

## MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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David E. MacIntire,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 26, 2021

Court of Appeals Case No.  
20A-CR-1612

Appeal from the Tippecanoe  
Superior Court 1

The Honorable Randy J. Williams,  
Judge

Trial Court Cause No.  
79D01-2003-F4-20

**Mathias, Judge.**

[1] David MacIntire was convicted in Tippecanoe Superior Court of Level 4 felony possessing material capable of causing bodily injury by an inmate and found to be a habitual offender. MacIntire raises three issues on appeal:

- I. Whether the court’s failure to instruct the jury on the meaning of “serious bodily injury” constitutes fundamental error;
- II. Whether his conviction is supported by sufficient evidence; and
- III. Whether his habitual-offender enhancement is supported by sufficient evidence.

[2] We affirm.

## **Facts and Procedural History**

[3] On March 26, 2020, MacIntire was an inmate at the Tippecanoe County Jail. Early that morning, Officer Bradford passed out shaving razors to the inmates—including MacIntire—and collected the razors about forty-five minutes later. When collecting razors, which are distributed three times a week, officers perform a quick inspection to “make sure that they are intact.” Tr. p. 111. When MacIntire handed his razor to Officer Bradford that morning, he noticed there was “rust on the blade” and the “blade was bent.” *Id.* at 100; *see* Ex. Vol. at 5, 7. Officer Bradford also observed that the razor had been altered, which MacIntire attempted to conceal by using toothpaste to reattach the plastic guard covering the blade. Thus, the officer believed the original blade had been

swapped out and that “there was another razor blade” in MacIntire’s cell. Tr. p. 100.

[4] Officer Bradford was concerned as the “approximately. . . inch and a half long” blade is “a very sharp device that could be used as a weapon.” *Id.* at 104, 108. MacIntire eventually revealed that there was a blade hidden under some items in his basket. Officers searched the basket and found the blade wrapped in paper “to try and hide it.” *Id.* at 104. Per jail procedure, the sheriff’s department was notified about the incident and “[o]pened up a criminal investigation.” *Id.* at 124. Based on that investigation, the State charged MacIntire with Level 4 felony possessing material capable of causing bodily injury by an inmate and with being a habitual offender. The two charges were set to be tried separately.

[5] MacIntire’s two-day jury trial began on July 6, 2020. While the jury was deliberating the felony charge, MacIntire waived his right to be tried by a jury on the habitual-offender enhancement. The jury subsequently found MacIntire guilty of the Level 4 felony, and the trial court proceeded to the habitual-offender phase. The State introduced into evidence certified conviction records for several prior felonies committed by MacIntire. At the conclusion of that phase of the trial, the court remarked that it did not “recall any testimony . . . from any of the State’s witnesses as to [MacIntire’s] date of birth,” *id.* at 158, and took the matter under advisement.

[6] About a week later, the trial court issued an order finding that MacIntire is a habitual offender. In that order, the court noted it used information from the

Chronological Case Summary (“CCS”) to link MacIntire to the State’s documentary evidence supporting the habitual-offender enhancement. *See* Appellant’s Conf. App. pp. 99–101. MacIntire was subsequently sentenced. And he now appeals.

## Discussion and Decision

[7] MacIntire raises three arguments on appeal. Having been charged with possessing material that is a “deadly weapon,” he first contends the trial court committed fundamental error by failing to instruct the jury on the definition of “serious bodily injury,” a term included in the definition of “deadly weapon.” *See* Appellant’s Br. at 10–16. Second, he asserts that his conviction is not supported by sufficient evidence because the State “failed to prove the razor was [a] deadly weapon.” *Id.* at 20. Third, he argues that his habitual-offender enhancement is not supported by sufficient evidence because the State failed “to prove that the David MacIntire on trial [] was the same individual who has accumulated two prior unrelated felony convictions.” *Id.* at 21. We address each contention in turn.

### *I. The trial court did not commit fundamental error in instructing the jury.*

[8] To convict MacIntire of Level 4 felony possessing material capable of causing bodily injury by an inmate, the State was required to prove that the razor blade constitutes a “deadly weapon.” [Ind. Code § 35-44.1-3-7](#). In relevant part, a “deadly weapon” is one that “is readily capable of causing serious bodily injury.” [I.C. § 35-31.5-2-86](#). Though the jury was instructed on the definition of

“deadly weapon,” it was not given an instruction defining “serious bodily injury.” McIntire, recognizing that he neither objected to the jury instructions nor tendered an instruction defining “serious bodily injury,” argues that the lack of such an instruction constitutes fundamental error. He is incorrect.

