

MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Andrew Jackson Bradley, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 31, 2023

Court of Appeals Case No.
22A-CR-2027

Appeal from the Putnam Circuit
Court

The Honorable Matthew L.
Headley, Judge

Trial Court Cause No.
67C01-2103-F2-156

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

[1] Following a jury trial, Andrew J. Bradley, Jr. was convicted of dealing in methamphetamine as a Level 2 felony and was subsequently sentenced to twenty years with three years suspended. On appeal, Bradley presents two issues for review:

1. Did the trial court abuse its discretion in granting the State's motion to quash Bradley's request for production of records pertaining to a narcotics investigation of another individual?
2. Did the trial court abuse its discretion in admitting evidence obtained following the traffic stop of Bradley?

[2] We affirm.

Facts & Procedural History

[3] In late 2020, Clay County law enforcement began a narcotics investigation of Jami Busbin, who they believed to be involved in the distribution of a "large amount" of methamphetamine in the area. *Transcript Vol. 2* at 70. Confidential informants had advised law enforcement that Busbin regularly purchased methamphetamine in Indianapolis and transported it back to Clay County. As part of their investigation, police secured a warrant to place a GPS tracker on Busbin's car, a Mitsubishi Eclipse.

[4] On March 10, 2021, the GPS tracker showed that Busbin's Mitsubishi traveled to Indianapolis and made several stops before returning to Clay County via I-70. Suspecting Busbin made a purchase of methamphetamine, the investigating

officers enlisted the help of other law enforcement agencies to conduct surveillance of the Mitsubishi. A detective located the Mitsubishi on I-70 and saw it exit at State Road 243 (SR 243) in Putnam County and go to a Marathon gas station. Clay County Sheriff's Department (CCSD) Deputy James Switzer, who headed the investigation into Busbin, conducted surveillance at the gas station along with CCSD Deputy Johnnie Bohnert and Indiana State Police Detective Jason Kempf. The officers observed the Mitsubishi parked near a wooded area at the end of a dead-end road behind the gas station. When the driver got out of the Mitsubishi, the officers learned that Busbin was not the driver, as the driver was a male, subsequently identified as Bradley.

[5] Shortly thereafter, Busbin arrived at the gas station driving a white Pontiac G6 and parked by the Mitsubishi. Bradley and Busbin were seen conversing and exchanging items between cars, including a brown fast-food bag. Deputy Bohnert and Detective Kempf observed Bradley carry the fast-food bag into the woods and then return to the cars several times. Busbin drove away in one direction in her Mitsubishi and Bradley drove away in the opposite direction in the Pontiac. Based on information they had and their training and experience, the surveilling officers believed that they just observed a drug transaction between Bradley and Busbin. A decision was made to stop both cars. Deputy Bohnert followed Bradley, and Detective Kempf and CCSD Deputy William Neville followed them. Deputy Switzer followed Busbin.

[6] As Bradley was driving south on SR 243, he “abruptly” pulled into the driveway of a house to which he had no connection. *Id.* at 76. Deputy Bohnert

and Detective Kempf continued southbound on SR 243. After they passed by the driveway, Bradley “quickly” pulled back out onto the roadway and continued driving southbound on SR 243. *Id.* at 238. Deputy Neville remained behind Bradley and followed him for a couple of miles.¹ Bradley eventually made a left turn into a parking lot. Believing that Bradley failed to signal the turn at least 200 feet in advance,² Deputy Neville initiated a traffic stop in the parking lot. Shortly thereafter, Deputy Bohnert and Detective Kempf arrived to assist with the traffic stop.

[7] Deputy Neville obtained Bradley’s license and registration and gave those items to Deputy Bohnert to run while Deputy Neville retrieved his drug detection K-9 partner from his car and took the dog around Bradley’s car. The dog indicated on both the driver and passenger doors. When Bradley refused to get out of the car, Deputy Neville grabbed him by his wrist and pulled him out. Before the officers conducted an interior search of the car, Bradley informed them that there was marijuana in the driver’s door, and the officers found 2.01 grams of marijuana there. On the passenger floorboard, the officers found a digital scale and a brown Hardee’s bag containing 98.92 grams of methamphetamine. They also found \$1091 in cash in Bradley’s pocket. Bradley admitted that earlier that

¹ As Bradley backed out of the driveway, Deputy Neville observed that Bradley was not wearing his seatbelt.

