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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1359

Filed: 6 September 2016

Iredell County, No. 13 CRS 055042

STATE OF NORTH CAROLINA

v.

BARRY DWAYNE BOWLES

Appeal by defendant from judgment entered 21 May 2015 by Judge Joe Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 11 May 2016.

Attorney General Roy Cooper, by Special Deputy Attorney General Scott T. Slusser, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jon H. Hunt, for defendant-appellant.

McCULLOUGH, Judge.

Barry Dwayne Bowles (“defendant”) appeals the denial of his motion to suppress. For the reasons stated herein, we affirm the order of the trial court.

I. Background

On 17 February 2014, defendant was indicted by an Iredell County grand jury for trafficking by possessing 14 grams or more but less than 28 grams of heroin and trafficking by transporting 14 grams or more but less than 28 grams of heroin in

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violation of N.C. Gen. Stat. § 90-95(h)(4). On 19 March 2015, defendant filed a “Motion to Suppress Illegal Stop, Illegal Arrest, and Illegal Search.” On 20 May 2015, a hearing was held on defendant’s motion to suppress.

In regards to defendant’s motion to suppress, the State offered the testimony of Detective-Sergeant Mike Dummett and Detective-Sergeant Brooks Meyer of the Iredell County Sheriff’s Office. The evidence tended to show that on 4 September 2013, Detective Dummett picked up an individual by the name of Lauren Smoker, who had previously been involved in three drug deals with an undercover police officer. Detective Dummett testified that Smoker (hereinafter referred to as “CI”) agreed to assist the Sherriff’s Office and signed an agreement to be a confidential informant. CI had never provided any information prior to 4 September 2013 that led to any arrests or convictions.

According to Detective Dummett’s testimony, CI told him that she could get in contact with the person that was providing her heroin. CI provided the name “Dwayne Bowles,” which Detective Dummett verified was a “real name,” and a phone number CI alleged belonged to Bowles. Thereafter, Detective Dummett printed a photograph of defendant from the Department of Motor Vehicles, and CI identified the person in the picture as defendant. CI was also able to describe defendant’s race, height, and weight. CI told Detective Dummett that defendant drove a Honda, but could not remember what specific model.

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Detective Dummett testified that to bolster CI's credibility, he requested that CI call defendant to discuss the narcotics transaction. While in the presence of Detective Dummett, CI made five separate phone calls to defendant. A recording device was attached to CI's phone, which only allowed Detective Dummett to listen to their conversation after it concluded. After all five phone calls, Detective Dummett rewound the tape and listened to the conversation in the presence of CI. In regards to these phone calls, the trial court found that "[t]he nature of the telephone calls indicated that the parties clearly knew each other and had an ongoing relationship of drug buys in the past."

After these phone calls, Detective Dummett determined he would have CI get in contact with defendant to bring her heroin. Detective Dummett had Detective Meyer assist as an undercover officer to accompany CI during the deal. Originally, Detective Dummett planned to have Detective Meyer and CI complete a hand-to-hand transaction of heroin; however, after listening to the recorded conversations, he changed the plan for safety purposes. Instead, Detective Dummett planned to arrest defendant on the scene rather than attempt a drug buy.

CI and Detective Meyer arranged to meet defendant in the parking lot of a Food Lion in Mooresville. Detective Meyer was given an audio transmitter device ("Kale system") that would provide live audio to Detective Dummett of what was occurring in CI's vehicle, but would not record the conversation. However, the Kale

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system was “an old antiquated system” that “died” while CI and Detective Meyer were sitting in the parking lot of the Food Lion. As a substitute, Detective Dummett called Detective Meyer on her cell phone and put her phone on speaker so that Detective Dummett could still hear what was occurring in the car.

Originally, CI and Detective Meyer went to the Highway 115 Food Lion location, but subsequently realized that defendant was at the 971 North Main Street Food Lion location. CI and Detective Meyer drove to the second location, and CI identified defendant’s car in the parking lot. At that time, a white male was exiting the Food Lion, and CI identified him as defendant to Detective Meyer. Detective Dummett approached defendant while he was at his vehicle, searched defendant, and recovered 25.2 grams of black tar heroin from his front right pocket.

