

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
ROBERT M. ALLISON**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD70395  
DATE: September 14, 2010

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Appeal From:

Boone County Circuit Court  
The Honorable Clifford E. Hamilton, Jr., Judge

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Appellate Judges:

Division One: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin,  
Judges

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Attorneys:

Shaun J. Mackelprang and John M. Reeves, Jefferson City, MO, for respondent.

Daniel E. Hunt, Jefferson City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**ROBERT M. ALLISON,**

**APPELLANT.**

No. WD70395

Boone County

Before Division One Judges: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin, Judges

Robert Allison appeals from the trial court's judgment finding Allison guilty of seven counts of the Class B felony delivery of a controlled substance, section 195.211, following a jury trial. Allison contends that the trial court: (1) erred by not sustaining a motion to suppress evidence seized from his home and business; (2) erred in overruling objections to Detective Brad Ford's testimony relaying a conversation with a confidential informant; (3) plainly erred in permitting the State to cross examine two of Allison's witnesses about prior misconduct and in permitting the State to rebut the witnesses' denial of the prior misconduct with Detective Ford's testimony; and (4) erred in entering a judgment of guilty on Count 2 which had been dismissed by the State.

**AFFIRMED.**

**Division One holds:**

(1) A purchase of a controlled substance by an undercover officer is not a search or seizure. The trial court did not abuse its discretion in admitting into evidence the controlled substances obtained by Detective Ford following invited entry into Allison's home and business.

(2) The testimony of Detective Ford regarding Allison's communication with a confidential informant was not offered for the truth, but to explain subsequent police conduct. The testimony was not hearsay. As the testimony was not hearsay the Confrontation Clause was not implicated.

(3) Allison failed to preserve his claims of error regarding improper impeachment. We will not exercise our discretion to afford plain error review. The complained of extrinsic evidence was either relevant (and thus admissible) to show bias, or was invited error by Allison. Allison "opened the door" to the State's impeachment efforts about which he now complains. Allison improperly introduced extrinsic evidence through the testimony of Field and Allen for the purpose of impeaching Detective Ford's character for truth and veracity.

(4) The trial court's written judgment improvidently noted a conviction of Count 2 as shown on the Indictment, even though that charge involved a date and a controlled substance not

submitted to the jury, and improvidently noted that Count 9 had been dismissed, even though that charge involved a date and a controlled substance which had been submitted to the jury. This error was a clerical error, which is discernable from the record, and as such the judgment may be amended nunc pro tunc. The judgment of the trial court is amended by the Opinion to reflect that Count 2 was dismissed by the State and to reflect that Allison was convicted of Count 9.

**Opinion by: Cynthia L. Martin, Judge**

September 14, 2010

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