² It was subsequently determined that Bradley activated his turn signal 243 feet before he turned.

day he had traveled to Indianapolis to purchase methamphetamine and that he had just sold two ounces of methamphetamine to Busbin for \$600 an ounce.

[8] Meanwhile, Deputy Switzer stopped Busbin's car in Clay County for speeding. Police found 56.5 grams, i.e., two ounces, of methamphetamine in her car.

[9] On March 15, 2021, the State charged Bradley with Count 1, dealing in methamphetamine as a Level 2 felony, Count 2, possession of methamphetamine as a Level 3 felony, and Count 3, possession of marijuana as a Class B misdemeanor. The State subsequently added Count 4, conspiracy to deal methamphetamine as a Level 2 felony.

[10] On January 20, 2022, Bradley filed a motion to suppress evidence obtained during what Bradley argued was an unconstitutional traffic stop. On January 26, 2022, Bradley provided the State with a Non-Party Request for Production for the CCSD seeking numerous documents, recordings, and information pertaining to the investigation of Busbin.³ Two days later, the State filed a motion to quash Bradley's requests. Following a hearing on February 16, 2022, the trial court partially granted the State's motion to quash, denying Bradley's requests for materials related to the investigation of Busbin.

[11] The trial court held a hearing on Bradley's motion to suppress on April 7, 2022. Two weeks later, the court entered its order denying Bradley's motion. A jury

³ This document is not included in the record.

trial was held from June 29 to July 1, 2022. During the trial, the bag of methamphetamine found in Bradley’s car, the money found in his pocket, and Deputy Neville’s bodycam video of his encounter with Bradley, which contained Bradley’s incriminating admissions,⁴ were all admitted into evidence with “no objections” from Bradley. *Transcript Vol. 2* at 241, 243, and 244. At the conclusion of the evidence, the jury found Bradley guilty on all four counts. A sentencing hearing was held on July 28, 2022. At the State’s request, the trial court vacated the convictions on Counts 2, 3, and 4 on double jeopardy grounds. The court entered judgment of conviction on Count 1 and sentenced Bradley to twenty years with three years suspended. Bradley now appeals. Additional facts will be provided as necessary.

Discussion & Decision

1. Motion to Quash

[12] Bradley argues that the trial court abused its discretion by denying him access to evidence the police had gathered during the investigation of Busbin for dealing in methamphetamine. As our Supreme Court has reiterated, “the Indiana Trial Rules are designed to allow liberal discovery. Under Trial Rule 26(B), if a defendant makes a specific request for an item that is relevant to his defense and is not privileged, he may obtain discovery of that item. Ind. Trial Rule 26(B)(1).” *Beville v. State*, 71 N.E.3d 13, 18 (Ind. 2017) (internal citations and

⁴ The bodycam video was played for the jury.

quotations omitted). There are, however, certain limits. When a discovery request is challenged, a court must balance “the need for the information and the burden of supplying it.” *Id.* (quoting *In re WTHR-TV*, 693 N.E.2d 1, 6 (Ind. 1998)).

[13] We afford trial courts broad discretion with regard to rulings on discovery matters. *Miller v. State*, 825 N.E.2d 884, 888 (Ind. Ct. App. 2005), *trans. denied*. “Therefore, such rulings will be overturned only for an abuse of discretion. An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before the court.” *Id.* (citation omitted); *see also Sweeney v. State*, 704 N.E.2d 86, 108 (Ind. 1998) (“The decision to enforce, modify, or quash a subpoena duces tecum is a question for the trial court and will not be disturbed unless the decision is clearly arbitrary.”) (citation and quotation marks omitted), *cert. denied*. Due to the fact-sensitive nature of discovery matters, the trial court’s ruling is cloaked in a strong presumption of correctness on appeal. *Williams v. State*, 819 N.E.2d 381, 384 (Ind. Ct. App. 2004), *trans. denied*.

[14] At issue in this appeal are Bradley’s discovery requests asking for “[a]ll documents, recordings (audio and video), statements, tips, audio, video, texts, emails, writings of tipsters” pertaining to the investigation of Busbin and for information regarding her “mode, methods, or patterns of selling and buying meth.” *Appellant’s Appendix Vol. 2* at 66; *Transcript Vol. 2* at 63. With respect to these requests, the State asserted in its motion to quash that “[p]rivileged information is not discoverable.” *Appellant’s Appendix Vol. 2* at 66. The State

also generally asserted that the requests should be quashed as irrelevant, unlikely to lead to admissible evidence, and/or overly burdensome.

