



---

ATTORNEY FOR APPELLANT

Mark K. Leeman  
Leeman Law Office  
Logansport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Caroline G. Templeton  
Deputy Attorney General  
Indianapolis, Indiana

---

IN THE  
COURT OF APPEALS OF INDIANA

---

Shaun A. Smith,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 11, 2022

Court of Appeals Case No.  
21A-CR-956

Appeal from the  
Cass Superior Court

The Honorable  
Lisa L. Swaim, Judge

Trial Court Cause No.  
09D02-2006-F5-39

**Molter, Judge.**

- [1] Shaun A. Smith appeals after a jury trial from his conviction for dealing in methamphetamine as a Level 5 felony, contending that the trial court abused its discretion when it admitted into evidence a redacted report compiling text messages that were extracted from his cell phone. We conclude that the trial

court did not abuse its discretion by admitting the evidence, and, regardless, any error would have been harmless.

[2] We affirm.<sup>1</sup>

### **Facts and Procedural History**

[3] In the afternoon on June 3, 2020, Detective Mark Van Horn initiated a traffic stop of a maroon moped after he observed the driver disregarding a stop sign. Smith was the driver, and his passenger was Jamie Varner. During the stop, Detective Van Horn asked Smith if he had any illegal narcotics on his moped or his person. Before answering “no,” Smith paused and looked at a compartment underneath the moped’s handlebars. Smith’s behavior indicated to Detective Van Horn that Smith was hiding something in the compartment.

[4] While awaiting warrant checks for Smith and Varner, Detective Van Horn retrieved K-9 Mattis from his police vehicle to sniff around the exterior of the moped. K-9 Mattis alerted Detective Van Horn to the odor of drugs, and Detective Van Horn found two small Ziploc baggies of a crystal-like substance in the compartment underneath the moped’s handlebars. In other compartments on the moped, Detective Van Horn found digital scales and a cell phone that Smith identified as his. Subsequent testing of the crystal-like

---

<sup>1</sup> We held oral argument on November 22, 2021, at South Adams High School in Berne, Indiana. We extend many thanks. First, we thank counsel for the quality of their oral and written advocacy, for participating in post-argument discussions with the audience, and for commuting to Berne, Indiana. We also thank the staff and administration at the high school for their accommodations and the students in the audience for their thoughtful post-argument questions.

substance identified it as methamphetamine, weighing a total of 3.2 grams. On June 4, 2020, Smith was charged with dealing in methamphetamine as a Level 5 felony.

[5] After taking Smith's cell phone into evidence, Detective Van Horn asked Detective Andrew Strong, who had received thirty-five hours of training on Cellebrite, to perform an extraction of information from Smith's cell phone. Using Cellebrite, a computer software program that extracts content from cell phones, Detective Strong performed the extraction. The extraction generated a report of Smith's text messages from June 2, 2020, to June 3, 2020. Detective Strong testified that those reports cannot be modified.

[6] The State redacted the report of Smith's text messages because it believed many of the text messages were not relevant to the case. The report revealed that Smith texted Varner that he had a "ball for sale" on June 2, 2020. Varner testified that she believed Smith meant that he had four grams of methamphetamine for sale. Further, the report contained text messages from Smith to Varner, explaining that he had paid \$170 for the "ball" and would drop the price to either \$120 or \$115.

[7] Smith's jury trial was held on April 7, 2021. During his trial, Smith objected to the admission of the Cellebrite report on the basis that the text messages had not been properly authenticated. The trial court overruled the objection and admitted the report into evidence. At the conclusion of the jury trial, Smith was found guilty. Smith was sentenced to 2,190 days of imprisonment, with the

possibility of serving 730 days in a community correction program if eligible and accepted into the program. Smith now appeals.

## Discussion and Decision

[8] Smith contends the trial court abused its discretion by admitting the Cellebrite report into evidence because the report contained text messages that were not properly authenticated as having been written by Smith. A trial court has broad discretion over the admissibility of evidence, and we disturb those rulings only upon an abuse of that discretion. *Chambless v. State*, 119 N.E.3d 182, 188 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances of the case or misinterprets the law. *Jimerson v. State*, 56 N.E.3d 117, 120 (Ind. Ct. App. 2016), *trans. denied*. We afford an evidentiary decision great deference upon appeal and reverse only when a manifest abuse of discretion denies the defendant a fair trial. *Id.* In determining whether an evidentiary ruling affected a party's substantial rights, we assess the probable impact of the evidence on the trier of fact. *Kirk v. State*, 974 N.E.2d 1059, 1066 (Ind. Ct. App. 2012), *trans. denied*.

[9] Smith argues there are two reasons the trial court should have excluded the Cellebrite report from evidence based on the failure to authenticate the evidence. First, he believes the text messages in the report were not independently authenticated because Detective Strong was not personally involved with Smith's arrest and thus did not have personal knowledge that the

cell phone actually belonged to Smith. Instead, Detective Strong received a cell phone from Detective Van Horn for which Detective Strong was required to generate a Cellebrite report. Additionally, Smith believes that Varner's testimony failed to lay a foundation for the source of the text messages in the Cellebrite report because she did not definitively state Smith's cell phone number during her testimony and could not initially remember discussing the purchase of a ball of methamphetamine from Smith.