[9] Fundamental error is an “extremely narrow” exception to the general rule that a party’s failure to properly preserve an issue below results in waiver of that issue on appeal. *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018). An error is fundamental if it “made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm.” *Id.* In considering a claim of fundamental error with respect to jury instructions, we look to the instructions as a whole to determine if they were adequate. *Munford v. State*, 923 N.E.2d 11, 14 (Ind. Ct. App. 2010).

[10] Here, the court instructed the jury on the elements of Level 4 felony possessing material capable of causing bodily injury by an inmate. Tr. pp. 138–39. In relevant part, the court informed the jury that the State needed to prove: (1) the razor blade was used or intended to be used in a manner readily capable of causing bodily injury; and (2) the razor blade is a deadly weapon. *Id.* at 138. The court provided the jury with definitions for both “bodily injury” and “deadly weapon.” *Id.* at 140. The instruction for the latter informed the jury that, to be a “deadly weapon,” the razor blade must be “readily capable of causing *serious bodily injury*.” *Id.* (emphasis added); see also I.C. § 35-31.5-2-86.

Thus, these instructions collectively informed the jury of precisely what the State needed to prove before the jury could find MacIntire guilty.<sup>1</sup>

[11] Nevertheless, MacIntire asserts that the court’s failure to define “serious bodily injury” rendered “it impossible for the jury to decide whether the razor was a deadly weapon.” Appellant’s Br. at 12. We disagree.

[12] In determining whether the State has proven an element of an offense, we expect juries to rely on common sense and knowledge acquired through everyday experiences. See *Clemons v. State*, 83 N.E.3d 104, 108 (Ind. Ct. App. 2017). The jury here could reasonably rely on common sense to conclude that the razor blade met the definition of a “deadly weapon” without an instruction defining “serious bodily injury”—a term that “is quite readily understood by the average laymen to mean some injury short of death.” *Id.* at 108. Further, trial courts have a duty to define words or terms used in other instructions only if they “are of a technical or legal meaning normally not understood by jurors unversed in the law.” *Id.* (quoting *Martin v. State*, 262 Ind. 232, 314 N.E.2d 60, 70 (1974)). Here, “serious bodily injury” is not used in a technical legal sense and is quite easily understood in this context. Indeed, the focus of the

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<sup>1</sup> We acknowledge MacIntire’s argument that the charging information, which was read to the jury, was “confusing” and “ambiguous.” Appellant’s Br. at 11–12. But even if we agreed with MacIntire on this point, the other instructions adequately informed the jury of what the State needed to establish beyond a reasonable doubt.

challenged offense is on the razor blade and its potential for causing serious bodily injury, not whether harm was actually inflicted. *See I.C. § 35-44.1-3-7.*

- [13] In short, the jury was properly instructed that, to find McIntire guilty, it needed to conclude the razor blade was capable of causing serious bodily injury. And the jury could infer the meaning of that term from common sense and experience to determine whether the blade is capable of causing such harm. We therefore cannot conclude that the court erred in failing to provide a jury instruction defining “serious bodily injury.” But even if we did find error, MacIntire has failed to show that it rose to the level of fundamental error.

## ***II. Sufficient evidence supports MacIntire’s conviction.***

- [14] When reviewing a claim of insufficient evidence supporting a conviction, we consider only the evidence and reasonable inferences favorable to the verdict, and we neither reweigh the evidence nor judge witness credibility. *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017). We will affirm unless we conclude that no reasonable fact-finder could find the elements of the offense proven beyond a reasonable doubt. *Id.*
- [15] To convict MacIntire of Level 4 felony possessing material capable of causing bodily injury by an inmate, the State was required to establish: (1) MacIntire; (2) knowingly or intentionally; (3) while incarcerated in a penal facility; (3) possessed a razor blade; (4) the razor blade was used or intended to be used in a manner that is readily capable of causing bodily injury; and (5) the razor blade is a deadly weapon. *I.C. § 35-44.1-3-7*; Appellant’s Conf. App. p. 71.

MacIntire’s sufficiency challenge is directed only at the fifth element, arguing “there was no evidence to demonstrate” that the razor blade recovered from his cell “was a deadly weapon.” Appellant’s Br. at 20. We disagree.

[16] As we noted above, a “deadly weapon,” is defined in relevant part as a weapon, equipment, or other material that could ordinarily be used in a manner capable of causing serious bodily injury. [I.C. § 35-31.5-2-86](#). Whether an object is a deadly weapon is a question of fact for the jury to decide based on the circumstances of each case. See [Timm v. State](#), 644 N.E.2d 1235, 1238 (Ind. 1994); [Gleason v. State](#), 965 N.E.2d 702, 709 (Ind. Ct. App. 2012). And the circumstances here support the jury’s conclusion that the razor recovered from MacIntire’s cell is a deadly weapon.

