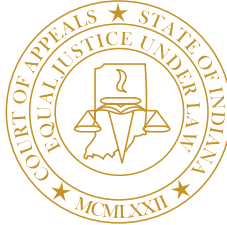


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Holly J. Terry,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



May 20, 2025

Court of Appeals Case No.
24A-CR-1013

Appeal from the Delaware Circuit Court

The Honorable Judi L. Calhoun, Judge

Trial Court Cause No.
18C01-2203-F1-5

Memorandum Decision by Judge Scheele
Judges May and Weissmann concur.

Scheele, Judge.

Case Summary

- [1] Holly J. Terry appeals her conviction for Level 1 felony dealing in a controlled substance resulting in death. Terry raises two issues for our review, which we restate as: whether the trial court's admission of the victim's forensic toxicology report and testimony about Terry's prior bad acts was erroneous. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] In the fall of 2021, Melinda Duncan, the victim, and Melinda's spouse, Chester Duncan, suffered from substance abuse issues with heroin and pills. Melinda and Chester were friends with and regularly purchased drugs from Terry. Using her boyfriend's cell phone, Terry exchanged text messages with and arranged to purchase drugs for Melinda on October 4, 2021. After purchasing drugs in Trotwood, Ohio, Terry and her boyfriend drove to Melinda's home in Muncie, Indiana.
- [3] When Chester awoke around 10:00 or 11:00 p.m., he observed Terry and Melinda in his home and learned Terry dropped "some stuff" off. Tr. Vol. II p. 42. Chester observed Terry leave his residence between 12:00 and 2:00 a.m. on October 5, then went back to sleep.
- [4] Around 4:00 a.m., Chester again awoke and found Melinda unconscious. Chester called 9-1-1, then used Narcan and performed CPR on Melinda to no avail. Upon arrival, Delaware County Sheriff's Office (DCSO) Deputy Grant

Delagarza observed Melinda to be unresponsive with no chance of revival. Chester subsequently informed DCSO Detective Sergeant Matthew Kubiak (Sgt. Kubiak) that Terry was the source of the drugs that killed Melinda.

[5] During his investigation, Sgt. Kubiak subpoenaed data from Terry's boyfriend's cell phone. From that phone number, Terry sent text messages identifying herself to and arranging a drug deal with Melinda on October 4. In reviewing the phone's location data from that evening, Sgt. Kubiak learned the phone traveled from near Muncie, Indiana to Trotwood, Ohio—an area known by law enforcement for narcotics sales. The cell phone then returned to Indiana and stopped near Melinda's residence around 11:00 p.m.

[6] Dr. Jolene Clouse, a forensic pathologist, performed an autopsy of Melinda. Blood samples collected during the autopsy were mailed to Axis Forensic Toxicology Labs (Axis) for testing. Results showed naloxone, nor-fentanyl, oxycodone, caffeine, cotinine, phenacetin, and fentanyl—at nearly ten times the lethal limit—in Melinda's blood at the time of her death. Dr. Clouse included these results in Melinda's autopsy report and determined the cause of death to be “acute mixed drug intoxication” with fentanyl as the primary cause. *Id.* At 99.

[7] In March 2022, the State charged Terry with Level 1 felony dealing in a controlled substance resulting in death. While in jail awaiting trial, Terry made several phone calls. In those calls Terry admitted: from her boyfriend's cell phone, she texted Melinda and identified herself; other texts were sent from her

boyfriend's phone offering fentanyl to Melinda; and that when she was out of jail she was "slinging that s**t and making that money" and made more than \$2,800 in a day. Media Index Vol. I, State's Ex. 49, 5:50-6:30.

- [8] A two-day jury trial was held in January 2024. Chester testified he and Melinda purchased heroin and pills from Terry around the time of Melinda's death. Over Terry's objection, the trial court permitted testimony about Terry's prior drug sales to Chester and Melinda.
- [9] Terry also objected to the admission of an Axis forensic toxicology report (the Axis Report) on Melinda's blood samples. Terry argued the State failed to establish a proper chain of custody in part because an individual named Gavin Greene had not testified but was listed on the Axis Report as an investigator. The State contended the testimony of Dr. Clouse and Axis forensic toxicologist Kevin Shanks established a proper chain of custody. Dr. Clouse testified she or her assistant collected biological samples during Melinda's autopsy and maintained the samples at her East Central Indiana Pathologists office until they were sent to Axis. Shanks testified about the procedure between East Central Indiana Pathologists and Axis for mailing biological samples and verified Melinda's samples were processed with "the normal and proper procedure" upon delivery. *Id.* at 118. The trial court admitted the Axis Report over Terry's objection.

[10] The jury found Terry guilty as charged. In February 2024, Terry was sentenced to thirty-seven years to be served in the Indiana Department of Correction. This appeal ensued.