Defendant offered no evidence.

On 20 May 2015, the trial court denied defendant’s motion to suppress. On 29 May 2015, the trial court entered an order making the following findings of fact and conclusions of law, in pertinent part:

1. On September 4, 2013, Detective Sergeant Mike Dummett made contact with a person known to him as a suspect in three hand to hand heroin transactions with an undercover officer. She was picked up and brought into the Iredell County Sheriff’s Office for a debriefing.
2. That said person agreed on that day to provide assistance to the Iredell County Sheriff’s Office, and was assigned CI# 2013-MD1323, hereinafter “CI”, and

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signed an agreement to be a confidential and reliable informant.

3. That prior to September 4, 2013, the CI had not been utilized by law enforcement as a CI, and had never previously provided any information and/or assistance that led to any arrests or convictions.
4. Detective Sergeant Mike Dummett testified that he asked the CI to provide assistance in locating other known drug dealers. Sergeant Dummett indicated that he did so, or that the CI did so, in hopes of reducing her sentence or gaining some assistance in her pending drug charges. The CI advised Sergeant Dummett that she knew the defendant Barry Dwayne Bowles was a known dealer of heroin and was in fact her supplier of heroin.
5. Sergeant Dummett asked the CI to telephone the Defendant and arrange a drug buy. Whereupon, several telephone calls were made between the CI and the Defendant during the course of the next few hours. These telephone calls were recorded and were admitted into evidence for the purpose of this hearing only.
6. The nature of the telephone calls indicated that the parties clearly knew each other and had an ongoing relationship of drug buys in the past. During the course of the next few hours, several telephone calls were made to arrange the transaction, and details such as price, time, amount, and location were discussed.
7. Prior to making the telephone call to the Defendant, Detective Dummett identified the Defendant by name, pulled up his driver's license number to verify that he was in fact a real person, asked the CI to identify the Defendant from his driver's license photo, and confirmed that the Defendant's telephone number was in fact a real number. He did not, however, access

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phone records to determine if the phone number was listed or owned by the Defendant.

8. Detective Dummett testified that the CI described the make of the Defendant's vehicle as a Honda, but did not know the model of the car.
9. Detective Dummett testified that due to time constraints of trying to arrange a drug transaction, he did not have time to access DMV records to determine if Barry Dwayne Bowles was connected to a Honda vehicle.
10. Based on the information provided by the CI, Detective Dummett determined that the CI's story was therefore valid.
11. As a result of the subsequent telephone calls, a drug buy was arranged to take place that afternoon at the Food Lion parking lot in Mooresville on Highway 115. The CI told Detective Dummett that this was the Food Lion where she and the Defendant would normally meet to conduct drug transactions.

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17. [Because of concerns about CI and the undercover officer's safety], it was determined that [Detective Dummett] would take down the Defendant as soon as he was identified in the Food Lion parking lot.
18. At the pre-arranged time, both the CI and Detective Meyer, operating in an undercover capacity, left the Iredell County Sheriff's Department to drive to the Food Lion in Mooresville to meet the Defendant.
19. They attempted to monitor the conversation on a [Kale] device, but because the system was old and outdated, it failed sometime shortly thereafter. As a result and a backup, Detective Sergeant Meyer placed a telephone

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call which she put on speaker phone so that Detective Dummett and the take-down team could still hear the conversation between the [CI] and the Defendant.

20. The CI and Detective Sergeant Meyer arrived at the Food Lion in Mooresville on Highway 115, but did not see the Defendant there.

21. Telephone calls and/or text messages were made between the CI and the Defendant, and the CI was informed by the Defendant that he was at another Food Lion on Main Street, waiting on her. The [actual] messages between the CI and the Defendant were not preserved as evidence, and therefore, not submitted at trial.

22. Based on this conversation, she went to this second Food Lion to meet with the Defendant. All this was overheard by both Detective Sergeant Meyer and Detective Sergeant Dummett.

23. Once they arrived at the subsequent Food Lion, the CI rode around the parking lot until she located the Defendant's vehicle.