[15] At the hearing on the motion to quash, the State argued that Bradley was asking for “basically everything” on the investigation of Busbin and that such contained information pertaining to confidential informants (CIs), GPS tracking devices, things filed “under seal,” and other “confidential-type things” involved in that case. *Transcript Vol. 2* at 58. In response, Bradley explained that he was seeking only information as to why the police thought that Busbin “was possibly obtaining a large amount of methamphetamine” on the day in question and why the officers believed that they observed a drug transaction take place between Busbin and Bradley. *Id.* at 61. Bradley noted that the import of this information was because the officers identified the suspected drug transaction as one of the reasons that justified the stop of Bradley.

[16] In granting the State’s motion to quash, the court stated:

I don’t see the relevance of all that information. I’m not going to get into some kind of confidential information about another case, especially if it’s been under seal. Obviously – apparently, I would assume, that the cops are using some kind of a confidential informant, and the identity of that person or persons needs to be protected for that person’s safety, but also for the integrity of the police officer’s investigation.

Id. at 64.

[17] We begin with the State’s claim that Bradley essentially requested “everything . . . regarding the investigation of Busbin” and that such encompassed privileged

information. *Transcript Vol. 2* at 58. The State maintains that the “extraordinarily broad” nature of Bradley’s request would necessarily have revealed the identities of CIs as well as other information that had been filed under seal to protect the integrity of the investigation. *Appellee’s Brief* at 19. In so arguing, the State asserted the informer’s privilege, under which a court may withhold the disclosure of evidence if the State shows that the CI’s identity would be revealed if the criminal defendant’s discovery request is granted. *Beville*, 71 N.E.3d at 19.

[18] We agree with the State that Bradley’s initial written requests for production were overly broad and, as such, would likely have revealed the identities of CIs as well as other information filed under seal. However, during the motion to quash hearing, Bradley narrowed his requests, explaining that he was seeking only information relating to him or “any information regarding a possible drug transaction on that specific day.” *Transcript Vol. 2* at 59. Bradley further clarified that he was seeking information only as to “what would make [the officers] believe that a drug transaction had taken place” between him and Busbin and “whether or not [the officers] actually had information that [Busbin] was possibly obtaining [methamphetamine] that day.” *Id.* at 60, 62. As narrowed, Bradley’s requests did not necessarily require disclosure of the identity of CIs. In such case, the informer’s privilege did not apply. The trial court, as it had already done with other requests by Bradley, should have

considered Bradley's requests in light of his subsequent limitation for production of only non-privileged information.⁵

[19] A defendant's request for the discovery of non-privileged information in a criminal case is generally analyzed under the three-part *Dillard* test:

(1) if there is a sufficient designation of the items sought to be discovered (particularity), *and* (2) if the items sought to be discovered are material to the defense (relevance), (3) then the trial court must grant the request unless the State makes a sufficient showing of its "paramount interest" in non-disclosure.

See Beville, 71 N.E.3d at 18 (citing *Dillard v. State*, 274 N.E.2d 387, 392 (1971)) (emphasis in original). "Ultimately these factors involve a balancing test that includes evaluation of the relevance of the material, its availability from other sources, the burden of compliance measured in terms of difficulty, and the nature and importance of any interests invaded." *In re WTHR-TV*, 693 N.E.2d at 8-9.

[20] Here, Bradley's limited requests were not too overbroad and were clearly relevant to his defense, which was based, in part, on his argument that the officers did not have reason to believe that a drug transaction had occurred and thus, they did not have probable cause to initiate a stop. Further, Bradley's limitation as to the information he was seeking nullified the State's paramount

⁵ The trial court denied the State's motion to quash as to other requests made by Bradley in light of Bradley's narrowing of his requests during the motion to quash hearing.

interest in protecting the identity of CIs and other confidential information contained in the investigative files of Busbin. Although an analysis of the *Dillard* factors suggests that the trial court abused its discretion in granting the State's motion to quash Bradley's requests for information about the Busbin investigation, we nevertheless conclude that reversal is not necessary.

