



Appellant-Defendant Ronald Williams appeals his convictions of dealing in cocaine, as a Class A felony, Ind. Code § 35-48-4-1; possession of marijuana, as a Class A misdemeanor, Ind. Code § 35-48-4-11; and maintaining a common nuisance, as a Class D felony, Ind. Code § 35-48-4-13. We affirm.

Williams presents three issues for our review, which we restate as:

I. Whether the trial court erred by admitting certain evidence seized as a result of a search of Williams' home.

II. Whether the trial court erred by admitting certain evidence.

III. Whether the trial court erred in instructing the jury.

In June 2006, Detective Early of the Anderson Police Department and Madison County Drug Task Force received information from a source that Willie Ford was selling crack cocaine from a certain location, which turned out to be Williams' apartment. Detective Early commenced surveillance on the apartment. During his surveillance, Detective Early saw a person, later identified as David Moore, arrive and enter the apartment and then leave one to two minutes later. Detective Early believed this to be a drug transaction and initiated a stop of the vehicle in which Moore was riding. He spoke to Moore who admitted having purchased cocaine at the apartment. Detective Early then contacted the prosecuting attorney to get a search warrant for the apartment and had Detective Brooks, also with the Madison County Drug Task Force, continue the surveillance of the apartment until the warrant was obtained. Detective Brooks

conducted surveillance on the apartment for fifteen to twenty minutes prior to the arrival of Detective Early with the search warrant. Detectives Early and Brooks, as well as two uniformed officers, served the search warrant upon the apartment. In doing so, they encountered three people later identified as Williams, Ford, and Marvella Hawkins. As a result of the search, the officers seized cash from both Williams and Ford, as well as crack cocaine, marijuana, and numerous items of drug paraphernalia from the apartment.

Based upon this incident, Williams was charged with dealing in cocaine, possession of marijuana, and maintaining a common nuisance. Following a jury trial, Williams was convicted of the charges. It is from these convictions that he now appeals.

Williams first contends that the trial court erred by denying his motion to suppress the evidence seized pursuant to the search warrant because probable cause did not exist to support the issuance of the warrant. Prior to trial, Williams filed a motion to suppress the evidence seized during the search of his apartment. The trial court denied Williams' motion, and this case proceeded to trial. Thus, the question on appeal is not whether the trial court erred in denying Williams' motion to suppress, but whether the trial court erred in admitting the evidence at trial. *See Cochran v. State*, 843 N.E.2d 980, 982-983 (Ind. Ct. App. 2006), *reh'g denied, trans. denied* (stating that once case proceeds to trial, question of whether trial court erred in denying motion to suppress is no longer viable and defendant's only available argument is whether trial court erred in admitting evidence at trial).

However, in the present case, Williams has waived the issue of the admission of the seized evidence because he failed to make a specific and timely objection to the evidence he wanted suppressed in order to preserve the error for this court's review. *See Green v. State*, 753 N.E.2d 52, 59 (Ind. Ct. App. 2001), *trans. denied*. The denial of a motion to suppress in the trial court is insufficient to preserve error for appeal. *Id.* Rather, a party must make a contemporaneous objection to the admission of the evidence in order to give the trial court the opportunity to make a final ruling on the issue in the context in which the evidence is introduced. *Wales v. State*, 768 N.E.2d 513, 525 (Ind. Ct. App. 2002). Here, Williams failed to object to testimony of the search and to pieces of evidence that were seized during the search of his apartment pursuant to the search warrant. Later during the trial, after some evidence had been admitted and other numerous items had been identified as having been seized as a result of the search, Williams' counsel mentioned his "general objection" to these items based upon the motion to suppress. Tr. at 354. This is clearly neither a simultaneous nor a specific objection. Having failed to object in a timely manner in order to preserve this alleged error, Williams is precluded from raising this issue on appeal.

Williams' second evidentiary challenge focuses on the trial court's admission of the videotaped statement of Marvella Hawkins. The admissibility of evidence is within the sound discretion of the trial court, and we will not disturb the decision of the trial court absent a showing of abuse of that discretion. *Gibson v. State*, 733 N.E.2d 945, 951

(Ind. Ct. App. 2000). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

At trial, Williams objected to the admission of the videotaped statement based upon the violation of his right to cross-examine the witness. Tr. at 449-51 and 694. On appeal, however, he objects to the admission of the videotaped statement pursuant to Indiana Rule of Evidence 803(5) because he alleges the witness had sufficient recollection. A party may not object on one ground at trial and raise a different basis for error on appeal. *Collins v. State*, 835 N.E.2d 1010, 1016 (Ind. Ct. App. 2005), *trans. denied*. Therefore, the issue is waived for review.

The third and final error raised by Williams in this appeal is that the trial court erred in instructing the jury. Instructing the jury lies solely within the discretion of the trial court, and we will reverse only upon an abuse of that discretion. *Elliott v. State*, 786 N.E.2d 799, 801 (Ind. Ct. App. 2003), *reh'g denied*. In order to conclude that the trial court abused its discretion, this Court must find that the instructions taken as a whole misstate the law or otherwise mislead the jury. *Proffit v. State*, 817 N.E.2d 675, 683 (Ind. Ct. App. 2004), *trans. denied*.

The court's instructions on accomplice liability state:

Indiana Code 35-41-2-4 Aiding, inducing or causing an offense

A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person:

1. Has not been prosecuted for the offense,
2. Has not been convicted of the offense, or

3. Has been acquitted of the offense.

Appellant's Appendix at 77. The second accomplice liability instruction states:

Under the aiding, inducing or causing statute, the State need not prove that the defendant personally participated in the commission of each element of the crime. Further, the State need not prove that the defendant knew of each separate act performed by the accomplice.

Appellant's App. at 78.

Williams asserts that the court's instructions regarding accomplice liability misled the jury and that the evidence did not support the giving of the instructions. However, at trial Williams did not object to the first instruction setting forth the statutory elements. In addition, in his brief Williams concedes that both instructions are a correct statement of the law. *See* Appellant's Brief at 10.

With regard to the second instruction, Williams never made these arguments to the trial court when objecting to the instruction. Instead, he objected to the instruction upon the ground that "the statute speaks for itself" and that the instruction is "kind of drawing specific attention to aiding and inducing." Tr. at 615. By not objecting to the instructions upon the grounds he now argues upon appeal, Williams has waived this claim of error. *See e.g., Proffit*, 817 N.E.2d at 684-85 (by not objecting to instructions upon ground he now argued on appeal, defendant waived claim of error); *see also Luna v. State*, 758 N.E.2d 515, 518 (Ind. 2001) (where defendant failed at trial to state ground for her objection which she asserted upon appeal, she waived her ability to raise it upon appeal).

Based upon the foregoing discussion and authorities, we conclude that Williams failed, for differing reasons, to preserve any of these issues for appeal.

Affirmed.

DARDEN, J., and RILEY, J., concur.