

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Vera R. Morgan,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

April 28, 2023

Court of Appeals Case No.  
22A-CR-2668

Appeal from the Delaware Circuit  
Court

The Honorable John M. Feick,  
Judge

Trial Court Cause No.  
18C04-2011-F1-13

**Memorandum Decision by Judge Mathias**  
Judges May and Bradford concur.

**Mathias, Judge.**

[1] Vera R. Morgan appeals her conviction for Level 1 felony dealing in a controlled substance resulting in death. Morgan raises two issues for our review, but we need only decide the following dispositive question: whether the trial court abused its discretion when it admitted into evidence text messages between Morgan, the victim, and third parties showing uncharged drug deals as part of Morgan’s plan of dealing in heroin. We affirm.

## **Facts and Procedural History**

[2] In September 2020, Morgan and Michael Schoeff arranged to go to Dayton, Ohio, to purchase heroin, with which they would then return to Indiana and resell. Morgan had a dealer-user relationship with Mandy Hart in Muncie. On October 10, Hart texted Morgan and asked for “some good sh\*t” and “how much for a half.” Ex. Vol. 5, pp. 57-58. Morgan made it clear that she had heroin available to sell but also mentioned that she was about “to head to Dayton” to resupply. *Id.* at 59. They then arranged for Hart to meet Morgan at 15th and Hoyt in Muncie and for Hart to inject the heroin in Morgan’s presence.

[3] Morgan texted Hart later that same day to check in on her. Hart responded an hour later and said she was okay, just “sick.” *Id.* at 62. Morgan stated that Hart “fell all the way out,” and Hart responded, “I’m sorry dude. I didn’t even do much, u seen it.” *Id.* Hart added, “Don[’]t feel bad. I’ll be alright,” to which Morgan responded, “I shouldn’t have sold you that ever.” *Id.* at 63. On October

11 and again on October 14, Morgan sent additional follow-up text messages to Hart to check in on her health.

[4] On October 16, Hart again texted Morgan and asked for heroin. Morgan called Hart back, and Hart and her boyfriend, Matthew Stockton, were already at 15th and Hoyt. Morgan asked them to meet her down the street at a nearby gas station, and Hart and Stockton agreed. Hart and Stockton then met Morgan and Schoeff at the gas station, where Hart purchased heroin from Morgan. Morgan and Schoeff then gave Hart and Stockton a ride back to Stockton's house in Muncie. Inside the house, Hart and Stockton injected the heroin.

[5] Hart overdosed and died. Stockton called his parents, and his parents called 9-1-1. Stockton informed law enforcement officers that he and Hart had purchased heroin from Morgan. Officers then located and arrested Morgan. In a subsequently recorded jailhouse phone call, Morgan told an unidentified male that, while she had planned to sell Hart heroin on October 16, by the time Morgan had arrived at the gas station Hart had already purchased heroin from another person.

[6] The State charged Morgan with Level 1 felony dealing in a controlled substance resulting in death. At her ensuing jury trial, the trial court admitted, over Morgan's objection, text exchanges regarding Morgan's September purchases of heroin in Dayton and the October 10-14 text exchanges between Morgan and Hart. Stockton also testified at Morgan's trial. The jury found Morgan guilty of the Level 1 felony and, thereafter, found her to be a habitual offender. The trial

court entered its judgment of conviction and sentenced Morgan to forty years. This appeal ensued.

## Discussion and Decision

- [7] Morgan appeals her conviction and contends that the trial court abused its discretion when it admitted the September text exchanges and the October 10-14 text exchanges into evidence. A trial court has discretion regarding the admission of evidence, and its decisions are reviewed only for abuse of discretion. *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021) (citing *Lewis v. State*, 34 N.E.3d 240, 247 (Ind. 2015)). We will reverse only if the trial court’s ruling was clearly against the logic and effect of the facts and circumstances before it and any error affects a party’s substantial rights. *Id.* (citing *Hall v. State*, 36 N.E.3d 459, 467 (Ind. 2015)).
- [8] Morgan asserts that the text messages were inadmissible under [Indiana Evidence Rule 404\(b\)](#),<sup>1</sup> which provides:

(1) Prohibited Uses. Evidence 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.

(2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity,

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<sup>1</sup> Morgan does not challenge the admissibility of the evidence under [Rule 403](#).

absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:

(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial--or during trial if the court, for good cause, excuses lack of pretrial notice.

[9] As our Supreme Court has explained:

Indiana Evidence Rule 404(b) serves to safeguard the presumption of innocence in favor of criminal defendants. *See Swain v. State*, 647 N.E.2d 23, 24 (Ind. Ct. App. 1995) (quoting *Hardin v. State*, 611 N.E.2d 123, 128 (Ind. 1993)), *trans. denied*. The Rule’s mandate is clear: a court may not admit evidence of another crime, wrong, or act “to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Ind. Evidence Rule 404(b)(1). This restriction prevents the jury from indulging in the “forbidden inference” that a criminal defendant’s “prior wrongful conduct suggests present guilt.” *Byers v. State*, 709 N.E.2d 1024, 1026-27 (Ind. 1999).

But Rule 404(b) does not totally proscribe other-bad-acts evidence—only its use as character evidence. Indeed, the Rule plainly states that other-bad-acts evidence may be admissible for other purposes, and it provides an illustrative list—to show “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Evid. R. 404(b)(2). So when the State claims that other-bad-acts evidence is admissible for a proper purpose, the trial court is tasked with deciding whether that evidence “is relevant to a matter at issue

other than the defendant's propensity to commit the charged act." *Hicks v. State*, 690 N.E.2d 215, 219 (Ind. 1997).

*Fairbanks v. State*, 119 N.E.3d 564, 568 (Ind. 2019).

[10] We agree with the State that the text exchanges here were relevant to show Morgan's plan of dealing heroin to Hart.<sup>2</sup> "Rarely will evidence be found that clearly sets forth a detailed plan of action to be followed by the defendant. Rather, the plan will be formulated in the mind of the defendant and the action unfolds to reveal the defendant's plan." *Southern v. State*, 878 N.E.2d 315, 322-23 (Ind. Ct. App. 2007), *trans. denied*. In *Goodner v. State*, our Supreme Court held that the trial court properly admitted statements about the defendant's two prior drug sales under [Rule 404\(b\)](#) because those statements concerned "transactions that week" that "were part of a plan that encompassed the charged offense: disposition of a half-ounce of cocaine." 685 N.E.2d 1058, 1061 (Ind. 1997).

[11] Likewise here, the texts were properly admitted because they concerned Morgan's plan to deal heroin to Hart. Specifically, the September text exchanges showed Morgan's acquisition of heroin in Dayton with the intent to resell in Indiana. And the October 10-14 text exchanges showed Morgan's recent sale of heroin to Hart in Muncie and a connection to Morgan's Dayton

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<sup>2</sup> As the State notes, it may seek to have evidence of a defendant's plan admitted under [Rule 404\(b\)](#) without the defendant first putting that question into issue. See *Goodner v. State*, 685 N.E.2d 1058, 1061 (Ind. 1997).

purchases. Thus, the text messages demonstrated Morgan’s ongoing plan to deal in heroin and to sell to Hart specifically as part of that plan, which encompassed the charged offense. Following *Goodner*, we therefore conclude that the trial court properly admitted the text messages under the “plan” exception of [Indiana Evidence Rule 404\(b\)](#). Accordingly, we affirm the trial court’s judgment and Morgan’s conviction.

[12] Affirmed.

May, J., and Bradford, J., concur.