

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.

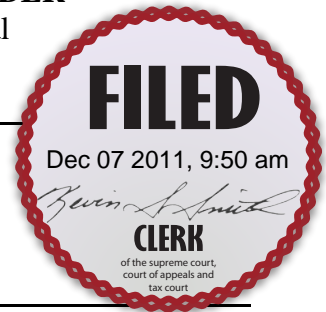
ATTORNEY FOR APPELLANT:

DERICK W. STEELE
Deputy Public Defender
Kokomo, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

PAUL HINTON,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 34A02-1104-CR-322

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Jr., Judge
Cause No. 34D01-1008-FD-736

December 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Paul Hinton appeals his conviction for Class D felony Possession of Cocaine.¹ Specifically, Hinton contends that the trial court erroneously admitted certain evidence at trial. We affirm.

FACTS AND PROCEDURAL HISTORY

During the early evening on August 26, 2010, Kokomo Police Officer Ted Secrease was on patrol near the area of Monroe and Bell Streets when he spotted Hinton driving a red pickup truck. Officer Secrease, who was familiar with Hinton through his work as a police officer, contacted dispatch to check for open warrants for Hinton's arrest. Officer Secrease performed a U-Turn to start following Hinton. As he turned, Officer Secrease observed Hinton speed away, eventually turning into an alleyway. Officer Secrease followed Hinton into the alleyway after being informed by another officer that he believed that there were indeed active warrants for Hinton's arrest.

As Officer Secrease caught up with Hinton in the alleyway, Officer Secrease observed that Hinton had hurriedly exited and begun walking toward the front of the truck. Officer Secrease exited his vehicle and announced his presence to Hinton. Officer Secrease observed Hinton "with his left hand throw a small clear plastic baggie to the ground" when Hinton saw him. Tr. p. 40. After seeing Hinton discard the small plastic baggie, Officer Secrease pulled out his taser and instructed Hinton to "come back" to him. Tr. p. 89. Officer Secrease then approached, handcuffed, and detained Hinton. Officer Secrease retrieved the plastic baggie that was discarded by Hinton, the contents of which were later determined to be .18 grams of

¹ Ind. Code § 35-48-4-6(a) (2010).

cocaine.

On August 27, 2010, the State charged Hinton with Class D felony possession of cocaine and Class A misdemeanor driving while suspended.² On December 31, 2010, Hinton filed a motion to suppress the cocaine that was recovered by Officer Secrease. Following a hearing on February 11, 2011, the trial court denied Hinton's motion to suppress. Hinton renewed his motion to suppress at the beginning of his jury trial which was commenced on March 4, 2011. The trial court denied Hinton's renewed motion, and the parties continued to trial. At the conclusion of the trial, the jury found Hinton guilty of Class D felony possession of cocaine. On March 30, 2011, the trial court sentenced Hinton to a three-year term, with one year to be executed on home detention and two years suspended to probation.

DISCUSSION AND DECISION

Hinton contends that the trial court abused its discretion in admitting the cocaine recovered by Officer Secrease into evidence at trial, arguing that the cocaine was obtained during an illegal stop in violation of the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution. Hinton, however, has waived this claim because he did not make a contemporaneous objection to the admission of the evidence at trial on constitutional grounds. "A contemporaneous objection at the time the evidence is introduced at trial is required to preserve the issue for appeal, whether or not the appellant has filed a pretrial motion to suppress." *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010) (citing *Jackson v. State*, 735 N.E.2d 1146, 1152 (Ind. 2000); *Wagner v. State*, 474 N.E.2d

² The State dismissed the Class A misdemeanor driving while suspended charge prior to trial.

476, 484 (Ind. 1985)). “The failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error on appeal.” *Jackson*, 735 N.E.2d at 1152 (citing *White v. State*, 687 N.E.2d 178, 179 (Ind. 1997); *Clausen v. State*, 622 N.E.2d 925, 927 (Ind. 1993)). Furthermore, “it is well settled that a party may not object to the admission of evidence ‘on one ground at trial and seek reversal on appeal using a different ground.’” *Bush v. State*, 929 N.E.2d 897, 898 (Ind. Ct. App. 2010) (quoting *Malone v. State*, 700 N.E.2d 780, 784 (Ind. 1998)).

In the instant matter, Hinton objected to the admission of the cocaine at trial only on chain of custody grounds. Hinton did not object to the admission of the cocaine on constitutional grounds at trial. Because an appellant is “not permitted to feed one can of worms to the trial judge and another to the appellate court,” *Dever v. Commonwealth*, 300 S.W.3d 198, 202 (Ky. Ct. App. 2009) (quoting *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976)), and Hinton failed to make a contemporaneous objection to the admission of the cocaine on constitutional grounds at trial, we conclude that Hinton has waived this claim for appellate review.

The judgment of the trial court is affirmed.

KIRSCH, J., and BARNES, J., concur.