MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Stephanie M. Seabeck,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 20, 2023

Court of Appeals Case No.
22A-CR-1546

Appeal from the
Posey Circuit Court

The Honorable
Craig S. Goedde, Judge

Trial Court Cause No.
65C01-2105-F2-255

Memorandum Decision by Judge Foley
Judges Robb and Mathias concur.

Foley, Judge.

[1] Stephanie M. Seabeck ("Seabeck") was convicted after a jury trial of conspiracy to commit dealing in methamphetamine[1] as a Level 2 felony and was sentenced to twenty years executed. Seabeck appeals her conviction and raises the following two issues for our review:

I. Whether the trial court abused its discretion when it admitted portions of Seabeck's jail calls to her co-conspirator into evidence; and

II. Whether the trial court properly instructed the jury.

[2] We affirm.

Facts and Procedural History

[3] On August 24, 2020, a confidential informant ("the CI") contacted the supervisor of the Posey County Drug Task Force and informed him that the CI could make an undercover methamphetamine purchase from Seabeck and her boyfriend, Zach Addison ("Addison"). The CI contacted Seabeck and told her that the CI had a friend who wanted to purchase one half-ounce of methamphetamine. Seabeck told the CI that the price for a half-ounce of methamphetamine was $700 and that Seabeck would bring the CI the methamphetamine after she showered. Seabeck then changed the location and told the CI that she could come to Addison's father's home, where Seabeck was, if the CI did not want to wait. The transaction did not happen that day,

[1] Ind. Code § 35-48-4-1.1(a)(1), (e)(1); Ind. Code § 35-41-5-2.

but the next day Seabeck told the CI to go to Dakota's Detailing Shop to purchase the methamphetamine. Seabeck informed the CI that Addison would be in the shop to meet her. When the CI arrived at the shop, Addison sold her the half-ounce of methamphetamine in exchange for $700, and the CI returned to officers and was debriefed. The substance sold to the CI was later tested and was found to be 14.13 grams of methamphetamine.

[4] On May 11, 2021, the State charged Seabeck with conspiracy to commit dealing in methamphetamine as a Level 2 felony. Prior to trial, Seabeck filed a motion to exclude hearsay, arguing that portions of the recordings of Seabeck's jail calls, which the State intended to admit at trial, constituted inadmissible hearsay because they were being offered for the truth of the matter asserted and were not covered by any recognized hearsay exceptions. She also alleged that they were inadmissible because they constituted character evidence and evidence of prior bad acts. During one of the conversations on the recordings, Seabeck and Addison had the following exchange:

> Seabeck: when I go in there, I won't have nobody for ever how long they throw me in there.
>
> Addison: you're a big God dam [sic] girl. This is the life we chose so this is what you signed up for. We take this shit on the chin and we deal with it alright. That's what the fuck you do. Here the fuck we are.
>
> Seabeck: I just wanted you. I didn't want this other shit.

> Addison: this is the price that comes with the bullshit life we were living OK. Steph, you can't hide from them forever OK. All it takes is one little traffic stop or one little wreck.

Appellant's App. Vol. II p. 107.

[5] Seabeck argued that Addison's statements in this conversation constituted inadmissible hearsay and should not be admitted. After a hearing, the trial court ruled that Addison's statement that began, "this is the price that comes with the bullshit life we were living . . .," was inadmissible, but it allowed the other statement that began, "you're a big God dam [sic] girl . . ." to be admitted. *Id*. at 12. During the jury trial, the State moved to admit a flash drive containing the recordings of three phone conversations between Seabeck and Addison while Seabeck was incarcerated. The exhibit was admitted over Seabeck's objection.

[6] Seabeck proposed a final instruction ("Proposed Instruction #1"), which set out the elements of conspiracy to commit dealing in methamphetamine and also provided that, "If the State fails to prove one or more of these elements beyond a reasonable doubt, you must find Ms. Seabeck not guilty of the crime of Conspiracy to Commit Dealing in Methamphetamine, a Level 2 felony as charged in Count I." *Id*. at 121. The trial court denied this instruction and gave a final instruction that was essentially identical to Seabeck's proposed instruction, except that it ended with the following sentence, "If the State fails to prove each of these elements beyond a reasonable doubt, you must find Ms. Seabeck not guilty of the crime of Conspiracy to Commit Dealing

Methamphetamine, a Level 2 felony as charged in Count I" ("Final Instruction #4"). *Id*. at 78, 121; Tr. Vol. II pp. 133–34.

