been attacked, Hendron had been at the trailer with Smith and that Minix had also been there to help with some renovation work. (Tr. Vol. 3 at 197).

[17] When the State asked Smith if the person who beat her was in the courtroom, Smith replied, “I can’t say for sure. I don’t – nothing’s popping out at me.” (Tr. Vol. 3 at 247). Smith testified that she remembered “certain details” of being attacked and beaten and that she did not remember if she had passed out. (Tr. Vol. 3 at 231). She testified that she did not recognize the person who had beaten her, but she described the perpetrator as “[r]eally angry, tattooed, muscle[d.]” (Tr. Vol. 3 at 232). Smith testified that she remembered that the person was a white male who was bald and had “a whole lot” of tattoos. (Tr.

Vol. 4 at 21). Smith testified that after she had been repeatedly struck on her head, she did not know what she was seeing. She stated that her “vision was pretty messed up[.]” (Tr. Vol. 4 at 26). Smith testified that her “perception . . . [and] [e]verything was distorted” at the time she was being attacked. (Tr. Vol. 4 at 20). She testified that she did not recall how the beating finally stopped or how long she was on the couch before Hendron had found her. Smith testified that she had had problems with her memory since she had been attacked in the trailer.

[18] At the beginning of the second day of the trial, Minix’s counsel told the trial court that he anticipated that the State would be introducing physical evidence at the trial that day and that Minix wanted to “continue [his] objection” to the initial search and seizure under the “Fourth Amendment[] and Indiana Constitution.” (Tr. Vol. 3 at 158). Minix’s counsel sought guidance from the trial court on whether Minix should object to each piece of evidence or whether the trial court would issue a “standing order[.]” (Tr. Vol. 3 at 158). The trial court informed Minix that it would “be appropriate for [him] to object” when the relevant evidence is being introduced and that “if [Minix] t[old] [the trial court] that it is a continuing objection,” then the trial court would “treat that as if [he] were objecting to everything as a result of . . . the initial . . . search.” (Tr. Vol. 3 at 158). The trial court then asked Minix’s counsel if he thought that process was “enough to protect [Minix’s] appellate rights[,]” and Minix’s counsel agreed that such specific action would be sufficient. (Tr. Vol. 3 at 159).

[19] The State then called Deputy Foerg as a witness. When the State asked Deputy Foerg to “describe what [had] happened when [he] went into the [trailer]” for the initial search, Minix objected and had the following colloquy with the trial court:

[MINIX’S COUNSEL]: I’m going to make an objection here, Judge, on the basis of search and seizure, Fourth Amendment, and Article I, Section 11 of the Indiana Constitution.

THE COURT: All right. Overrule that objection, and I have previously found that we’re not going to require a continuing objection in order to preserve any rights.

[MINIX’S COUNSEL]: I would ask, Judge, that the Court take notice of an impending objection then on the same basis for the evidence that was found inside, tangible and intangible.

THE COURT: I will do so, and I will overrule the continuing objection.

(Tr. Vol. 3 at 170).<sup>6</sup> Thereafter, Deputy Foerg testified that he saw blood on the couch, walls, floor, and on a washer and dryer.

[20] Subsequently, when Deputy Foust testified, the State started to introduce various exhibits relating to the initial search, including Exhibits 7-11, and Minix stated that he had “[n]o objection” to those exhibits. (Tr. Vol. 4 at 53, 56, 61). Exhibits 7 and 8 were photographs that Deputy Foust had taken when he had been outside of the trailer before he had conducted the initial search of the

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<sup>6</sup> Neither Minix’s counsel nor the trial court reference Indiana Trial Rule 103(b) when discussing the continuing objection.

trailer. Exhibit 7 showed the front door slightly ajar, and Exhibit 8 showed the couch with some red blood spatters on it. Exhibit 9 was Deputy Foust's bodycam video footage, which depicted the initial search from the time that Deputy Foust had approached and entered the trailer, his view of the inside of the trailer and the blood on items therein, his encounter with the naked Minix, the deputies' cuffing and dressing of Minix, Minix's verbal statements to the deputies, and the placement of Minix into Deputy Foust's vehicle. The bodycam video also showed that Minix was covered in tattoos, including on his bald head and extending down his neck, arms, and torso. Exhibits 10 and 11 were photographs of Minix's hands that showed he had dried blood on them. Again, Minix stated that he had "[n]o objection" to all of those exhibits. (Tr. Vol. 4 at 53, 56, 61).

