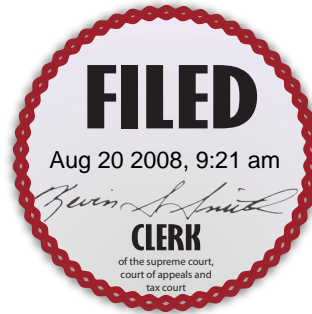


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**MARIELENA LINDKE**  
South Bend, Indiana

**STEVE CARTER**  
Attorney General of Indiana

**GEORGE P. SHERMAN**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

DARREN E. DUGGER,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 20A05-0801-CR-48

---

APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable George W. Biddlecome, Judge  
Cause No. 20D03-0604-FB-22

---

**August 20, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Darren E. Dugger was convicted after a jury trial of dealing in a schedule II controlled

substance<sup>1</sup> as a Class B felony and sentenced to ten years. He appeals, raising the following two restated issues:

- I. Whether the trial court abused its discretion when it limited the cross-examination of a witness; and
- II. Whether the trial court abused its discretion when it allowed into evidence an audio recording of the drug transaction.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On November 16, 2005, an informant named Ryan Bingaman met with Goshen Drug Unit Lieutenant Shawn Turner and advised that he could purchase methamphetamine from an individual that he knew as Big D. Bingaman stated that Big D would be at the residence of Charles Boswell. Big D was later identified as Dugger. Before this transaction occurred, Lieutenant Turner searched both Bingaman and his vehicle and gave Bingaman \$100 in previously copied bills to make the drug purchase from Dugger. Bingaman was also given a recording device to wear on his person to document the transaction.

Bingaman drove Lieutenant Turner in his vehicle to Boswell's residence. Bingaman went inside Boswell's house, and Lieutenant Turner remained in the vehicle. Although Dugger's vehicle had not been parked outside, he was inside of Boswell's residence when Bingaman arrived. Inside of the house, Bingaman, Dugger, and Boswell went into a bedroom, where Dugger weighed a baggie of methamphetamine on scales and gave the baggie to Bingaman. In exchange, Bingaman gave Dugger the \$100 and then exited the house. When he got back into his vehicle, he told Lieutenant Turner that he purchased drugs

---

<sup>1</sup> See IC 35-48-4-2 (1).

from Dugger. Lieutenant Turner took possession of the methamphetamine, and after driving to a different location, Lieutenant Turner again searched Bingaman and the vehicle and obtained the recording device. Laboratory testing later confirmed that the substance that Dugger sold to Bingaman was methamphetamine.

The State charged Dugger with dealing in a schedule II controlled substance as a Class B felony. After a jury trial, he was found guilty as charged. The trial court sentenced him to ten years. Dugger now appeals.

## **DISCUSSION AND DECISION**

### **I. Limitation of Cross-Examination**

“Trial courts have wide discretion to determine the scope of cross-examination, and a trial court’s decision as to the appropriate extent of cross-examination will only be reversed for an abuse of discretion.” *McCorker v. State*, 797 N.E.2d 257, 266 (Ind. 2003). However, the Sixth Amendment to the United States Constitution guarantees a defendant the right to confront witnesses against him. *Id.* (citing *Davis v. Alaska*, 415 U.S. 308, 315, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974)). In state court proceedings, this right is secured for defendants through the Fourteenth Amendment. *Id.* (citing *Pointer v. Texas*, 380 U.S. 400, 403, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965)). Any agreement between the witness and the state and any promises, grants of immunity, or rewards offered in return for testimony must be disclosed to the jury. *Rubalcada v. State*, 731 N.E.2d 1015, 1024 (Ind. 2000). This serves to help the jury better assess the reliability and honesty of the witness. *McCorker*, 797 N.E.2d at 266. “The full extent of the benefit offered to a witness is relevant to the jury’s determination of the weight and credibility of the witness’s testimony.” *Id.*

Dugger argues that the trial court abused its discretion when it limited his cross-examination of Bingaman as to any consideration that he received in exchange for his testimony at trial. He contends that the trial court's limitation of what he could inquire into when cross-examining Bingaman did not allow him to delve into Bingaman's motive for testifying. Specifically, Dugger claims that the trial court abused its discretion when it: (1) only allowed inquiry about cases which were addressed in Bingaman's plea agreement; (2) did not allow the word "consideration" to be used in Dugger's cross-examination; and (3) sustained objections by the State to questions regarding Bingaman's plea agreement.