[7] At the conclusion of the trial, Seabeck was found guilty of Level 2 felony conspiracy to commit dealing methamphetamine, and the trial court sentenced her to twenty years in the Department of Correction. Seabeck now appeals.

Discussion and Decision

I. Admission of Recordings

[8] Seabeck argues that the trial court abused its discretion when it allowed portions of the recordings of her jail call conversations with Addison to be admitted into evidence. The admission and exclusion of evidence rests within the sound discretion of the trial court, and we review the exclusion of evidence only for an abuse of that discretion. *Griffith v. State*, 31 N.E.3d 965, 969 (Ind. 2015). An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances presented. *Barnhart v. State*, 15 N.E.3d 138, 143 (Ind. Ct. App. 2014). "Even if a trial court errs in its evidentiary ruling, 'we will not overturn the conviction if the error is harmless.'" *Griffith*, 31 N.E.3d at 969 (quoting *Appleton v. State,* 740 N.E.2d 122, 124 (Ind. 2001) (citations omitted)). "An error is harmless if 'the probable impact of the evidence upon the jury is sufficiently minor so as not to affect a party's substantial rights.'" *Id*. (quoting *Appleton*, 740 N.E.2d at 124). The trial court's ruling will be sustained on any reasonable basis apparent in the record, whether or not relied on by the parties or the trial court. *Washburn v. State*, 121

N.E.3d 657, 661 (Ind. Ct. App. 2019) (citing *Jeter v. State*, 888 N.E.2d 1257, 1267 (Ind. 2008), *cert. denied*), *trans. denied*.

[9] Seabeck argues that the trial court abused its discretion when it admitted the statement that began, "you're a big God dam [sic] girl . . ." into evidence during her trial. She claims the statement was hearsay because it was offered for the truth of the matter asserted and not covered by any hearsay exceptions. Appellant's App. Vol. II p. 12. She also argues that the statement was inadmissible because it constituted character evidence and evidence of prior bad acts. Hearsay is an out-of-court statement used to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). Hearsay is inadmissible unless it falls under a hearsay exception. *Cook v. State*, 119 N.E.3d 1092, 1096 (Ind. Ct. App. 2019), *trans. denied*; Ind. Evidence Rule 802. Evidence Rule 404(a) requires exclusion of "[e]vidence of a person's character or trait" offered "to prove that on a particular occasion the person acted in accordance with the character or trait." Evidence Rule 404(b) states that "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character."

[10] Even if we assume, arguendo, that the trial court erroneously admitted the statement, any error was harmless. Even if a trial court makes an error in its evidentiary ruling, we will not overturn the conviction if the error is harmless. *Griffith*, 31 N.E.3d at 969. The improper admission of evidence is harmless error when the conviction is supported by such substantial independent evidence of guilt as to satisfy the reviewing court that there is no substantial

likelihood that the questioned evidence contributed to the conviction. *Corbally v. State*, 5 N.E.3d 463, 470 (Ind. Ct. App. 2014). In deciding whether an error contributed to a verdict, it must be determined whether the erroneously admitted evidence was unimportant in relation to everything else the jury considered on the issue in question. *Id.*

[11] Here, there was substantial evidence of guilt independent of the challenged statement presented at trial to support that Seabeck committed conspiracy to commit dealing in methamphetamine. Indiana Code section 35-48-4-1.1 provides in pertinent part that a person who knowingly or intentionally delivers or finances the delivery of methamphetamine commits dealing in methamphetamine, and the offense is a Level 2 felony if the amount of the drug involved is at least ten grams. Ind. Code § 35-48-4-1.1(a)(1), (e)(1). Under Indiana Code section 35-41-5-2(a), a person conspires to commit a felony when, with intent to commit the felony, she agrees with another person to commit the felony. The State must also prove that either the defendant or the other person performed an overt act in furtherance of the agreement. I.C. § 35-41-5-2(b).

[12] The evidence independent of the challenged statement clearly showed that Seabeck conspired with Addison to deal methamphetamine. The supervisor of the Posey County Drug Task Force testified that the CI contacted him and informed him that she could make an undercover methamphetamine purchase from Seabeck and Addison. The CI testified that on August 24, 2020, she contacted Seabeck and asked if she could purchase a half-ounce of methamphetamine and was told by Seabeck that the price for that amount was

$700. The CI later sent a text message to Seabeck that stated, "I got the $700 for the half baby." Ex. Vol. III p. 6. Seabeck responded, "I'm gettin a shower n [sic] then comin in I'll let you kno [sic] when I head in." *Id*. at 7. Seabeck also told the CI that the CI could come to Addison's father's house that day to pick up the methamphetamine. When the transaction did not occur that day, Seabeck spoke with the CI the next day and told the CI to go to Dakota's Detailing Shop to purchase the methamphetamine from Addison, and the transaction took place there as arranged by Seabeck.