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25. As soon as the Defendant exited the store and as he was walking to his vehicle, the CI identified the Defendant to Detective Sergeant Meyer and then, as agreed, they left the location.

26. Detective Sergeant Meyer testified that the CI told her the Defendant drove a small black SUV, but there was no testimony this information was relayed to Detective Dummett.

27. She said that the Defendant's car was described to her as a small black SUV. She was in the car with the CI

when [CI] personally identified the Defendant as the person she was supposed to meet.

28. Detective Sergeant Meyer further testified that she was able to hear the conversation between the Defendant and the CI even though it was on a cell phone, due to the close proximity in which she sat next to the CI in the vehicle.
29. Based on the positive identification of the Defendant by the CI, and based on Detective Sergeant Dummett's positive identification of the Defendant from the photographs he had seen earlier, the Defendant was approached and subsequently arrested as he attempted to flee the parking lot.
30. During a subsequent search of the Defendant, heroin was in fact found on his person and in his car, a black Honda SUV.

The trial court concluded as follows:

1. That the Defendant and the CI clearly knew each other and had an ongoing relationship concerning the purchase of illegal drugs.
2. That the telephone conversations were clearly to establish the terms of a heroin drug buy that was to take place later that afternoon in the Food Lion parking lot.
3. That Detective Sergeant Mike Dummett was able to personally identify the Defendant based on the photograph that was identified by the CI and by a description of the car he was driving.
4. By a preponderance of the evidence, Detective Sergeant Dummett had established probable cause to determine that the Defendant was there to sell illegal narcotics,

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and in fact had those narcotics on his person at the time of the arrest.

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8. While the [CI] had not worked previously for the Iredell County Sheriff's Department, she did establish herself with enough reliability to be used as a Confidential Informant in this case, based on the fact that she demonstrated an ongoing relationship with the Defendant that included the purchase of illegal narcotics.
9. However, even if she had not established such reliability, based on the information she did provide and the verification of that information she did prove reliable as an anonymous tipster that illegal narcotics would be located on Defendant at this time and place.

On 21 May 2015, the State dismissed the charge of trafficking heroin by transporting, and defendant pled guilty to the charge of trafficking heroin by possession. On the same date, defendant preserved his right to file an appeal challenging the denial of his motion to suppress. Defendant was sentenced as a prior record level III to 90 to 120 months imprisonment. Defendant now appeals.

II. Standard of Review

When reviewing a trial court's denial of a motion to suppress, "we are bound by the trial court's findings of fact if such findings are supported by competent evidence in the record; but the conclusions of law are fully reviewable on appeal." *State v. Stover*, 200 N.C. App. 506, 510, 685 S.E.2d 127, 131 (2009) (citation omitted).

III. Discussion

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Defendant presents five issues on appeal. Defendant asserts that the trial court erred by: (A) denying defendant's motion to suppress because the tip provided by CI did not establish the required probable cause for the stop and seizure of defendant, (B) denying defendant's motion to suppress because the search and seizure of defendant was unlawful as it was warrantless and did not meet an exception to the warrant requirement, (C) overruling defendant's objection to Detective Dummett's characterization of defendant's voice on the phone recording, (D) overruling defendant's objection to entering the recording of the phone call into evidence without proper foundation, and (E) denying defendant's offer of proof regarding the failed audio transmission device.

A. Reliability of the Confidential Informant

First, defendant claims that the trial court erred by denying his motion to suppress because the tip leading to defendant's arrest was unreliable and therefore, it failed to establish reasonable suspicion or probable cause for the stop and seizure of defendant. We disagree.

Our Supreme Court has held that "[t]he common-sense, practical question of whether probable cause exists must be determined by applying a totality of the circumstances test." *State v. Benters*, 367 N.C. 660, 664, 766 S.E.2d 593, 597 (2014) (internal quotation marks omitted). "[P]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Id.*

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at 664-65, 766 S.E.2d at 598 (citation omitted). When probable cause is based upon information received from an outside source, the court “must determine the reliability of the information by assessing whether the information came from an informant who was merely anonymous or one who could be classified as confidential and reliable.” *Id.* at 665, 766 S.E.2d at 598. The “reliability” of an informant may be established by showing that the informant had previously given reliable information to law enforcement and that the information was given against the informant’s penal interest. *See id.*; *State v. Hughes*, 353 N.C. 200, 203, 539 S.E.2d 625, 628 (2000). However, “[s]ome objective proof as to why [the] informant was reliable and credible” must be present to support a decision to conduct a search. *Hughes*, 353 N.C. at 204, 539 S.E.2d at 628.

