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ATTORNEY FOR APPELLANT:

JOHN PINNOW
Special Assistant to the
State Public Defender
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

FILED
Nov 28 2011, 10:22 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

DANIEL WALTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 57A03-1105-CR-198
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Robert E. Kirsch, Judge
Cause No. 57D01-1004-FA-13

November 28, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Daniel Walton appeals his two convictions for Dealing in Methamphetamine[1], a class A felony. He argues that the trial court abused its discretion when it admitted into evidence audio recordings of him selling methamphetamine because they were not of sufficient clarity to be intelligible and enlightening to the jury. Finding no error, we affirm.

FACTS

Otis Collins II agreed to serve as a confidential informant for the Indiana Multi-Agency Group Enforcement Task Force. Collins hoped that if he assisted the Task Force with its counter-methamphetamine operations, he might not have to serve all of his sentence of thirty-nine weekends in the Dekalb County jail for operating a motor vehicle while intoxicated and driving with a suspended license.

Collins told Task Force Detective Sergeant Cory Heffelfinger that he could buy Methamphetamine from Daniel Walton. Collins had known Walton for more than fifteen years, but he had not previously bought methamphetamine from Walton. Collins called Walton and arranged to meet Walton at his home to buy a quarter ounce of methamphetamine.

On September 18, 2009, before heading to Walton's home, Collins met with Task Force officers. The officers searched Collins and his vehicle. They then equipped Collins with an audio recording and transmitting device and gave him $500 to purchase the methamphetamine. Collins drove directly to Walton's home as the officers followed.

[1] Ind. Code §§ 35-48-4-1.1(a)(1), 1.1(b)(1)

After arriving at Walton's home, the officers watched Collins and monitored him using the audio transmitter. Collins got out of his vehicle and met Walton at the front door. The two men entered the home as they chatted about an old motorcycle Walton owned. As they headed toward the kitchen, Walton pulled some methamphetamine from his pocket. Collins asked if it was "red," and Walton replied that that was just its name. "Red phosphorous" is a type of methamphetamine that derives its name from its color. The red hue is a result of the red phosphorous in the match tips utilized in the manufacturing process. Walton handed Collins the methamphetamine, which Collins examined. The two talked as they headed into the living room, where Collins counted the money for Walton. Walton told Collins he had to recount the money for his dealer. Walton then walked Collins to the door.

Collins then got back into his truck and drove directly to the same location where he met the officers. Collins gave 6.31 grams of methamphetamine and the remaining $100 to the officers.

Collins arranged for second meeting with Walton, this time at Collins' home. Collins indicated that he wanted to buy an entire ounce of methamphetamine. Walton stated that he could supply that amount, but that it would cost $1,200.

On September 24, 2009, prior to the second meeting, Collins again met with Task Force officers. The officers searched Collins, fitted him with an audio recording and transmitting device, and gave him $1,200 to purchase the methamphetamine. Detective Heffelfinger told Collins to make the buy outside because the officers had not searched

his home. The officers then dropped Collins off near his home, but, because the recording device was not working properly, he had to return to the surveillance van for adjustments. Following the adjustments, the officers were able to hear "bits and pieces" of what was said during the drug buy.

An officer followed Walton to Collins's house. Walton arrived and let himself into the house. Collins insisted on conducting the purchase outside, as he had others inside his home. Walton reluctantly accompanied Collins outside, with the methamphetamine in his pocket. Although both men were now outside, the two men were not within the view of the officers. Walton told Collins that there were a lot of policemen around that night and he did not like it. The two quickly exchanged the methamphetamine and the money. Walton told Collins to let him know if it did not weigh enough. Collins returned to the surveillance van and turned over a baggie containing 21.82 grams of methamphetamine.

