

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Melissa K. Mitchell,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 28, 2022

Court of Appeals Case No.  
21A-CR-1561

Appeal from the DeKalb Superior  
Court

The Honorable Adam C. Squiller,  
Judge

Trial Court Cause No.  
17D01-2002-F6-79

**Weissmann, Judge.**

[1] Melissa Mitchell challenges her convictions for possession of methamphetamine and resisting law enforcement, arguing that the trial court improperly admitted evidence that was irrelevant, prejudicial, and lacking foundation. Finding no error, we affirm the ruling below.

## Facts

[2] On February 24, 2020, Matthew Traster, Assistant Chief of Police for the City of Butler, observed Melissa Mitchell's red car at a known drug house. He ran the car's license plate number, which dispatch reported as being registered to a black passenger car. Believing that Mitchell was using a false and fictitious plate, Assistant Chief Traster initiated a traffic stop.

[3] Assistant Chief Traster would soon learn that Mitchell's plates were proper—he had run the wrong plate number—but not before he smelled burnt marijuana emanating from Mitchell's car. He asked for consent to search the vehicle, which Mitchell gave. Then she refused to exit her car. Assistant Chief Traster called for backup. Helped by two other officers, he was eventually able to remove Mitchell from the driver's seat. She continued to resist, so he used a taser to subdue and handcuff her.

[4] The officers then searched Mitchell's car, where they found two pipes, a baggie containing suspected drugs, and a jar containing a leafy green substance. Officers suspected that one of the pipes, which was clear and dusted with a heavy white and brown residue, was used to smoke methamphetamine. Assistant Chief Traster collected the evidence and placed it in plastic bags,

which he heat-sealed and initialed. He then placed those bags in the transfer locker at the police department. Mitchell was arrested and charged with possession of methamphetamine, a Level 6 felony, resisting law enforcement, a Class A misdemeanor, and possession of paraphernalia, a Class C misdemeanor. The last count was dropped before jury trial.

[5] At trial, Mitchell objected to the admission of the clear pipe as evidence, arguing that it lacked a proper chain of custody. Tr. Vol. II, pp. 125, 160. According to the evidence log, it was placed into evidence on July 5, 2019—several months before the traffic stop during which it was collected. Assistant Chief Traster testified that this date was in error, leftover from a previous evidence log. *Id.* at 134-35. Additionally, the evidence log does not reflect when the clear pipe was transported to the lab, where it tested positive for methamphetamine. *Id.* at 123. Even so, Assistant Chief Traster testified that the pipe presented at trial was the same pipe he had collected, as it was consistent with his memory, heat-sealed, marked with his writing, and labeled with the correct case number. *Id.* at 124, 138. Similarly, the forensic scientist who tested the pipe confirmed that the same exhibit was heat-sealed in a bag that contained her markings. *Id.* at 160. The pipe was ultimately admitted over Mitchell's objection. *Id.* at 160-61.

[6] The jury convicted Mitchell on both remaining counts. The trial court sentenced Mitchell to one year suspended for the possession charge and fourteen days for the resisting charge. Mitchell now appeals, arguing that the marijuana evidence and methamphetamine pipe were admitted in error.

## Discussion and Decision

[7] Mitchell challenges the trial court’s admission of both the marijuana evidence and lab results relating to the methamphetamine pipe. First, she argues that the marijuana evidence was more prejudicial than probative because she was not on trial for any marijuana offenses. Next, she argues that the chain of custody for the methamphetamine pipe was inadequate because the State failed to show its continuous whereabouts. She argues that both the marijuana evidence and the lab result that indicated there was methamphetamine in the pipe should have been excluded by the trial court. Without this evidence, she concludes that the State did not present evidence sufficient to support her convictions, which should therefore be vacated. Because we find that this evidence was not admitted in error, we affirm her conviction.

[8] We review the trial court’s evidentiary rulings for abuse of 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.” *Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014) (quoting *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013)). The trial court has broad discretion on issues of relevance and unfair prejudice. *Snow v. State*, 77 N.E.3d 173, 176 (Ind. 2017).

### I. Marijuana Evidence

[9] Rule 403 of the Indiana Rules of Evidence states that a court may exclude relevant evidence if it is more prejudicial than probative. Mitchell argues that evidence of the odor and presence of marijuana in her car was irrelevant and

unfairly prejudicial because she was not on trial for any marijuana offenses. She claims that the trial court improperly admitted the evidence as *res gestae*, “the common-law doctrine that made evidence admissible as part of a crime’s story.” *Snow*, 77 N.E.3d at 174. The *res gestae* theory of admission did not survive the adoption of the Indiana Rules of Evidence. *Id.* at 175. Crucially, Mitchell made no objection along these lines at trial and makes no claim of fundamental error on appeal. Tr. Vol. II, p. 115 (stating “no objection” to photograph that depicts what witness calls a “marijuana pipe”); Tr. Vol. II, pp. 116-17 (stating “no objection” to the admission of “a small jar with a green leafy substance”). The issue is therefore waived. *Halliburton v. State*, 1 N.E.3d 670, 678 (Ind. 2013) (“Failure to object at trial waives the issue for review unless fundamental error occurred.”) (quoting *Treadway v. State*, 924 N.E.2d 621, 633 (Ind. 2010)).

