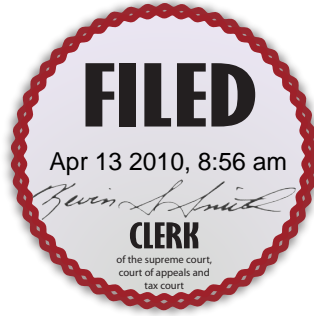


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

EDWARD A. McGLONE
Terre Haute, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana
Indianapolis, Indiana

ANN L. GOODWIN
Special Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY J. STEUERWALD,)

Appellant-Defendant,)

vs.)

No. 11A04-0908-CR-442)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE CLAY CIRCUIT COURT
The Honorable Joseph D. Trout, Judge
Cause No. 11C01-0808-FB-00295

APRIL 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Timothy J. Steuerwald appeals his conviction of dealing in methamphetamine, a Class D felony. We affirm.

ISSUES

Steurwald raises one issue for our review, which we restate as: Whether Steuerwald was denied his right to confront the informant who testified that Steuerwald dealt the methamphetamine. The State raises the issue of whether Steuerwald waived this issue. For purposes of judicial economy, we first address the waiver issue.

FACTS AND PROCEDURAL HISTORY

Angela Pursel was facing a charge of possession of drug paraphernalia when she was charged in a second case with obtaining a controlled substance by fraud or deceit, also referred to as prescription fraud. Pursel contacted Detective Jerry Siddons of the Clay County Sheriff's Department and offered to become an informant in exchange for a positive recommendation by Detective Siddons to the prosecutor. Detective Siddons agreed to make the recommendation in exchange for Pursel's controlled buys from Steuerwald; however, he made no guarantees regarding the effect of his recommendation.

On July 10, 2008, Detective Siddons met with Pursel, and after searching her vehicle and purse, he gave her eight blister packs of Sudafed, the active ingredient in methamphetamine, and monitored her by sight and transmitter as she first traveled to a lake property to meet with Steuerwald. Steuerwald did not come to the lake property, so Pursel went to Steuerwald's home, where they entered the home and Pursel gave the

Sudafed to Steuerwald. The transmitting device in Pursel's purse allowed Detective Siddons to monitor her conversation with Steuerwald, and the detective heard Steuerwald tell Pursel that he would contact her later that evening "when things were done." (Tr. at 226). Pursel and Detective Siddons understood this promise to mean that she would be receiving finished methamphetamine later that night. Pursel's purse and vehicle were searched after her delivery of the Sudafed to Steuerwald. The tape device did not work, so the tape of the discussion was not available to the jury.

At approximately 10:45 p.m., Pursel contacted Detective Siddons and informed him that Steuerwald had told her that the methamphetamine was ready. Pursel met Detective Siddons and a female officer at a cemetery, where Pursel's vehicle, purse, and person were searched. Pursel was outfitted with a transmitter, and she proceeded to Steuerwald's home.

Steuerwald gave Pursel a baggie containing what was later determined to be .87 grams of a substance containing methamphetamine. The transaction was recorded, but the recording was of poor quality. The recording did memorialize Pursel's suggestion that Steuerwald "hurry up," and Steuerwald's reply, "I am hurrying." Pursel returned to the cemetery without making any stops and gave the methamphetamine to Detective Siddons.

On August 1, 2008, the State charged Steuerwald with dealing in methamphetamine, a Class B felony; possession of methamphetamine, a Class D felony; and maintaining a common nuisance, a Class D felony. Prior to the trial, but after the

controlled buy, Pursel was charged with Auto Theft, a Class D felony; operating a vehicle while intoxicated, a Class C misdemeanor; operating a vehicle with an alcohol concentration of .08 or more, a Class C misdemeanor; and failure to stop after an accident to an attended vehicle, a Class C misdemeanor. Pursel entered into a plea agreement whereby she pled guilty to the pre-buy charges of obtaining a controlled substance by fraud or deceit and the post-buy charges of operating a vehicle with an alcohol concentration equivalent of .08 or more and failure to stop after an accident resulting in damage to an attended vehicle. Pursel was sentenced to time served followed by two and one-half years of formal probation, to pay court costs and restitution to the vehicle owner, and to attend drug/alcohol abuse classes, while the State dismissed the other charges. The guilty plea made no mention of Pursel testifying at Steuerwald's trial, but Pursel believed that she could be charged with false informing if she changed her testimony at trial.

Pursel testified at trial about the controlled buy. The trial court allowed defense counsel to question her about prior convictions involving dishonesty pursuant to Indiana Evid.R. 609. However, it appears from the content of Steuerwald's offer to prove that the trial court did not allow Steuerwald to question Pursel about prior convictions for battery resulting in bodily injury, a Class C misdemeanor; possession of methamphetamine, a Class D felony; unlawful possession of a syringe, a Class B misdemeanor; or two batteries, Class B misdemeanors. It also appears from the content

of the offer to prove that the trial court did not allow Steuerwald to question Pursel about the post-buy convictions or some details about the plea agreement.

The jury found Steuerwald guilty on all charges, but because of double jeopardy concerns, the trial court sentenced Steuerwald on the dealing charge only. Steuerwald now appeals his conviction.

