

Eric Simmons was convicted after a jury trial of Class B felony dealing in methamphetamine.¹ As he has demonstrated no prejudice from the admission of the evidence he challenges, we affirm.

FACTS² AND PROCEDURAL HISTORY

In February of 2009, police spoke to an individual they had recently arrested for possession of various drugs. They wanted the individual to serve as a confidential informant, and he agreed to do so. In April of 2009, the informant contacted Simmons and arranged to buy methamphetamine. Officer Kenneth Rose searched the informant and gave him \$100 for the purchase. Simmons met the informant at a gas station and sold him methamphetamine. Police recorded the transaction with a video camera.

At trial, Officer Rose was asked about the amount of drugs the informant had when arrested in February 2009: “were they user amounts, dealer amounts, do you recall?” (Tr. at 66.) Simmons’ counsel objected on the ground the question called for an opinion, and the court overruled the objection. The officer replied, “they were user amounts based on my training and experience.” (*Id.*)

¹ Ind. Code § 35-48-4-1.1.

² The Statement of Facts section in an appellant’s brief “shall describe the facts *relevant to the issues presented for review.*” Ind. Appellate Rule 46(A)(6) (emphasis added). Simmons’ sole allegation of error addresses the admission of a police officer’s testimony, but his Statement of the Facts includes no mention whatsoever of the challenged testimony, his objection to it, or any other aspect of his trial.

DISCUSSION AND DECISION

The admission or exclusion of evidence is entrusted to the discretion of the trial court. *Shepherd v. State*, 902 N.E.2d 360, 364 (Ind. Ct. App. 2009), *trans. denied*. An error in the admission of evidence is harmless unless the error affected the defendant's substantial rights. *Id.* To determine whether an error in the admission of evidence affected the defendant's substantial rights, we consider the probable impact the evidence had on the jury. *Id.* The question is not whether there is sufficient evidence to support the conviction absent the erroneously admitted evidence, but whether the evidence was likely to have had a prejudicial impact on the jury. *Id.*

Assuming, without deciding, the challenged testimony should not have been admitted, we must nonetheless affirm. Simmons neither asserts the admission of the evidence affected his substantial rights nor explains how it affected his rights. As the testimony was about the amount of drugs possessed by someone other than Simmons two months before the transaction that resulted in Simmons' arrest, no prejudice to Simmons is apparent. We accordingly affirm.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.