[21] Thereafter, the trial court called for a recess during Deputy Foust's testimony. After the jury had exited the courtroom, the trial court asked Minix's counsel about the lack of objection to the photographs of Minix's hands. Specifically, the trial court asked, "I thought we had discussed an objection to the picture of the hands. Are you going to just cover that then on cross? Is that your plan at this point?" (Tr. Vol. 4 at 69). Minix's counsel responded, "I am, Your Honor." (Tr. Vol. 4 at 69).

[22] When Minix's counsel cross-examined Deputy Foust, he asked Deputy Foust about the bodycam video and what it had revealed during the initial search. For example, Minix's counsel asked Deputy Foust how the video had showed that Minix had a substance on his hands that Deputy Foust had believed to be

blood and how that substance had not been tested. Minix’s counsel also questioned Deputy Foust about Minix’s statements made while the deputies were in the trailer during the initial search. Notably, Minix’s counsel asked Deputy Foust “two specific statements” that were “a point of interest[,]” including Minix’s statements about “What is this, protect the whores night?” and “You guys, someone’s already been hurt that night[.]” (Tr. Vol. 4 at 160). Additionally, Minix’s counsel cross-examined Deputy Foust about Minix’s head nod and statement about where his clothes were located. Moreover, Minix’s counsel’s cross-examination of Deputy Foust included questions about the deputy’s general observations of what he had seen inside the trailer during the initial search. Counsel asked Deputy Foust about Minix’s pants and boots, and he questioned the deputy about blood being splattered everywhere in the living room, including on the couch, coffee table, and floor.

[23] A forensic scientist with the Indiana State Police Lab testified that testing of the broomstick and Minix’s jeans and boot revealed that they were presumptively positive for the possible presence of blood. The forensic scientist also testified that DNA testing showed that Minix’s DNA and Smith’s DNA were found on the broomstick, the jeans, and the toe of the boot. The State introduced the lab results of the DNA testing, and Minix had “[n]o objection.” (Tr. Vol. 4 at 240).

[24] The jury found Minix guilty of three of the five charges. Specifically, the jury found Minix guilty of Level 3 felony aggravated battery, Level 3 felony criminal confinement, and Level 5 felony intimidation and not guilty of Class B misdemeanor possession of marijuana and Class B misdemeanor possession of

paraphernalia. The trial court sentenced Minix to an aggregate executed sentence of twenty-eight (28) years to be served in the Indiana Department of Correction.

[25] Minix now appeals.

## **Decision**

[26] Minix argues that the trial court abused its discretion by admitting evidence during his jury trial. Minix also raises this issue as a challenge to the trial court's denial of his motion to suppress. However, because Minix is appealing following a trial, the issue presented is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. *See Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). Minix contends that the warrantless search of the trailer violated his rights under the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution and that the trial court abused its discretion when it admitted evidence obtained during the warrantless search.<sup>7</sup>

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<sup>7</sup> Minix states that the evidence obtained during the warrantless search included his statements and photographs. Minix asserts that Deputy Foust took photographs during the warrantless search of the trailer, and he cites to the probable cause affidavit to support that assertion. As noted above, everything that is contained in the probable cause affidavit was not part of the evidence at trial. While the bodycam video shows that Deputy Foust took some photographs when he was inside the trailer during the initial search, our review of the record on appeal does not reveal that those photographs were admitted during the trial. Instead, the record indicates that the photographs of the inside of the trailer that were introduced at trial—and to which Minix stated that he had no objection—were photographs that Deputy Foust had taken when he had executed the search warrant (Exhibits 23, 29, 33). The only photographs that were taken by Deputy Foust during the initial search and that were introduced at trial were photographs of the outside of the trailer

