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# IN THE
# COURT OF APPEALS OF INDIANA

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| MORGAN B. DALTON, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 85A02-0904-CR-299 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE WABASH SUPERIOR COURT
The Honorable Robert R. McCallen III, Judge
Cause No. 85C01-0710-FB-126

**September 8, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Defendant Morgan Dalton appeals her conviction for Dealing in a Narcotic Drug, a Class B felony,[1] for which she was sentenced to twelve years of incarceration, with four years suspended to probation. Dalton contends that the trial court erred when it failed to grant her motion for a mistrial. We affirm.

## FACTS AND PROCEDURAL HISTORY

On August 27, 2007, a confidential informant ("CI"), in cooperation with the Wabash County Drug Task Force, called Dalton, an acquaintance, about purchasing heroin. During a recorded conversation, Dalton arranged for CI to pick up two bags of heroin from Dalton's home later that day. After the conversation with Dalton, Officer Prater of the Wabash County Police Drug Task Force searched CI for any controlled substances and wired him for audio surveillance of the controlled buy between the CI and Dalton. When the CI arrived at Dalton's home, he gave Dalton sixty dollars in exchange for two bags of heroin.

The State charged Dalton with Dealing in a Narcotic Drug, a Class B felony. During Dalton's trial, CI testified that he knew Dalton and her husband for more than five years. When the prosecutor asked CI to describe the kind of relationship he had with the Dalton's, he replied, "I'd buy a lot of drugs off of them and they bought a lot of drugs off me." Tr. p. 86. Dalton immediately objected and moved to strike CI's answer. The trial court granted Dalton's motion and gave the jury the following admonition: "Alright. I'm gonna grant that motion. I'm gonna strike that answer. And ladies and gentlemen, as I've indicated to you, you are to disregard the most recent answer the gentleman gave in response to the question

[1] Ind. Code § 35-48-4-1(a)(1) (2007).

by the State of Indiana." Tr. p. 87. Dalton subsequently moved for a mistrial on the basis that the trial court's admonition was insufficient to overcome the prejudice to him, a motion which the trial court denied. The jury found Dalton guilty as charged, and the trial court sentenced her to twelve years of incarceration with four suspended to probation.

## DISCUSSION AND DECISION

Dalton challenges her conviction on the ground that the trial court erred in failing to grant her motion for mistrial in which she asserted great prejudicial impact from CI's testimony that he and Dalton had been involved in drug transactions prior to the instant offense. While Dalton acknowledges that the trial court recognized that CI's testimony was in violation of Indiana Rules of Evidence 404(b) when it sustained Dalton's timely objection and admonished the jury, she contends that the admonition was insufficient to cure the prejudicial effect of CI's inadmissible testimony.

> Because the trial court is in the best decision to evaluate the relevant circumstances of an event and its impact on the jury, the trial court's determination of whether to grant a mistrial is afforded great deference on appeal. To succeed on appeal from denial of a motion for mistrial, the appellant must demonstrate the statement or conduct in question was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected. Mistrial is an extreme remedy invoked only when no other measure can rectify the perilous situation. We determine the gravity of the peril based upon the probable persuasive effect of the misconduct on the jury's decision rather than upon the degree of impropriety of the conduct. Moreover, reversible error is seldom found when the trial court has admonished the jury to disregard a statement made during the proceedings.

*Bradley v. State*, 649 N.E.2d 100, 107-08 (Ind. 1995). Evidence admitted in violation of Evidence Rule 404(b) will not require a conviction to be reversed "if its probable impact on

the jury, in light of all the evidence in the case, is sufficiently minor so as not affect a party's substantial rights." *Houser v. State*, 823 N.E.2d 693, 698 (Ind. 2005) (citations omitted).

In light of the overall strength of the State's case, we conclude that the probable impact on the jury of the CI's statement was minor. The jury heard the recorded telephone conversation between Dalton and the CI in which the CI arranged to purchase two bags of heroin from Dalton's home. The jury also heard a complete audio recording of the drug transaction itself. Detectives Matt Rebohlz and Nick Brubaker of the Wabash Drug Task testified regarding the surveillance of the drug transaction and test results confirming that the two bags the CI bought actually contained heroin. Moreover, the trial court immediately admonished the jury to disregard the CI's statement, and Dalton points to nothing in the record to indicate that the jury did not take this admonition to heart.

When CI's brief reference to his prior dealings with Dalton is viewed in light of the other evidence of Dalton's guilt, we are not convinced that it was so prejudicial and inflammatory as to place Dalton in a position of grave peril to which she should not have been subjected so as to require the trial court to grant her motion for mistrial. *See Warren*, 757 N.E.2d at 999. We find no error in the trial court's denial of Dalton's motion for a mistrial.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.