In the present case, when viewing the totality of the circumstances we find that the information provided by CI was sufficiently reliable to establish probable cause for the stop and seizure of defendant.

First, although CI had not previously worked as a confidential informant, she provided information that was corroborated by the police prior to defendant’s arrest. Specifically, CI provided defendant’s name, race, height, and weight, and positively identified a photo of defendant. CI also provided the police with defendant’s phone number and made five phone calls to this number to arrange a drug transaction, all while at the Iredell County Sheriff’s Office in the presence of Detective Dummett.

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Further, CI knew defendant drove a Honda, and, although she could not identify the specific make or model, she knew that defendant was not at the first Food Lion location because she did not see his vehicle. Finally, as defendant was exiting the Food Lion at the second location, CI positively identified defendant and his car to the police.

The reliability of the information provided by CI is further bolstered by the fact that CI met with Detective Dummett in person. Our Court has noted that when a tip comes from a “face-to-face” encounter rather than an anonymous telephone call, the informant significantly increases the likelihood of being held accountable if their tip proved to be false, since law enforcement have “an opportunity to observe the demeanor of the [] informant in an effort to assess the reliability of [the] tip.” *State v. Allison*, 148 N.C. App. 702, 705, 559 S.E.2d 828, 830 (2002). In this case, over the course of the several hours that Detective Dummett met with CI, he was able to observe her general demeanor with the police as well as her behavior when setting up the drug deal. Because CI was in the presence of police officers when providing defendant’s information and setting up a drug buy with defendant, the likelihood that CI would be held accountable if her tip proved to be false was significantly increased.

Finally, CI’s entire involvement with the police regarding defendant was against her penal interest. The U.S. Supreme Court has held,

Admissions of crime . . . carry their own indicia of credibility – sufficient at least to support a finding of

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probable cause to search. That the informant may be paid or promised a “break” does not eliminate the residual risk and opprobrium of having admitted criminal conduct.

United States v. Harris, 403 U.S. 573, 583-84, 29 L. Ed. 2d 723, 734 (1971). Similarly, our Supreme Court has held that an informant admitting to the purchase of an illegal substance goes against that informant’s penal interest. *See State v. Beam*, 325 N.C. 217, 221, 381 S.E.2d 327, 330 (1989) (holding that an informant admitting to purchasing marijuana from the defendant was indicia of reliability because it was against the informant’s penal interest); *State v. Arrington*, 311 N.C. 633, 641, 319 S.E.2d 254, 259 (1984) (“The information supplied by the first informant establishes, against the informant’s penal interest, that he had purchased marijuana from the defendant.”). In the present case, CI could have denied her involvement with the heroin sales altogether or remained silent. Instead, CI willingly admitted to purchasing heroin from defendant (whom she referred to as her “provider”), offered defendant’s name, description, phone number, and other identifying information to the police, and participated in several phone calls with the intent to set up the purchase of heroin from defendant.

Considering the totality of the circumstances, we find that the information provided by CI was a reliable basis for establishing probable cause for the stop and seizure of defendant. CI provided the police with several pieces of information that were confirmed to be accurate prior to defendant’s arrest, CI met with the police face-

to-face, and CI's entire involvement with the police on 4 September 2013 was against her penal interest. Therefore, the trial court did not err in denying defendant's motion to suppress on these grounds.

B. Warrantless Search and Seizure of Contraband

In his second issue on appeal, defendant claims that CI's tip was insufficient to provide probable cause for his arrest, and thus the seizure of the contraband found on defendant was unlawful as it was warrantless and did not meet an exception to the warrant requirement. We disagree.