[17] Our supreme court has previously observed that a razor is “[c]learly . . . a deadly weapon.” [Stovall v. State](#), 477 N.E.2d 252, 256 (Ind. 1985). And the State produced evidence leading to the same conclusion. For example, the State introduced pictures of the approximately “inch and a half long” blade. Ex. Vol. at 5, 7, 9, 11; Tr. p. 104. And Officer Bradford testified that the recovered blade is “a very sharp device that could be used as a weapon.” Tr. p. 108. From this evidence, the jury could reasonably conclude that the razor blade was capable of causing serious bodily injury, which, again, “is quite readily understood by the average laymen to mean some injury short of death.” [Clemons](#), 83 N.E.3d at 108; see [Froedge v. State](#), 249 Ind. 438, 445, 233 N.E.2d 631, 636 (1968) (recognizing that a razor is “likely to cause great bodily harm if used”); [People v. Pollock](#), 89 P.3d 353, 369 (Cal. 2004) (“Even without a handle, a razor blade

could be used to slice a victim’s throat, wrist, or other vital spot, and thus a detached razor blade has a reasonable potential of causing great bodily injury or death.”). As such, the evidence supports the jury’s conclusion that the blade is a “deadly weapon.” To find otherwise would require us to reweigh the evidence in MacIntire’s favor, which we will not do. His conviction is therefore supported by sufficient evidence.

***III. Sufficient evidence supports MacIntire’s habitual-offender adjudication.***

- [18] We address challenges to the sufficiency of evidence supporting a habitual-offender adjudication the same way as other sufficiency claims. We do not reweigh the evidence; rather, we view the evidence in the light most favorable to the judgment. *White v. State*, 963 N.E.2d 511, 518 (Ind. 2012).
- [19] To prove MacIntire was a habitual offender, the State was required to establish that he had accumulated two prior unrelated felonies and that at least one of those felonies was not a Level 6 felony or a Class D felony. *See Ind. Code § 35-50-2-8(b)*. The State alleged MacIntire had accumulated several unrelated, qualifying felonies. And, during the habitual-offender phase of trial, the State introduced into evidence certified conviction records for each prior felony.
- [20] MacIntire does not challenge the State’s documentary evidence. Instead, his argument centers on the State’s failure “to introduce any evidence demonstrating the identity of the David MacIntire on trial.” Appellant’s Br. at 21. He acknowledges that the trial court—after taking the matter under advisement—relied on identifying information in the CCS to link MacIntire to

the State’s documentary evidence. But MacIntire asserts that the court’s reliance on the CCS was improper. We agree with MacIntire that “[i]t is the State’s burden to establish the guilt of a defendant during the trial,” Reply Br. at 10, and we encourage the State in the future to be more thorough in linking a defendant alleged to be a habitual offender with the person identified in qualifying conviction records. That said, under these facts and circumstances, we find nothing “improper” about the procedure employed by the trial court.

[21] In consulting the CCS after taking the matter under advisement, we find that the trial court simply took judicial notice of the official court record. *See Ind. Trial Rule 77(B)*. Indeed, the trial court may on its own and at any stage of the proceeding take judicial notice of a fact that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *Ind. Evidence Rule 201*. One such source, absent evidence to the contrary, are court records, whether on paper or electronically in the statewide Odyssey case management system. *See Horton v. State*, 51 N.E.3d 1154, 1161 (Ind. 2016). In its order finding that MacIntire is a habitual offender, the court noted that “the [CCS] in this cause lists the defendant’s date of birth as [] and his driver’s license number as [].” Appellant’s Conf. App. p. 99. The court used that factual, identifying information to link MacIntire with the State’s documentary evidence. *Id.* at 99–101. While we acknowledge the court did not specifically state it was “taking judicial notice of the CCS,” Evidence *Rule 201* does not impose such a requirement. *See Horton*, 51 N.E.3d at 1161 (recognizing that

“the ultimate purpose of judicial notice is efficient consideration of uncontroversial facts”).

- [22] In short, the trial court did not err in using the CCS to identify MacIntire as the same person referred to in the State’s certified conviction records. The court’s habitual-offender determination is supported by sufficient evidence.

### **Conclusion**

- [23] The trial court’s failure to provide a jury instruction defining “serious bodily injury” was not fundamental error. And MacIntire’s conviction and habitual-offender adjudication are supported by sufficient evidence.
- [24] We affirm.

Altice, J., and Weissman, J., concur.