[27] The State argues that we need not review Minix’s asserted evidentiary challenge because Minix failed to preserve for appellate review the question of the admissibility of the evidence obtained during the warrantless search. Specifically, the State contends that Minix waived any evidentiary challenge because, although Minix had initially requested a continuing objection, he thereafter specifically told the trial court that he had no objection when the evidence from the warrantless search was introduced at trial. We agree with the State.<sup>8</sup>

[28] “It is well settled that ‘Indiana recognizes continuing objections.’” *Hostetler v. State*, 184 N.E.3d 1240, 1245 (Ind. Ct. App. 2022) (quoting *Hayworth v. State*, 904 N.E.2d 684, 691 (Ind. Ct. App. 2009)), *trans. denied*. See also Indiana Evidence Rule 103(b) (providing that “[o]nce the court rules definitively on the record at trial a party need not renew an objection . . . to preserve a claim of error for appeal”). However, as this Court explained in *Hostetler*, “despite the request for a continuing objection,” a defendant will waive his “appellate challenge to the admission of evidence by his subsequent affirmative statements

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(Exhibits 4-8), and Minix stated that he had no objection to these exhibits when they were admitted into evidence.

<sup>8</sup> The State also contends that Minix did not have standing to challenge the warrantless search. The State asserts that Minix did not live in the trailer or have any expectation of privacy in the trailer. While the State raised a challenge to standing during the motion to suppress hearing, it appears that it abandoned that contention at trial. We note that, during its closing argument, the State argued that Minix had been staying at the trailer and had his possessions there. Nevertheless, given our resolution of Minix’s appellate challenge based on waiver, we need not review the State’s standing argument.

that he had no objection to the evidence.” *Hostetler*, 184 N.E.3d at 1246-47.<sup>9</sup> *See also Hayworth*, 904 N.E.2d at 694 (holding that the defendant had “waived her objection to the admission of the evidence seized” where the defendant had requested a continuing objection but had then subsequently “affirmatively [stated] that she had ‘No objection’ to the vast majority of the evidence against her”). Indeed, “[a]n ‘appellant cannot on the one hand state at trial that he has no objection to the admission of evidence and thereafter in this Court claim such admission to be erroneous.’” *Hostetler*, 184 N.E.3d at 1247 (quoting *Halliburton v. State*, 1 N.E.3d 670, 679 (Ind. 2013)) (other citation omitted).

[29] Here, despite Minix’s initial statement that he wanted a continuing objection to the evidence obtained during the initial warrantless search, he then affirmatively stated that he had no objection when the evidence was introduced at trial. Most notably, when the State introduced Exhibit 9, the bodycam video—which depicted the initial search from the time that Deputy Foust had approached and entered the trailer, his view of the inside of the trailer and the blood on items therein, his encounter with the naked Minix, the deputies’ cuffing and dressing of Minix, Minix’s verbal statements to the deputies, and the placement of Minix into Deputy Foust’s vehicle—Minix stated that he had “[n]o objection” to the admission of that evidence. (Tr. Vol. 4 at 56). Given

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<sup>9</sup> In *Hostetler*, we explained that the 2014 amendment to Trial Rule 103(b) “merely recognized the use of a continuing objection at trial” and that the “amendment did not change or overrule the existing case law explaining that a defendant can waive a continuing objection by affirmatively stating that he has no objection when evidence is introduced and admitted at trial.” *Hostetler*, 184 N.E.3d at 1246.



Minix’s subsequent affirmative statements that he had no objection to the evidence obtained during the warrantless search, we conclude that he has waived appellate review of his claim of error. *See Hostetler*, 184 N.E.3d at 1247 (holding that where a defendant requests a continuing objection but then makes subsequent affirmative statements that counsel has no objection to the evidence, the defendant waives appellate review of a challenge to the admissibility of evidence). *See also Halliburton*, 1 N.E.3d at 679 (holding that an “appellant cannot on the one hand state at trial that he has no objection to the admission of evidence and thereafter in this Court claim such admission to be erroneous”). Accordingly, we affirm the trial court’s judgment.<sup>10</sup>

[30] Affirmed.

Bradford, J., and Kenworthy, J., concur.

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<sup>10</sup> Minix does not argue that the admission of the evidence obtained during the warrantless search constituted fundamental error.