“A search without a search warrant may be made incident to a lawful arrest; however, the scope of the search is limited to the arrestee's person and the area within his immediate control.” *State v. Hardy*, 299 N.C. 445, 455, 263 S.E.2d 711, 718 (1980) (citation omitted). “An officer may arrest without a warrant any person who the officer has probable cause to believe . . . [h]as committed a felony[.]” N.C. Gen. Stat § 15A-401(b)(2) (2015). “Probable cause for an arrest has been defined as ‘a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty.’” *State v. Phillips*, 300 N.C. 678, 684, 268 S.E.2d 452, 456 (1980) (citation omitted).

For the same reasons stated above, we hold that CI's tip was reliable, and thereby provided a reasonable ground of suspicion for the search and seizure of defendant. CI provided defendant's name, identified defendant from a photo, engaged

in the discussion of a heroin deal on the phone while in the presence of police officers, led the officers to the agreed-upon location, and identified defendant again when he was exiting the Food Lion prior to his arrest. Because of these events, Detective Dummett had reasonable grounds of suspicion to suspect defendant was in fact committing a felony.

Therefore, because Detective Dummett had probable cause to arrest defendant, defendant's arrest and the subsequent search of his person and seizure of heroin were lawful.

C. Overruling of Defendant's Objection to Voice Recording Testimony

Next, defendant argues that the trial court erred by allowing Detective Dummett to testify that the voice on the recording played at the hearing belonged to defendant.

On appeal, the standard of review of a trial court's decision to exclude or admit evidence is that of an abuse of discretion. *Brown v. City of Winston-Salem*, 176 N.C. App. 497, 505, 626 S.E.2d 747, 753 (2006). "An abuse of discretion will be found only when the trial court's decision was so arbitrary that it could not have been the result of a reasoned decision." *Id.* (citation and internal quotation marks omitted). In addition to showing that the trial court erred in admitting or excluding the evidence, a defendant must also show that "but for the error, a different result would likely

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have been reached.” *State v. Gayton*, 185 N.C. App. 122, 125, 648 S.E.2d 275, 278 (2007).

During the hearing for defendant’s motion to suppress, the State played the audio recordings of the phone calls made between CI and defendant. After the audiotape was played, the following dialogue occurred:

[THE STATE]: Were those the recorded phone calls that you had [CI] make to [defendant]?

[DET. DUMMETT]: Yes.

[DEFENDANT]: I’m going to object to the characterization of Barry Dwayne Bowles.

THE COURT: Overruled, and we’ll let him answer.

[THE STATE]: Yes?

[DET. DUMMETT]: Yes, they are.

Relying on *State v. Williams*, 288 N.C. 680, 220 S.E.2d 558 (1975), defendant now asserts that the trial court committed prejudicial error by overruling defense counsel’s objection to Detective Dummett’s identification of the recorded voice as belonging to defendant. In *Williams*, our Supreme Court held:

Before a witness may relate what he heard during a telephone conversation with another person, the identity of the person with whom the witness was speaking must be established. Identity of the caller may be established by testimony that the witness recognized the caller’s voice, or by circumstantial evidence.

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Williams, 288 N.C. at 698, 220 S.E.2d at 571 (internal citation omitted). Defendant specifically claims that because the State did not introduce any evidence that Detective Dummett had personal knowledge of defendant's voice and also failed to elicit testimony from any witnesses familiar with defendant's voice that it was in fact defendant's voice on the recording, the trial court's ruling was in error.

However, "[w]here evidence is admitted over objection, and the same evidence . . . is later admitted without objection, the benefit of the objection is lost." *State v. Whitley*, 311 N.C. 656, 661, 319 S.E.2d 584, 588 (1984). In this case, while defendant did properly object to the characterization of defendant's voice during Detective Dummett's testimony, Detective Meyer subsequently testified as to the same fact, without objection from defense counsel:

[THE STATE]: Did you know that [CI] was speaking to an individual you know now to be Barry Dwayne Boyles?

[DET. MEYER]: That's my understanding at that time, yes.