During Dugger's cross-examination of Bingaman, Dugger sought to present evidence of any consideration that Bingaman had received for his testimony at the trial. When Dugger attempted to question Bingaman on his prior criminal history, the State objected, and after a bench conference, the trial court ruled that Dugger could inquire as to any consideration that Bingaman received for his cooperation with the police, including a recall of a bench warrant and a plea agreement in a previous charge, but that he could not inquire as to Bingaman's entire criminal record. *Tr. Vol. II* at 69-70. Dugger then proceeded to question Bingaman about the reduction of his bond from a prior arrest that he received after agreeing to become an informant for the police. *Id.* at 75-76. When Dugger asked who had authorized this bond reduction, a bench conference was held, and the trial court ruled that Dugger had to lay a proper foundation to determine if Bingaman had direct knowledge of how the reduction was authorized. *Id.* at 76. Further, when Dugger questioned Bingaman as to whether he received "consideration in the reduction of his charge" for his assistance of the police, another bench conference was held, and the trial court ruled that Dugger could not use the word

“consideration” in his questioning until it was established that there was an agreement between Bingaman and the State. *Id.* at 79.

Although the trial court did put some limitations on how Dugger could cross-examine Bingaman regarding the consideration he received for assisting the police, he was able to question Bingaman about the plea agreement he received. Bingaman testified that he had previously been charged with Class B felony dealing in methamphetamine and was subsequently charged with Class D felony possession of marijuana and Class B misdemeanor possession of a police radio. *Id.* at 87. He stated that, as a result of a plea agreement, he pled guilty to one count of Class D felony possession of methamphetamine and one count of Class D felony possession of marijuana in exchange for the dismissal of the other charges. *Id.* at 95, 97. Dugger also questioned Bingaman about the sentence he received, and Bingaman testified that he received thirty months on house arrest. *Id.* at 98. Further, Dugger was permitted to cross-examine Bingaman on the possible sentences for both a Class B felony and a Class D felony, which highlighted the benefit in sentencing that Bingaman received.

Additionally, the trial court permitted Dugger to cross-examine Lieutenant Turner regarding Bingaman’s motivation in assisting the police, continuances of Bingaman’s court dates while he was assisting the police, other arrests of Bingaman, any monetary consideration given to Bingaman, and that Bingaman had been released without posting bond so that he could assist the police. *Tr. Vol. I* at 95, 117, 118-20, 127-28, 133-34. We conclude that, based on all of the above testimony, the jury was fully advised of the circumstances surrounding Bingaman’s work as an informant for the police and any benefits or consideration he received for doing so. The limitations that the trial court imposed on

cross-examination of the witness did not materially impede the presentation the defendant's defense.

## **II. Admission of Audio Recording**

Generally, the admission or exclusion of evidence is a determination within the sound discretion of the trial court. *Smith v. State*, 839 N.E.2d 780, 784 (Ind. Ct. App. 2005). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *McVey v. State*, 863 N.E.2d 434, 440 (Ind. Ct. App. 2007), *trans. denied*. "The foundational requirements for the admission of a tape recording made in a non-custodial setting are: (1) that the recording is authentic and correct; (2) that it does not contain evidence otherwise inadmissible; and (3) that it be of such clarity as to be intelligible and enlightening to the jury." *Kidd v. State*, 738 N.E.2d 1039, 1042 (Ind. 2000). The trial court has wide discretion in determining whether these criteria have been met. *Id.* The erroneous admission of evidence will constitute harmless error when it is merely cumulative of other properly admitted evidence. *Collins v. State*, 873 N.E.2d 149, 159 n.6 (Ind. Ct. App. 2007) (citing *Hyppolite v. State*, 774 N.E.2d 584, 592 (Ind. Ct. App. 2002)).

Dugger argues that the trial court abused its discretion when it allowed the audio recording of the drug transaction between Bingaman and Dugger to be admitted into evidence. He contends that the recording contained a great deal of static and interference and was almost unintelligible. He also claims that, because most of the conversation on the recording was not audible, it was of insufficient clarity to be enlightening to the jury.

Assuming without deciding that the audio recording was not of such clarity to be enlightening to the jury and that its admission into evidence was error, we conclude that any error in its admission was harmless. The audio recording was merely cumulative of the testimony of Bingaman, who participated in the transaction, and testified that Dugger gave him a gram of methamphetamine in exchange for \$100. *Tr. Vol. II* at 49-50. Additionally, the recording was also cumulative of the testimony of Boswell, who was present for the transaction and testified that he observed Dugger hand the drugs to Bingaman, who then handed money to Dugger. Accordingly, we find no error in the admission of the audio recording.

Affirmed.

VAIDIK, J., and CRONE, J., concur.