Discussion and Decision

[11] Terry contends the trial court erred in admitting the Axis Report and evidence of Terry's prior acts of drug dealing. We review a trial court's ruling on the admission of evidence for an abuse of discretion. *Russell v. State*, 217 N.E.3d 544, 548 (Ind. Ct. App. 2023), *trans. denied*. "A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court or if the court misapplies the law." *Id.* (quoting *Mack v. State*, 23 N.E.3d 742, 750 (Ind. Ct. App. 2014), *trans. denied*). "The trial court's ruling will be sustained on any reasonable basis apparent in the record, whether or not relied on by the parties or the trial court." *Bush v. State*, 243 N.E.3d 405, 413 (Ind. Ct. App. 2024) (quoting *Washburn v. State*, 121 N.E.3d 657, 661 (Ind. Ct. App. 2019), *trans. denied*), *trans. denied*.

I. Admission of the Axis Report was not erroneous.

[12] Terry argues the Axis Report should have been excluded because the State failed to properly establish its chain of custody and "the State failed to present *any* evidence of the exact whereabouts of the samples taken from [Melinda]

Duncan during the autopsy by Dr. Clouse.”¹ Appellant’s Br. p.14 (emphasis in original). Terry maintains because an investigator named Gavin Greene was listed on the toxicology report and did not testify at trial, the State failed to meet its burden of giving reasonable assurances that the evidence remained undisturbed as it passed through various hands. We disagree.

[13] An exhibit is admissible “if the evidence regarding its chain of custody strongly suggests the exact whereabouts of the evidence at all times.” *Culver v. State*, 727 N.E.2d 1062, 1067 (Ind. 2000). The State “must give reasonable assurances that the property passed through various hands in an undisturbed condition.” *Id.* The State “need not establish a perfect chain of custody[,]” and any gaps in the chain go to the weight, not the admissibility of the evidence. *Id.* One must present evidence that “does more than raise a mere possibility that the evidence may have been tampered with” to successfully challenge the chain of custody. *Troxell v. State*, 778 N.E.2d 811, 814 (Ind. 2002).

[14] For fungible evidence, like the blood samples here, the State has a higher burden to establish the chain of custody: the State must show the “continuous whereabouts” of the evidence. *Culver*, 727 N.E.2d at 1068. Specifically, the

¹ In her introduction to this issue, Terry also challenges testimony presented regarding the results from Melinda’s samples. Her argument appears to be that if chain of custody was not established, then all testimony thereon should be excluded. Because Terry does not present independent argument regarding the challenged testimony, we address only the issue raised regarding chain of custody. See *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016) (“We will not become an advocate for a party, or address arguments that are . . . too poorly . . . expressed to be understood.”) (citation and internal quotations omitted), *trans. denied*.

State needs to present evidence of a doctor or someone in authority present at collection of the blood and establish a chain of custody of the specimens to the laboratory where the testing is conducted. *Id.* (citing *Baker v. State*, 449 N.E.2d 1085, 1087 (Ind. 1983)).

[15] In *Culver*, a case we find instructive, Culver challenged the chain of custody as to the victim's blood sample. *Id.* at 1067. The blood was drawn at an autopsy where a person in authority, a detective, was present. *Id.* at 1068. That detective testified he was present when the blood was drawn and he maintained possession of the blood sample in a refrigerator at City Hall until he mailed the sample to the FBI laboratory. *Id.* Our Supreme Court held that chain of custody was properly established. *Id.*

[16] Here, the State presented evidence on both *Culver* elements: (1) Dr. Clouse testified she was present at Melinda's autopsy when either she or her assistant drew the blood samples; and (2) they maintained Melinda's samples at her East Central Indiana Pathologists office until they were mailed overnight via Federal Express to Axis.

[17] Forensic toxicologist Kevin Shanks testified in-depth about the Axis procedure for processing samples post-delivery by Federal Express. Shanks explained the normal and proper procedure was followed for processing Melinda's samples, which included verifying the samples matched the paperwork and were undisturbed upon receipt by Axis. Shanks signed the Axis Report after verifying "everything" in the report "look[ed] valid." Tr. Vol. II p. 118.

[18] We are not persuaded by Terry’s assertion that the State did not present “any” evidence of the exact whereabouts of Melinda’s samples. Appellant’s Br. p. 14. And that an investigator named Gavin Greene is listed on the toxicology report but did not testify at trial is of no moment; Shanks’ verification provided reasonable assurance that Melinda’s samples passed from the hands of East Central Indiana Pathologists into the hands of Axis in an undisturbed condition. The State not only met the higher burden applied to fungible evidence by showing in whose possession the samples continuously remained—East Central Indiana Pathologists, then Federal Express, then Axis—but also provided ample evidence describing the samples’ whereabouts while in Axis’ possession. The State met the burden that its “chain of custody strongly suggests the exact whereabouts of [Melinda’s samples] at all times.” *Culver*, 727 N.E.2d at 1067. The trial court did not abuse its discretion by admitting the Axis Report.