Detective Meyer also answered several subsequent questions, without objection, regarding the communication between CI and "Barry Bowles." Thus, when defense counsel failed to object to Detective Meyer characterizing the voice as belonging to defendant, defendant waived *any* objection to testimony that identified defendant as the voice on the recorded calls. Consequently, we find that this issue has not been preserved for appellate review.

D. Admissibility of Phone Call Recording

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For his fourth issue on appeal, defendant argues that the trial court committed prejudicial error by allowing the recording of the phone call into evidence where there was no proper foundation. Defendant specifically claims that because Detective Dummett was only able to listen to the recorded conversations after they were completed, he did not have any personal knowledge of defendant's voice that would have enabled him to properly identify it on the recording.

"A trial court's determination as to whether a document has been sufficiently authenticated is reviewed de novo on appeal as a question of law." *State v. Crawley*, 217 N.C. App. 509, 515, 719 S.E.2d 632, 637 (2011) (citation omitted), *review denied* 365 N.C. 553, 722 S.E.2d 607 (2012).

Rule 901 of the North Carolina Rules of Evidence provides in pertinent part:

(a) *General provision.* -- The requirement of authentication or identification 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.

(b) *Illustrations.* -- By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

.....

(5) *Voice Identification.* -- Identification of a voice, whether heard firsthand *or through mechanical or electronic transmission or recording*, by opinion based upon hearing

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the voice at any time under circumstances
connecting it with the alleged speaker.

N.C. Gen. Stat. § 8C-1, Rule 901(a) and (b)(5) (2015) (emphasis added). When discussing the admissibility of tape recordings, our Supreme Court has noted that “[u]nder Rule 901, testimony as to accuracy based on personal knowledge is all that is required to authenticate a tape recording, and a recording so authenticated is admissible if it was legally obtained and contains otherwise competent evidence.” *State v. Jones*, 358 N.C. 330, 344-45, 595 S.E.2d 124, 134 (2004) (quoting *State v. Stager*, 329 N.C. 278, 317, 406 S.E.2d 876, 898 (1991)).

This Court encountered a nearly identical scenario in *State v. Martinez*, 149 N.C. App. 553, 561 S.E.2d 528 (2002). In *Martinez*, a detective listened to and recorded a telephone conversation between the defendant and an informant, in which the defendant discussed the illegal drug activity for which he was subsequently arrested. *See id.* at 556, 561 S.E.2d at 530. This Court rejected the defendant’s argument that the recording was not properly authenticated through the detective’s testimony, since the detective “was present when the conversation was taking place and . . . had listened to it several times since the original recording.” *Id.* at 559, 561 S.E.2d at 532. Further, our Court noted that the recording was legally obtained, since, in North Carolina, only one party (in this case, the informant) is required to consent to the recording. *Id.*

The facts of the present case are directly analogous to those in *Martinez*. Detective Dummett was present when the conversations were taking place between CI and defendant, as they occurred while CI was at the Sherriff's Office. Although the recording device did not allow Detective Dummett to listen to the conversations while they were ongoing, Detective Dummett listened to the conversations on the tape as soon as they ended, while still in the presence of CI. Pursuant to this Court's holding in *Martinez*, the fact that Detective Dummett was not a party to the conversation itself does not mean that he lacked the requisite personal knowledge to authenticate the voice recording. Additionally, the recordings were legally obtained because CI consented to making the phone calls to defendant, and contained competent evidence of a proposed drug sale. We therefore hold that the trial court did not err by allowing the recording into evidence.

E. Offer of Proof

Finally, in his last argument on appeal, defendant contends the trial court erred in denying defendant an opportunity to offer proof regarding the audio transmission device used by law enforcement. We disagree.

In *State v. Mackey*, 352 N.C. 650, 535 S.E.2d 555 (2000), our Supreme Court encountered a similar issue. The defendant in *Mackey* claimed the trial court erred by denying his offer of proof of the testimony of a detective. *See id.* at 659, 535 S.E.2d at 560. The *Mackey* Court noted:

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[I]n order for a party to preserve for appellate review the exclusion of evidence, the significance of the excluded evident [sic] must be made to appear in the record and a specific offer of proof is required unless the significance of the evidence is obvious from the record. . . . [T]he essential content or substance of the witness' testimony must be shown before we can ascertain whether prejudicial error occurred.