[10] Waiver notwithstanding, Mitchell’s argument still fails. Relevant evidence is evidence that: (1) has any tendency to make a fact more or less probable than it would be without the evidence; and (2) the fact is of consequence in determining the action. Ind. Evidence Rule 401. We agree with the State that the marijuana evidence’s relevance was twofold. First, the smell of marijuana explains why Assistant Chief Traster continued the traffic stop even after discovering that Mitchell’s plates were proper. Second, a person can only commit the misdemeanor of resisting law enforcement when the officer “is lawfully engaged in the execution of the officer’s duties.” Ind. Code § 35-44.1-3-1. Without the marijuana evidence, the jury would be aware of no valid basis to

search Mitchell's car, no reason to forcefully pull her out of her vehicle, and no reason to arrest her.

[11] Relevant evidence is generally admissible. Ind. Evidence Rule 402. Admitting the marijuana evidence was not clearly against the logic and effect of the facts. *Guilmette*, 14 N.E.3d at 40. Accordingly, the trial court did not abuse its discretion in failing to find the evidence more prejudicial than probative.

## II. Chain of Custody

[12] Next, Mitchell argues that the State did not establish a proper chain of custody for the methamphetamine pipe, thereby spoiling the reliability of the related lab result. Both the pipe and the lab results were admitted into evidence. Mitchell repeatedly objected to admission of the pipe but stated she had “no objection” to admission of the lab results. *Id.* at 125, 160-61, 163. This means her claim as to the lab results is waived. *Halliburton*, 1 N.E.3d at 678. Waiver notwithstanding, both claims fail on the merits.

[13] To establish a proper chain of custody, the State must give reasonable assurances that the evidence remained in an undisturbed condition. *Troxell*, 778 N.E.2d at 814 (citing *Cliver v. State*, 666 N.E.2d 59, 63 (Ind. 1996)). The State need not establish a perfect chain of custody. *Id.* Gaps go to the weight of the evidence, not to admissibility. *Id.* Additionally, we presume officers handled evidence regularly, and that they exercise due care in handling their duties. *Id.* Mitchell bears the burden of presenting evidence that does more than raise a mere possibility that the evidence may have been tampered with. *Id.*

- [14] Assistant Chief Traster testified that the pipe exhibited at trial was the same pipe collected at the scene. Tr. Vol. II, p. 138. Moreover, the forensic scientist who performed tests on the pipe testified that the evidence bag containing the pipe was sealed when she received it. *Id.* at 159, 161. A “sealed container in an unaltered condition gives us a reasonable assurance” that the evidence “passed through the chain of custody in an undisturbed manner.” *Muex v. State*, 800 N.E.2d 249, 253 (Ind. Ct. App. 2003) (citing *Gilliam v. State*, 270 Ind. 71, 383 N.E.2d 297, 302 (Ind. 1978) (holding that “the possibility of tampering was precluded by the sealing of the envelope and that of loss or substitution precluded by recording of the registered mail”)).
- [15] Mitchell relies on *Graham v. State*, 253 Ind. 525, 255 N.E.2d 652 (Ind. 1970), to argue that the gaps reflected by the faulty evidence log mean the evidence never should have been admitted. In *Graham*, the defendant was convicted of possession of heroin, which was wrapped in the foil of a gum wrapper. *Id.* at 653. When police collected the heroin evidence, they initialed the foil and put the evidence in a manila envelope. *Id.* at 653-54. For six days, the evidence was unaccounted for and the prosecution failed to present testimony of the police officers who could explain where it was. *Id.* at 655. Our Supreme Court ruled that “[t]he fact that the chewing gum wrapper was identifiable as that acquired from appellant at the drugstore cannot cure the defective evidentiary chain of custody which preceded the laboratory experiments.” *Id.*
- [16] Mitchell’s case is distinguishable from *Graham* in several ways. First, there is no suggestion that the manila envelope in *Graham* was sealed at all, let alone heat

sealed, like the bag containing Mitchell's pipe. Second, Assistant Chief Traster and the forensic scientist testified that the pipe at trial was the same pipe collected and tested, that the seals had not been broken in a suspicious manner, and that the handling of the evidence had been regular, evidence log notwithstanding. Tr. Vol. II, pp. 124, 138, 139 158-160, 161. Third and finally, the nature of the evidence in *Graham* was much more vulnerable to tampering than the evidence here. In *Graham*, the gum wrapper was merely the container for a fungible drug. Here, the pipe was encrusted with methamphetamine residue. It would have been easier for a bad actor to swap out the contents of the wrapper in *Graham* than to create the residue here—which had been photographed before testing. Mitchell's claim fails because she only raises the mere possibility of evidence tampering. *See Troxell*, 778 N.E.2d at 814.

[17] Because admission of both the marijuana evidence and evidence stemming from the methamphetamine pipe was proper, Mitchell has failed to establish the evidence was insufficient to support her convictions. We therefore affirm the trial court.

Najam, J., and Vaidik, J., concur.