

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR10-943

JIMMY LEE WILLIAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED SEPTEMBER 14, 2011

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[NO. CR-2009-068-4]

HONORABLE EDWIN KEATON,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

The issue before us is whether the trial court abused its discretion in admitting DVDs containing video recordings of appellant Jimmy Lee Williams selling marijuana and cocaine to a confidential informant. Appellant was convicted by a Ouachita County jury of two counts of delivery of a controlled substance, marijuana; two counts of delivery of a controlled substance, cocaine; possession of drug paraphernalia; and possession of marijuana, for which he was sentenced to a total term of forty years' imprisonment. On appeal, he contends that the trial court erred in admitting the DVDs because the State failed to lay the proper foundation for their admission. We affirm.

The Ouachita County Drug Task Force, by way of the confidential informant, made four controlled buys of illegal drugs from appellant. On each occasion, the informant wore a hidden digital-video recorder, which recorded each transaction. On January 5, 2009, the



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informant purchased marijuana from appellant; on January 6, 2009, marijuana and cocaine were purchased; and on January 9, 2009, and February 28, 2009, cocaine was purchased.

At appellant's jury trial, the State attempted to introduce the DVDs from the four transactions, but the trial court did not allow their admission, ruling that the State failed to lay a proper foundation for the evidence. The State recalled Cameron Owens, the officer who made the DVDs from the hidden-camera recordings and who testified in part as follows:

WITNESS: Yesterday we talked about my video recordings on the undercover recorder. There was a video made on the undercover recorder. After I stop the recorder, and I've - It's a little digital recorder, a computer generated video file, there's a, it's on a card inside that recorder. I take it to the computer and by a USB cable I download that file onto the hard drive of the computer which makes an exact copy of that file. And then at that time I make another digital, exact digital copy and I put it on the disk. Those are the disks that I have in front of me. The disk from January 5 is the disk that I reviewed with the informant.

Officer Owens testified as to the same process for each recording on the four different dates of the controlled buys. Over the course of the trial, both Officer Owens and the confidential informant testified that the recordings on the DVDs were true and accurate depictions of what transpired during the drug transactions with appellant. The trial court allowed the admission of all four DVDs over appellant's objection that the State had failed to lay a proper foundation in compliance with Arkansas Rule of Evidence 901 (2010). Appellant was convicted on March 2, 2010, after which a timely notice of appeal was filed. This appeal followed.

The decision to admit or exclude evidence is within the sound discretion of the circuit court, and that decision will not be reversed absent a manifest abuse of discretion. *Settles v. State*, 2011 Ark. App. 241. Generally, the same considerations and requirements for



admissibility that apply to photographs also apply to videotapes. *Hamilton v. State*, 348 Ark. 532, 74 S.W.3d 615 (2002). An appellate court will not reverse a circuit court's ruling on a hearsay question unless the appellant can demonstrate an abuse of discretion. *Settles, supra*. An abuse of discretion is a high threshold; it does not simply require error in the circuit court's decision, but requires that the circuit court acted improvidently, thoughtlessly, or without due consideration. *Id.*

Rule 901(a) of the Arkansas Rules of Evidence provides that, "[t]he 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 the proponent claims." An example of authentication or identification that conforms with the requirements of this rule includes testimony of a witness with knowledge that a matter is what it is claimed to be. Ark. R. Evid. 901(b)(1). Authentication may also be shown by evidence describing a process or system used to produce a result and showing the process or system produces an accurate result. Ark. R. Evid. 901(b)(9).

Both parties agree that the same requirements for admissibility of photographs apply to videotapes and that this court reviews a court's determination on admissibility for an abuse of discretion. *See Hamilton, supra*. Appellant contends, however, that videotapes present a unique opportunity for editing and that the burden of authentication should be more demanding. Because appellant failed to argue below that the burden of authentication should be more demanding for videotaped evidence, he is barred from asserting it for the first time on appeal. *Price v. State*, 2010 Ark. App. 111, 377 S.W.3d 324.



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Appellant argues that the State failed to lay a proper foundation for the admission of the DVDs because it failed to show that the DVDs at trial were the videos reviewed by the informant. Appellant points to an objection raised after the confidential informant's testimony and the State's attempt to have the DVDs admitted. The trial court sustained appellant's objection to the admission of the DVD after the witness testified that he reviewed the video and that it was a true and accurate depiction of all the events that happened during the first transaction. However, after the State recalled Officer Owens, who testified about how he had placed the hidden camera on the informant and the procedure used to make the DVDs, the trial court allowed the introduction of the evidence. Appellant contends that this was error arguing that, despite the officer's testimony that the informant reviewed the videotapes, there is nothing in the record indicating that the informant reviewed these specific DVDs or that they reflected the transactions that had occurred. Appellant claims that had the informant truly reviewed the videotapes as alleged he would have been able to recall specifics of the transactions that he was unable to recall when questioned at trial.

Appellant's argument is without merit because the State offered testimony from two witnesses with knowledge of the DVDs and transactions, as well as testimony describing the process used to create the DVDs. Officer Owens and the informant testified that they did not tamper with the camera or recordings, that they reviewed each DVD, and that the DVDs were fair and accurate depictions of what transpired during the drug buys. *See* Ark. R. Evid. 901(b)(1). Moreover, Officer Owens identified the DVDs in court as the ones that he had specifically made from the recordings. He testified about the process of placing the recordings



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on the DVDs. His testimony was sufficient to authenticate the DVDs and establish that they were accurate copies of the recordings of appellant's drug transactions. *See* Ark. R. Evid. 901(b)(9). Further, Officer Owens testified that he reviewed the videos with the informant, and the informant testified that he reviewed the DVDs that were before the court. Because Rule 901(b)(1) and (9) were satisfied, the trial court did not abuse its discretion in admitting the evidence.

Affirmed.

PITTMAN and BROWN, JJ., agree.

Dana A. Reece, for appellant.

Dustin McDaniel, Att'y Gen., by: *LeaAnn J. Irvin*, Ass't Att'y Gen., and *Jose M. Alfaro*, Law Student Admitted to Practice Pursuant to Rule XV of the Rules Governing Admission to the Bar of the Supreme Court under the Supervision of *Darnisa Evans Johnson*, Deputy Att'y Gen., for appellee.