The State charged Walton with two counts of dealing in methamphetamine, a class A felony. At trial, Walton filed a motion in limine asking the trial court to exclude "[a]ny recording of any alleged drug transactions on the grounds that said audio taping cannot be heard in its entirety and thus any statements made therein can be taken out of context." Appellant's App. p. 7, 53. After a hearing on the matter, the trial court denied the motion, holding:

> I personally, I am not sure how the State plans to present this to the jury as far as the mechanics, but I personally find this presentation to be very inadequate in the sense of, uh, you know, I couldn't hear that much,

> but I hear enough to believe that it supports that it is relevant and I hear enough to believe that it seems to be an indication of a drug transaction transpiring. Now is it of very good quality, the answer is no its not. But I don't think that Fassoth or Lenover require crystal clear quality or they don't require that there be portions, I mean, that all portions be audible. In fact I remember reading somewhere and I can't place my finger on it right now where one case there was like 34 inaudible portions in the tape recording. I think that is what the number was and the Court in that case, and I don't remember what case it was, said that that's okay. You know, I think this is one of those pieces of the evidence where I understand what the Defendant is saying. This is very easily a tape recording that could work against the State as well as for the State. So, do I think it should be excluded from the evidence? The answer is no. So, the Court will deny the Defendant's Motion in Limine having to do with the admissibility of the audio tape.

Tr. P. 36-37. The two audio tapes of the drug buys were admitted as State's Exhibits C and F.

At trial, Walton renewed his motion to exclude the audiotapes. The trial court overruled the motion and entered a continuing objection. Upon the conclusion of the evidence, the jury found Walton guilty as charged.

DISCUSSION AND DECISION

Walton challenges the admission into evidence of State's Exhibits C and F, the audio recordings of the methamphetamine purchases. Walton asserts that both exhibits should not have been admitted into evidence because they were not of sufficient clarity to be intelligible and enlightening to the jury.

Trial courts have broad discretion in deciding whether to admit a sound recording into evidence, and, on appeal, we will not reverse that decision unless it represents a manifest abuse of discretion that denied the defendant a fair trial. Hall v. State, 897

N.E.2d 979, 981 (Ind. Ct. App. 2008). An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id. The foundational requirements for a taped recording made in a non-custodial setting are: (1) the recording is authentic and correct; (2) the recording does not contain evidence otherwise inadmissible; and (3) the recording is of such clarity as to be intelligible and enlightening to the jury. Lehman v. State, 730 N.E.2d 701, 703 (Ind. 2000). It is within the trial court's broad discretion to determine whether these criteria have been met. Id.

Here, Walton challenges the admission of the audiotapes because they lacked sufficient clarity. The trial court listened to the audio tapes prior to trial. Although the trial court stated that it could not "hear that much" and the tapes were not of very good quality, it concluded that it had heard enough to believe that the tapes are relevant, support the prosecution's case, and are an indication of a drug transaction. Tr. p. 36-37. Having listened to the recordings, we conclude that the trial court did not abuse its discretion in admitting the recording into evidence. Although portions of the recording are inaudible due to background noise and low recording volume, we do not agree that the audio recordings were "not of sufficient clarity to be admissible." The fact that some portions of the tapes were inaudible does not necessarily mean that there existed an absence of clarity such that the conversations were unintelligible. It appears from the recordings that Collins and Walton were involved in a drug buy. Further, we cannot expect the recording quality of a person wearing a wire transmitter to be the same as a

recording in an interrogation room. Kidd v. State, 738 N.E.2d. 1039, 1042 (Ind. 2000). Therefore, the trial court did not err by admitting the audiotapes.

Furthermore, both exhibits are recordings of the September drug buys, the details of which Collins testified to at trial. He testified as to how he contacted Walton, when and where they met, their discussions during the drug buys, and the exchanges of the methamphetamine. Tr. p. 141-203. Also, Detective Dwight Miller of the Kendallville Police Department was a member of the Task Force, present at both drug buys, and provided corroborating testimony. Id. at 91-131. Therefore, even if we were to determine that the trial court erred by admitting the audiotapes, the error would be harmless because the evidence presented was cumulative. Purvis v. State, 829 N.E.2d 572, 585 (Ind. Ct. App. 2005) (stating that improper admission of evidence is harmless error when erroneously admitted evidence is merely cumulative of other evidence).

The judgment of the trial court is affirmed.

KIRSCH, J., and BROWN, J., concur.