DISCUSSION AND DECISION

I. WAIVER

Steuerwald contends that the trial court improperly limited his right of confrontation by not allowing him to ask certain questions about Pursel's criminal record and plea agreement. The State counters that Steuerwald has waived this claim because he did not raise a "Confrontation Clause objection" at trial. (Appellee's Brief at 8). The State cites *West v. State*, 755 N.E.2d 173, 183-84 (Ind. 2001) for the proposition that to preserve this issue for a review, a party must make an offer to prove, setting forth the grounds for admission of the evidence and the relevance of the testimony. The State contends that even though there was an offer to prove, there was no indication of the grounds for admission or the relevance.

Our review of the record discloses that before trial the State filed a motion in limine in which it requested the court, among other things, to prevent Steuerwald from asking questions related to evidence of any convictions not sanctioned by Indiana Evidence Rule 609(a), which limits impeachment to questions regarding certain enumerated crimes or crimes involving "dishonesty or false statement." The trial court

granted the motion “with exception that any such evidence of special consideration in return for service rendered by law enforcement or the prosecution in regard to the confidential informant in this case may be allowed if brought to the Court outside the presence of the jury and leave of Court permitted.” (Appellant’s App. at 20). The trial judge entered a “Supplemental Order in Limine,” in which it stated that Steuerwald would be allowed to present evidence of Pursel’s October 28, 2005 and October 31, 2005 convictions for check deception (Class A misdemeanors). (Appellant’s App. at 21). The order also allowed Steuerwald to present evidence that Pursel “entered into [an] arrangement with law enforcement for ‘control buys’ against Defendant as she was facing potential charges for obtaining a controlled substance by fraud or deceit, a Class B felony, and reckless possession of paraphernalia, a Class B misdemeanor.” *Id*

At trial, after cross-examination of Pursel regarding her two prior check deception convictions and her conviction for obtaining a controlled substance by fraud or deceit, defense counsel requested that the trial court allow him to make an offer to prove. The trial court noted some changes to its initial rulings, and then defense counsel asked Pursel about other convictions prior to the buy, convictions that occurred after the buy, and the circumstances of the plea agreement.

The words “confrontation clause” do not appear in the trial transcript; however, it is clear from the questions asked in the offer to prove, coupled with the trial court’s comments and its previous rulings, that everyone understood that the issue of Pursel’s criminal history, possible penalties for charges, and subsequent plea agreement was

raised to show that Steuerwald should be allowed to confront Pursel to show Pursel's bias, prejudice, and motive under Indiana Evid.R. 616. The three elements of *West* are satisfied, and Steuerwald has not waived the confrontation issue.

II. CONFRONTATION

Steuerwald contends that the trial court interfered with his right of confrontation on cross-examination when it did not allow him to show the extent of Pursel's prior criminal history, the number of charges dismissed in her plea before trial, and the complete circumstances of her guilty plea. Steuerwald concedes that the jury was made aware of Pursel's potential bias, prejudice, and self-interest, but he theorizes that the jury would have benefitted by further evidence.

Steuerwald compares this case to *Janner v. State*, 521 N.E.2d 709 (Ind. Ct. App. 1988), in which the trial court did not allow the defendant to impeach the State's paid informant by cross-examining the informant about a charge against him for burglarizing the defendant's home and the dismissal of the charge sometime between the incident from which Janner's charges arose and the time of trial thereon. We held that the failure "to disclose relevant evidence which has a direct bearing on a witness's credibility presents a danger that the fact finder will be misled by remaining uninformed about the witness's credibility." *Id.* at 711-12. We further held that exclusion of such evidence "undermines the truth finding function of our judicial system. *Id.* at 712. We cited *Jarrett v. State*, 498 N.E.2d 967 (Ind. 1986), where our supreme court held that it was improper for the trial court to limit the cross-examination of two co-defendants. *Id.* at

715-16. Our supreme court held that the state's wish to keep the sentencing information away from the jury "was subordinate to the crucial role of full and proper cross-examination." *Id.* at 716.

However, relying on our supreme court's decision in *Hatchett v. State*, 503 N.E.2d 398 (1987), we held in *Beaty v. State*, 856 N.E.2d 1264, 1270 (Ind. Ct. App. 2006), *trans. denied*, that a trial court does not abuse its discretion in excluding such evidence if the jury has been made aware of the witness's interest. Here, Pursel testified on direct examination that she contacted Detective Siddons so he could "assist" her in resolving the prescription fraud and possession of paraphernalia charges against her. On cross-examination, she admitted that "[i]t was agreed that [Detective Siddons] would go up to bat for me, yes, and do his best to keep me from getting jail time." (Tr. at 55). Pursel further admitted on cross-examination that she believed that "had you changed your story now and say no I didn't [obtain methamphetamine from Steuerwald), that you could be looking at False Informing charges[.]" (Tr. 72). On further examination, Pursel testified that before receiving Detective Siddon's assistance, she faced up to a three-year prison sentence. With this testimony, the jury was sufficiently able to consider Pursel's alleged bias. Thus, under *Hatchett* and *Beaty*, the trial court did not abuse its discretion and Steuerwald was not denied his right of confrontation.

Affirmed.

MAY, J., and MATHIAS, J., concur.