[10] Under Rule 901(a) of the Indiana Rules of Evidence, “[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” “Once this reasonable probability is shown, any inconclusiveness regarding the exhibit’s connection with the events at issue goes to the exhibit’s weight, not its admissibility. Additionally, authentication of an exhibit can be established by either direct or circumstantial evidence.” *Pavlovich v. State*, 6 N.E.3d 969, 976 (Ind. Ct. App. 2014) (citations omitted), *trans. denied*. However, “[a]bsolute proof of authenticity is not required.” *Fry v. State*, 885 N.E.2d 742, 748 (Ind. Ct. App. 2008), *trans. denied*. Letters and words set down by electronic recording and other forms of data compilation are included within Evidence Rule 901(a). *Hape v. State*, 903 N.E.2d 977, 989–90 (Ind. Ct. App. 2009), *trans. denied*.

[11] Evidence Rule 901(b) provides examples of evidence that satisfy the authentication requirement, including: “(1) *Testimony of a Witness with Knowledge*. Testimony that an item is what it is claimed to be by a witness with

knowledge,” and “(4) *Distinctive Characteristics and the Like*. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.” We have acknowledged Evidence Rule 901(b)(4) as one of the most frequently used means to authenticate electronic data, including text messages and emails. *See Hape*, 903 N.E.2d at 990–91.

[12] Here, there was ample evidence to support the admission of Smith’s text messages. First, both Detectives Van Horn and Strong identified Exhibit 9 as Smith’s cell phone. Tr. at 32–33, 76. Specifically, Detective Van Horn testified about how he collected and stored Smith’s cell phone. *Id.* at 76. He explained that his police department’s protocol is to place the evidence into evidence bags, seal the bags, initial the seals to confirm they are not broken, and place the evidence into the evidence room. *Id.* Detective Van Horn also testified that Smith claimed ownership of the cell phone and that Detective Van Horn had asked Detective Strong to perform a Cellebrite extraction for him. *Id.*

[13] Additionally, Detective Strong testified about the manner in which Smith’s text messages were recovered, the standard method for conducting Cellebrite extractions, and that Detective Strong had received at least thirty-five hours of training in Cellebrite extractions. *Id.* at 31–34. He further testified that he was the officer who generated the Cellebrite report from Smith’s cell phone and that such reports are unmodifiable. *Id.* at 32, 33–34.

[14] The State also introduced Varner's testimony to authenticate that the text messages were Smith's, independently of authenticating that the cell phone was his. *See Hape*, 903 N.E.2d at 990 (holding that where the proponent of the text messages offers the substance of the messages, the messages must be separately authenticated). Varner testified that she was exchanging text messages with Smith on June 2 and June 3, 2020, the dates of the text messages in the Cellebrite report. Tr. Vol. 2 at 48:25–49:5; State's Ex. 4. She also testified that their text message exchange included a discussion about her purchasing methamphetamine from him:

Q: Ma'am, I'm going to show you what's been marked as State's Exhibit 4a. Would you look at 4a?

A: Okay.

Q: Can you tell me, did Mr. Smith contact you via text messages regarding a ball?

A: Yes.

Q: And that again was methamphetamine?

A: Yes.

Q: And then did you inquire about what it would take to acquire that from him?

A: Yes.

[15] Tr. Vol. 2 at 51:13–51:21. These text messages were reflected in the Cellebrite report. *See* State’s Ex. 4.

[16] She also confirmed the text messages came from a phone number that she knew was the defendant’s cell phone number.

Q: Okay. Can you tell me, ma’am, your phone number that day was it, hang on one second, was Shaun Smith’s phone number that day 574-727-0218?

A: If it was in my phone, then, yes.

Q: Okay. And what did you have him down in your phone as?

A: I think it was just Shaun.

Q: Shaun Broadnacks (sic)?

A: Brockstin (sic)? Yeah.

Q: Shaun Brockstin (sic). So, is it your testimony that Shaun Brockstin (sic) is Shaun that you identified as Shaun Smith?

A: Yes.

[17] Tr. Vol. 2 at 50:14–23.

[18] Taken together, the testimony describing Smith’s cell phone and how it was collected and placed into evidence by Detective Van Horn, the Cellebrite extraction, Varner’s testimony, and the text messages are enough to



authenticate both the cell phone and, independently, the text messages as being authored by Smith. *See* Ind. Evidence Rule 901(b)(4) (providing that authentication may be made through “appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances”). Smith’s arguments that this evidence is inconclusive to authenticate the text messages go to the weight of the evidence rather than its admissibility.

[19] However, even if the trial court erred by admitting Smith’s text messages, that would constitute harmless error. “The improper admission of evidence is harmless error when the erroneously admitted evidence is merely cumulative of other evidence before the trier of fact.” *Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017), *trans. Denied*. Here, the Cellebrite report was merely cumulative of the other evidence presented that established Smith’s guilt in dealing methamphetamine. For example, Detective Van Horn testified that he located operational digital scales with white residue on the surface of them when searching Smith’s moped. *Tr.* at 74–75. Varner testified that Smith had contacted her about having methamphetamine for sale and that she discussed buying it from him the day before his arrest. *Id.* at 51, 53–54. We, therefore, find any error in the admission of the evidence would be harmless.

[20] Finally, Smith argues that even if the text messages were authenticated, the trial court erred by admitting the Cellebrite report because its redactions made it so confusing and unintelligible that it left the jury to speculate as to its contents, thereby affecting Smith’s substantial rights. *Appellant’s Br.* at 17. “A party’s

failure to object to an alleged error at trial results in waiver of the issue on appeal.” *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018). Here, Smith did not object to the Celebrite report’s redactions, so he waived his challenge on that issue. *See* Tr. at 35–36. Regardless, even if Smith did not waive his challenge, any inappropriate redactions would constitute harmless error due to the other cumulative evidence discussed above establishing his guilt.

[21] Affirmed.

Altice, J., and May, J., concur.