[21] First, Bradley could have obtained the information he was seeking by deposing the officers involved. Although Bradley did depose one officer, he admitted that he did not question the officer about why he believed that a drug transaction had taken place. Second, nearly three months prior to trial, the officers testified at the motion to suppress hearing about their investigation of Busbin, including that they had received information from CIs about where she purchased methamphetamine and that they had obtained a warrant to place a GPS tracker on her car. The officers also testified to the GPS tracker alerting them that Busbin's car went to a location identified by CIs as a place Busbin purchased methamphetamine and their surveillance of the car on its return to the area. They also detailed their observations of what transpired between Bradley and Busbin at the local gas station. Through this testimony at the suppression hearing, Bradley received the information he sought in his discovery request. On the record before us, we conclude that even if the trial court abused its discretion in granting the State's motion to quash, such had minimal, if any, effect on the fact-finding process at trial. *Cf. Hall v. State*, 36 N.E.3d 459, 467 (Ind. 2015) (recognizing that "certain constitutional errors, no

less than other errors, may have been ‘harmless’ in terms of their effect on the fact-finding process at trial”).

2. *Admission of Evidence*

- [22] Bradley argues that the trial court “abused its discretion in denying the motion to suppress.” *Appellant’s Brief* at 30. Because Bradley is appealing following a trial, direct review of the motion to suppress ruling is no longer available; the issue is reviewed only as a question of the admission of evidence at trial. *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013); *Kelley v. State*, 825 N.E.2d 420, 424 (Ind. Ct. App. 2005).
- [23] The general admission of evidence at trial is a matter we leave to the discretion of the trial court. *Nicholson v. State*, 963 N.E.2d 1096, 1099 (Ind. 2012). We review these determinations for abuse of that discretion and reverse only when admission is clearly against the logic and effect of the facts and circumstances and the error affects a party’s substantial rights. *Id.*
- [24] A pretrial motion to suppress does not preserve a challenge to the admission of evidence for appeal. *Brown v. State*, 910 N.E.2d 204, 207 (Ind. 2010). To preserve the issue, the defendant must make a contemporaneous objection at the time the evidence is introduced at trial. *Id.* The failure to make a contemporaneous objection results in waiver of the error on appeal. *Id.* The rule requiring a contemporaneous objection “is no mere procedural technicality; instead, its purpose is to allow the trial judge to consider the issue

in light of any fresh developments and also to correct any errors.” *Shoda v. State*, 132 N.E.3d 454, 461 (Ind. Ct. App. 2019).

[25] The State argues that Bradley waived the issue for review by failing to contemporaneously object to admission of evidence pertaining to the traffic stop, including Deputy Neville’s testimony, the methamphetamine and marijuana found during the search of Bradley’s car, the large amount of cash found in Bradley’s pocket, and Bradley’s incriminating statements that he had sold two ounces of methamphetamine to Busbin. We agree.

[26] At trial, Deputy Neville testified without objection to his stop of Bradley’s car, his subsequent interactions with Bradley, the discovery of marijuana and methamphetamine in Bradley’s car, the large amount of cash found in Bradley’s pocket, and the incriminating statements Bradley made about selling methamphetamine to Busbin. The marijuana and the bag of methamphetamine found in the car, the cash, and the bodycam video of the encounter, which included Bradley’s incriminating admissions, were all admitted with Bradley expressly indicating he had “no objections.” *Transcript Vol. 2* at 241, 243, and 244. Bradley also did not object when the bodycam video was played for the jury.

[27] After Deputy Neville’s testimony was finished and he was excused, the court recessed. Following a short break, the trial resumed and Bradley stated that for the purpose of “preserving the record,” he was submitting depositions taken as well as the previous exhibits and testimony from the suppression hearing as

evidence. *Transcript Vol. 3* at 4. The State stated it had no objection and explained that Bradley was “introducing that to preserve the suppression issue for appeal.” *Id.* at 5. The trial court acknowledged such and stated it would “show that as a continuing objection . . . to Nevill’s [sic] testimony about the stop.” *Id.*

[28] Although the trial court noted a continuing objection, such was in response to an objection that was not properly and timely made by Bradley. Further, the continuing objection was to Deputy Neville’s testimony; it did not cover the admission of the methamphetamine found in Bradley’s car, the cash found in his pocket, or the bodycam video, which was played for the jury without objection. In addition, we note that Bradley raised no objection to Detective Kempf’s testimony regarding the stop of his car, the drugs found inside it, or his incriminating statements. Bradley also did not object when Deputy Switzer testified about the methamphetamine found in Busbin’s car or the laboratory analyst’s testimony concerning the results of her analysis of the substances found in Bradley’s car. On the record before us, we conclude that Bradley has waived any objection to the admission of evidence obtained after he was stopped.

[29] Judgment affirmed.

Riley, J. and Pyle, J., concur.