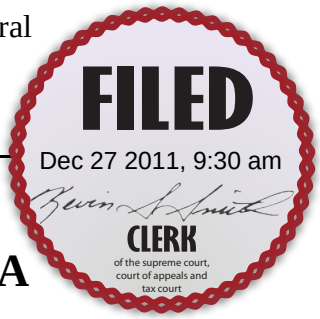
APPELLANT PRO SE:

ANTHONY M. MORRIS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana



IN THE COURT OF APPEALS OF INDIANA

ANTHONY MORRIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A02-1011-CR-1182
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Wayne A. Sturtevant, Judge
Cause No. 29D05-0909-CM-5472

December 27, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Anthony Morris appeals his conviction for operating a vehicle with an alcohol concentration equivalent ("ACE") of at least .08 gram of alcohol, a Class C misdemeanor, following a jury trial.[1] He presents a single dispositive issue for our review, namely, whether the trial court abused its discretion when it excluded from evidence three exhibits proffered by Morris at trial.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 28, 2009, the State charged Morris with carrying a handgun without a license, operating a vehicle while intoxicated, and operating a vehicle with an ACE of at least .08 gram of alcohol. The State dismissed the handgun charge prior to trial. A jury found Morris, who represented himself at trial, guilty of the two remaining charges. The trial court entered judgment of conviction and sentence only on the offense of operating a vehicle with an ACE of at least .08 gram of alcohol. This appeal ensued.

DISCUSSION AND DECISION

Morris contends that the trial court abused its discretion when it excluded from evidence three exhibits he proffered at trial, namely, Exhibits A, I, and N.[2] The State objected to Exhibit A on hearsay grounds and lack of foundation, Exhibit I for lack of

[1] Morris states that he was also convicted of operating a vehicle while intoxicated, as a Class C felony, but the CCS states that the trial court entered judgment of conviction and sentence only on the operating a vehicle with an ACE of at least .08 gram of alcohol. Appellant's App. at 7.

[2] Those exhibits consisted of, respectively: an excerpt of an online article entitled "Accuracy and precision of breath alcohol measurements for subjects in the absorptive state"; a BAC DataMaster evidence ticket purporting to show a second breath test indicating a BAC of .07; and an excerpt from www.nhtsa.gov regarding administration of the horizontal gaze nystamus test.

foundation, and Exhibit N on hearsay grounds, and the trial court sustained each of those objections. Hearsay is inadmissible unless an exception applies. See Ind. Evidence Rule 802. And the requirement of authentication or identification of an exhibit as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Ind. Evidence Rule 901(a). When evidence establishes a reasonable probability that an item is what it is claimed to be, the item is admissible. Thomas v. State, 734 N.E.2d 572, 573 (Ind. 2000). When a trial court has made a ruling concerning the sufficiency of the foundation laid to justify the admission of evidence, we review that decision for an abuse of discretion. Id. We likewise review a trial court's exclusion of evidence on hearsay grounds for an abuse of discretion. See Ballard v. State, 877 N.E.2d 860, 861 (Ind. Ct. App. 2007).

Here, Morris did not make any argument or present any evidence to the trial court in an effort to overcome the hearsay objections or to establish a foundation for the excluded exhibits, yet his entire appeal is premised on making such arguments for the first time in his brief on appeal. It is well-settled that an appellant is limited to the specific grounds argued to the trial court and cannot assert new bases for admissibility for the first time on appeal. See Taylor v. State, 710 N.E.2d 921, 923 (Ind. 1999). Morris, who represented himself, asked the trial court what was required to establish a foundation for the exhibits, and the court stated, "Well, Mr. Morris, I can't give you that information. That's information that you undertook to . . . be prepared to abide by when you decided to represent yourself." Transcript at 34. We agree, and Morris cannot now make any of the arguments in support of the admissibility of the excluded exhibits for the first time on

appeal. The trial court likewise explained the hearsay rule to Morris, but Morris did not argue at trial either that the exhibits were not hearsay or that they were admissible as an exception to hearsay. Accordingly, he has waived appellate review of these issues. See Taylor, 710 N.E.2d at 923.

Affirmed.

ROBB, C.J., and VAIDIK, J., concur.