

SIXTH DIVISION  
JANUARY 30, 2015

No. 1-13-1318

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. 11 CR 1498
	)	11 CR 1499
	)	
LUIS CASTANEDA,	)	Honorable
	)	Maura Slattery-Boyle,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice HOFFMAN and Justice ROCHFORD concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Defendant was not denied a fair trial or due process where the trial court's comments during its pronouncement of guilt represent only a fair and accurate summation of the evidence.

¶ 2 Following a bench trial, defendant Luis Castaneda was found guilty of two counts of possession of a controlled substance and sentenced to concurrent terms of four years' incarceration. On appeal, defendant does not challenge the sufficiency of the evidence, instead argues only that he "was denied due process by the trial judge's mistaken recollection about whether [defendant] or the confidential informant had initiated the charged drug transactions." We affirm.

¶ 3 According to the State's theory of the case, defendant was a drug dealer who delivered cocaine to a confidential informant and a Chicago police officer assigned to a Drug Enforcement Agency (DEA) task force in exchange for money. Defendant admitted that he delivered the cocaine and accepted cash in exchange, but argued that he was entrapped, and that the transactions were orchestrated by the confidential informant who gave defendant the cocaine prior to the transactions observed by the police officer and took the money defendant received from the police officer afterward. Because defendant does not challenge the sufficiency of the evidence, we will narrow our discussion of the facts to that which is necessary to understand his mistaken recollection argument.

¶ 4 At trial, the State presented the testimony of Officer Ruben Briones, and a confidential informant know as "John Doe." The witnesses testified generally consistently, that on three occasions Doe contacted defendant asking to buy cocaine, that Doe and Briones met with defendant in a parking lot, and that defendant gave Doe or Briones cocaine in exchange for money. The conversations between Doe, Briones, and defendant were secretly recorded and audio recordings of the conversations were entered into evidence along with transcripts of the conversation which translated portions of the conversations from Spanish into English. The

parties also stipulated to testimony of the forensic chemists that analyzed the material received from defendant and verified its weight and cocaine content.

¶ 5 During Briones' testimony, he testified, in relevant part, "The confidential source received a phone call from [defendant.]" During Doe's testimony, he recounted a transaction that occurred in the parking lot of a cell phone store, and described his and Briones' actions as follows: "We waited for [defendant] to call us and he called to see if we were there." Doe described a transaction in a grocery store parking lot as follows: "We got a series of phone calls as to he was coming, [defendant] was coming."

¶ 6 Defendant testified that he was schizophrenic and that he often did odd jobs for Doe, whom he knew as "Tino." He further testified that he participated in the transactions with Briones, but that Doe gave him the cocaine the day prior to each transaction and met with him after the transactions were complete to take the money. In exchange for his participation, defendant received \$50 and a small amount of cocaine.

¶ 7 Defendant supported his claim of schizophrenia with the testimony of his sister and stipulated medical testimony.

¶ 8 Following argument by the parties, the trial court found defendant guilty of two counts of possession of a controlled substance stating, in relevant part:

"One of the targets of the investigation was [defendant] not only one of the targets, but one of the people that were investigated to an on [*sic*] term over a two years investigation; that during this time [defendant] was one who initiate [*sic*] phone calls to this John Doe, and that drugs were either transferred by [defendant] to Tino, to John Doe, or to – directly to Officer Briones."

The trial court found defendant not guilty of a third count and noted that it had found defendant guilty of only the lesser-included offense of possession.

¶ 9 Following a hearing, the trial court sentenced defendant to concurrent terms of four years' incarceration. Defendant appeals.

¶ 10 On appeal, defendant contends that the trial court failed to accurately recall the evidence and thereby deprived defendant of due process. Defendant cites three cases in support of this contention, *People v. Mitchell*, 152 Ill. 2d 274 (1992), *People v. Bowie*, 36 Ill. App. 3d 177 (1976), and *People v. Williams*, 2013 IL App (1st) 111116. In each of these cases, the reviewing court held that the failure to accurately recall the evidence can deprive a defendant of a fair trial. However, we find it unnecessary to engage in a detailed discussion of these cases, because, in this case, the unsupported nature of defendant's arguments becomes apparent with little more than an examination of his opening brief.

¶ 11 In his brief, defendant identifies this portion of the trial court's comments: "[defendant] was the one to initiate phone calls." Then, without explanation, defendant substitutes the word "transactions" for the words "phone calls," arguing "The judge's mistaken recall about who initiated the transactions was crucial because it went directly to the heart of [defendant's] entrapment defense."

¶ 12 We find that no error occurred in this case, and that any appearance of error results solely from defendant's attempt to change the words used by the trial court. The trial court said that defendant initiated phone calls. This is an absolutely accurate statement, more than adequately supported by the trial record; both Briones and Doe testified that defendant made at least some of the phone calls that occurred during this series of three transactions. The trial court did not say that defendant initiated every phone conversation, made the first phone call in any transaction, or

even that defendant initiated most of the phone conversations. Most importantly, the trial court never stated that defendant initiated the transactions. This contention of error is created solely by defendant's paraphrase of the trial court's otherwise completely accurate assessment of the evidence. Because we find no error in the trial court's recollection of the facts, we must affirm its judgment.

¶ 13 Affirmed.