[13] Based on this evidence, Seabeck's intent to deliver the methamphetamine was apparent, and it was clear that Seabeck and Addison had an agreement to provide methamphetamine to the CI. In furtherance of this conspiracy, Seabeck instructed Addison and the CI to go to a designated location, and, while there, Addison sold the CI a half-ounce of methamphetamine in exchange for $700. Although Addison handed the methamphetamine to the CI, the evidence showed that Seabeck was the one who arranged the deal, told the CI the price, and told the CI to go to the location to purchase the methamphetamine from Addison. There was substantial independent evidence without the challenged evidence to conclude that Seabeck conspired with Addison to commit dealing in methamphetamine, and therefore, any error in the admission of the statement was harmless.

II. Jury Instruction

[14] Seabeck also argues that the trial court erred in instructing the jury. The instruction of the jury lies within the trial court's sound discretion, and we

review the trial court decisions regarding jury instructions only for an abuse of that discretion. *Harrison v. State*, 32 N.E.3d 240, 251 (Ind. Ct. App. 2015), *trans. denied*. To constitute an abuse of discretion, an instruction that is given to the jury must be erroneous, and the instructions viewed as a whole must misstate the law or otherwise mislead the jury. *Winkleman v. State,* 22 N.E.3d 844, 849 (Ind. Ct. App. 2014), *trans. denied.* In determining whether the trial court abused its discretion when it refused to give a tendered instruction we consider: (1) whether the instruction correctly states the law; (2) whether there is evidence in the record supporting the instruction; and (3) whether the substance of the instruction is covered by other instructions. *Harrison*, 32 N.E.3d at 251. When a defendant seeks reversal based on instructional error, she must demonstrate a reasonable probability that substantial rights of the complaining party have been adversely affected. *Id.*

[15] Seabeck contends that the trial court incorrectly instructed the jury when it denied giving her Proposed Instruction #1 and instead read the jury Final Instruction #4. She asserts that the wording of the final paragraph of Final Instruction #4 was confusing. Final Instruction #4 set out the elements of conspiracy to commit dealing in methamphetamine and also provided, "If the State fails to prove each of these elements beyond a reasonable doubt, you must find Ms. Seabeck not guilty of the crime of Conspiracy to Commit Dealing in Methamphetamine, a Level 2 felony as charged in Count I." Appellant's App. Vol. II p. 78. Final Instruction #4 was consistent with the pattern instruction regarding the State's burden of proving guilt beyond a reasonable doubt. Tr.

Vol. II pp. 133–34. The preferred practice is to use the pattern jury instructions. *Ivory v. State*, 141 N.E.3d 1273, 1283 (Ind. Ct. App. 2020), *trans. denied*. Proposed Instruction #1 was almost identical to Final Instruction #4, except that it stated that the jury must find Seabeck not guilty, "[i]f the State fails to prove one or more of these elements beyond a reasonable doubt." Appellant's App. Vol. II p. 121.

[16] Looking to the instructions as a whole, they properly instructed the jury that the State needed to prove each and every element of the offense charged in order for the jury to find Seabeck guilty. Although Proposed Instruction #1 was also a correct statement of law, it was adequately covered by other instructions given to the jury. *See Harrison*, 32 N.E.3d at 251; *Winkleman*, 22 N.E.3d at 849 (jury instructions are to be read together and construed as a whole to determine whether the jury was properly instructed). In addition to Final Instruction #4, the trial court instructed the jury that "[t]o overcome the presumption of innocence, the State must prove Ms. Seabeck guilty of each element of the crime charged beyond a reasonable doubt." Tr. Vol. II p. 151. It also instructed the jury that, "[t]he State must prove each element of the crimes by evidence that firmly convinces each of you and leaves no reasonable doubt." *Id*.; Appellant's App. Vol. II p. 82. While Final Instruction #4 did not use the exact language requested by Seabeck in Proposed Instruction #1, we conclude that the instructions as a whole covered the substance of Proposed Instruction #1 and did not relieve the State of any part of its burden. Based on all of the instructions given to the jury, we conclude that the jury was properly instructed

on the State's burden and understood that the State was required to prove each element of the offense charged. The trial court did not abuse its discretion in its instruction of the jury.

[17] Affirmed.

Robb, J., and Mathias, J. concur.