Id. at 660, 535 S.E.2d at 560 (quoting *State v. Simpson*, 314 N.C. 359, 370, 334 S.E.2d 53, 60 (1985)). Relying on *Simpson*, the *Mackey* Court concluded that no prejudicial error was committed by denying the defendant's offer of proof because the transcript of trial dialogue, in which the defendant's proposed testimony was discussed, was sufficient to establish the testimony's essential content. *See id.* at 661, 535 S.E.2d at 561. The *Mackey* Court further noted that even assuming the offer of proof should have been allowed, the "obvious irrelevance" of the proposed testimony made it clear that there was "no reasonable possibility that the trial court's ruling affected the result at trial, and any error in this regard was harmless" *Id.*

In the present case, the following dialogue took place during trial regarding the failed audio transmission device ("Kale system") at issue:

[THE STATE]: What's a Kale system?

[DET. DUMMETT]: Kale system, it's an audio recorder, an audio visual system that gives us the ability to hear what's going on in the vehicle. At that time it was an old antiquated system and it died. So what we had to do was, I had to call Detective-Sergeant [Meyers'] cell phone, put it on speaker so I could hear what she was saying

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.....

[DEFENDANT]: Tell me about the transmitter. What kind of device was it, the Kale system?

[DET. DUMMETT]: I can just tell you that it's a system that gives us live audio.

[DEFENDANT]: Is it installed in the car? Is it installed on Detective Meyer?

[DET. DUMMETT]: It's in listening distance of Detective Meyer so we can hear what she's saying.

[DEFENDANT]: But it's an antiquated system that died that day, so I don't think you're going to be giving out any State secrets if you tell us what kind it is. Can you tell us what it was?

[DET. DUMMETT]: Counselor, I don't feel comfortable sitting in front of a drug trafficker telling you about our surveillance equipment.

[Conversation with counsel and judge at the bench]

THE COURT: All right. We will note the State's objection to that. The Court will sustain the objection. Based on the information the Court needs in this hearing, I think I've got adequate information as to what was testified to. And again, Mr. Benton, I do want to give you an opportunity just to -- I mean, if there's something more than the fact that they used the system, it didn't work, they went to a backup system. I mean, if there's something more that I'm missing --

[DEFENDANT]: And Judge, in regards to that, just for the record purposes, I'll say we make an offer of proof, which from my understanding, the conversation with the Court and Miss Floyd, that will be denied at this point in time?

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THE COURT: Yes. Yes, sir. I mean, for the purposes of this hearing -- I mean yes, sir, that will be denied. Yes, sir.

The aforementioned dialogue was sufficient to establish the significance, or lack thereof, of the testimony regarding the “dead” audio transmission device. Because the Kale system was not ultimately used to record the conversations at issue, the “essential content or substance” of testimony regarding the Kale system was simply that it failed, thereby forcing Detective Dummett to use an alternate device. There was nothing more for defendant to offer proof on regarding the Kale system. Based on Detective Dummett’s testimony and the subsequent discussion about the transmission device, the significance of the Kale system is clear from the record.

Alternatively, pursuant to *Mackey*, even assuming that defendant’s offer of proof should have been allowed, it is clear there was no reasonable possibility that the trial court’s ruling affected the result at trial, and thus any error in this regard was harmless pursuant to N.C. Gen. Stat § 15A-1443(a). *See Mackey*, 352 N.C. at 661, 535 S.E.2d at 561. The evidence indicates that Detective Dummett called Detective Meyer on her cell phone as an alternate method of listening to what was occurring in CI’s vehicle. Because the Kale system was never used, there is no reasonable possibility that any additional testimony regarding the workings of the Kale system would have affected the outcome of the hearing. This assignment of error is therefore overruled.

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IV. Conclusion

For the foregoing reasons, we affirm the trial court's denial of defendant's motion to suppress.

AFFIRMED.

Judges ELMORE and INMAN concur.

Report per Rule 30(e).