II. Admission of evidence of Terry’s prior bad acts was not erroneous.

[19] Terry asserts the trial court should have excluded Chester’s testimony about Terry’s other sales of pills or heroin to Melinda and Chester around Melinda’s death. She baldly asserts this evidence “certainly raises the ‘forbidden inference’ that Terry acted in conformance with the alleged prior conduct[.]” Appellant’s Br. p. 15.

[20] We note Terry’s Summary of Argument and Argument on this issue are identical. Appellant’s Br. pp. 10-11, 14-15. The Argument section includes only a statement of fact that Chester testified to Terry’s prior bad act; a lengthy quote

from *Wickizer v. State*, 626 N.E.2d 795 (Ind. 1993), describing the narrow construction of the intent exception to Indiana Evidence Rule 404(b); and a conclusion that admitting the evidence “certainly” raised the forbidden inference and amounted to error. *Id.* at 15. Though Terry’s argument is underdeveloped, we nevertheless address it on the merits.

[21] Terry’s argument appears based on Indiana Evidence Rule 404(b)(1), which prohibits evidence of “a crime, wrong, or other act . . . to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” However, such evidence may be admissible if it is relevant to a matter other than the defendant’s propensity to commit the charged act, including “proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Ind. Evidence Rule 404(b)(2); *Fairbanks v. State*, 119 N.E.3d 564, 568 (Ind. 2019). A trial court must then conclude the probative value of the evidence is not substantially outweighed by undue prejudice, passing the Indiana Evidence Rule 403 balancing test. *Id.* “A trial court’s evidentiary rulings are presumptively correct, and the ‘defendant bears the burden on appeal of persuading us that the court erred in weighing prejudice and probative value under Evid. R. 403.’” *Rivera v. State*, 132 N.E.3d 5, 12 (Ind. Ct. App. 2019) (quoting *Anderson v. State*, 681 N.E.2d 703, 706 (Ind. 1997)), *trans. denied*.

[22] Here, the challenged testimony established that around the time of Melinda’s death, Chester and Melinda obtained their drugs from Terry. Rather than merely showing Terry’s propensity as a drug dealer, this evidence was relevant

to prove multiple non-character purposes. First, it demonstrated opportunity by establishing Terry’s access to controlled substances and her existing supplier relationship with the Duncans. Second, it showed motive, as it established Terry’s financial interest in dealing drugs to the Duncans. *See Iqbal v. State*, 805 N.E.2d 401, 408 (Ind. Ct. App. 2004) (finding prior bad act evidence admissible to prove a motive where it was offered for a reason other than propensity to commit the crime charged); *See also Hicks v. State*, 690 N.E.2d 215, 222 n.12 (Ind. 1997) (finding that “[m]otive and most other collateral issues are unlike intent” and less likely to produce the forbidden inference).

[23] Next, Terry has not met her burden of persuading us that the trial court erred in weighing probative value and unfair prejudice under Rule 403. While the testimony was undoubtedly prejudicial, it was highly relevant to a central issue in the case—whether Terry was the person who supplied the drugs to Melinda that caused her death. The court did not abuse its discretion in admitting this evidence.

[24] Even if we determined the trial court erred in admitting the evidence, which we do not, any error was harmless.

Appellate Rule 66(A) . . . defines reversible error for our appellate courts.[.] When an appellate court must determine whether a non-constitutional error is harmless, Rule 66(A)’s “probable impact test” controls. Under this test, the party seeking relief bears the burden of demonstrating how, in light of all the evidence in the case, the error’s probable impact undermines confidence in the outcome of the proceeding[.]

Hayko v. State, 211 N.E.3d 483, 492 (Ind. 2023), *reh’g denied, cert. denied*. Here, the evidence included not only testimony of Terry’s prior drug sales, but also text messages arranging the specific drug purchase on October 4, 2021; cellphone data tracking Terry from a known drug source to the victim’s residence; eyewitness testimony placing Terry at Melinda’s residence shortly before her overdose; and Terry’s own admissions in jail calls. Therefore, the probable impact of testimony about Terry’s prior drug dealing was “sufficiently minor[.]” *Id.* In light of all the evidence in this case directly linking Terry to the charged offense, our confidence in the outcome is not undermined and any error was harmless. *Id.* The judgment of the trial court is affirmed.

Affirmed.

May, J., and Weissmann, J., concur.

ATTORNEY FOR APPELLANT

Joseph P. Hunter
Quirk and Hunter, P.C.
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Jennifer Anwarzai
Deputy Attorney General
Indianapolis, Indiana