MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charles Grays,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 18, 2022

Court of Appeals Case No. 21A-CR-2471

Appeal from the Elkhart Circuit Court

The Honorable Stephen R. Bowers, Special Judge

Trial Court Cause No. 20C01-1708-F2-29

Vaidik, Judge.

Case Summary

[1] Charles Grays appeals his convictions for Level 2 felony dealing in cocaine, Level 4 felony unlawful possession of a firearm by a serious violent felon, Class A misdemeanor resisting law enforcement, and Class A misdemeanor operating a vehicle while suspended. He argues the trial court erred in denying his motions to suppress evidence and in instructing the jury and that his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] Around 1:30 a.m. on August 5, 2017, Corporal Travis Hamlin of the Elkhart Police Department observed a car driven by Grays. Grays stopped at a stop sign, activated his turn signal, turned right, and quickly pulled off to the side of the road. Noting Grays failed to signal 200 feet before turning in violation of Indiana Code section 9-21-8-25, Corporal Hamlin parked behind Grays to initiate a traffic stop. Grays exited the car and explained to Corporal Hamlin that he was experiencing car trouble. While standing near Grays's driver's side door, Corporal Hamlin observed a "white rock-like substance" that appeared to be "crack cocaine" inside the door. Tr. Vol. III p. 221.

[3] Corporal Hamlin then asked Grays to step to the rear of the car, and Grays complied. However, after Corporal Hamlin asked Grays if he "had anything on him," Gray attempted to flee on foot. *Id.* at 226. Corporal Hamlin apprehended and arrested Grays. Corporal Hamlin found eight individual baggies in Grays's

pockets, each containing what appeared to be crack cocaine, as well as $1,210 in cash. Later testing revealed the combined weight of the baggies was over 24 grams, at least 13.41 grams of which was cocaine.[1] A search of Grays's car revealed white residue, a dinner plate with a razor blade, and a loaded handgun. Corporal Hamlin later questioned Grays and explained what he was being charged with. Grays asked why "he was being charged with dealing" and Corporal Hamlin replied "due to the amount [of drugs] . . . it was not user amount." Tr. Vol. IV p. 5. Grays then told Corporal Hamlin that he "uses" drugs and had "been dealing." *Id.*

[4] A few days later, the State charged Grays with Level 2 felony dealing in cocaine, Level 4 felony unlawful possession of a firearm by a serious violent felon, Class A misdemeanor resisting law enforcement, and Class A misdemeanor operating a vehicle while suspended. Before his jury trial in June, Grays requested to proceed pro se, but the trial court denied his motion. Grays was found guilty as charged but appealed, arguing the trial court erred in denying his request to proceed pro se. We agreed and reversed, ordering a new trial. *See Grays v. State*, No. 18A-CR-1994, 2019 WL 1830604 (Ind. Ct. App. Apr. 25, 2019).

[5] On remand, Grays filed four motions to suppress the drug and gun evidence. In November 2019, Grays, represented by counsel, moved to suppress, arguing

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[1] Four of the baggies were tested and revealed a combined 13.41 grams of cocaine. The other four baggies were not tested as the statutory weight limit for a Level 2 felony (over 10 grams) had already been reached.

Corporal Hamlin did not have probable cause to stop and search his car and that the search constituted an improper inventory search. In July 2020, Grays again moved to suppress, challenging the chain of custody. A few months later, Grays filed a pro se motion to suppress, arguing he did not violate the turn-signal statute and Corporal Hamlin committed perjury in testifying as such. Finally, in July 2021, Grays, again represented by counsel, moved to suppress, arguing it was impossible to comply with the turn-signal statute. The trial court denied each motion.

[6] A jury trial was held that same month. The State presented the video of Corporal Hamlin's questioning of Grays, in which Corporal Hamlin explains why Grays is being charged with dealing and Grays admits to using and dealing. Grays testified he had never seen the drugs or gun and did not know how they came to be on his person or in his car. As to his admissions to Corporal Hamlin, Grays testified those were "lies." Tr. Vol. IV p. 143. At closing, the State argued,

> Possess with the intent to deliver. It was on the defendant's person. Defendant grabbed it—grabbed at it continuously. The rock was in that door handle, easily accessible to the defendant. He even told Hamlin in that interview, the defendant had a lot of that cocaine on him because he did not trust leaving that much amount laying around. It was a lot of cocaine and it was worth a lot of money.
>
> And we talked yesterday about how do we know someone's intent? We look at their actions and we look at their words. You heard from Corporal . . . Hamlin and [other officers]. They have

> years of experience, years of training in this. That packaging was not in a way for individual consumption, but to sell.

Id. at 163-64. The trial court then instructed the jury on the charged offense of Level 2 felony dealing in cocaine—requiring the jury to find Grays knowingly possessed with intent to deliver at least 10, but less than 28, grams of cocaine—and the lesser-included offense of Level 4 felony possession of cocaine—requiring the jury to find Grays knowingly possessed at least 10, but less than 28, grams of cocaine. The jury found Grays guilty of all four charged offenses—Level 2 felony dealing in cocaine, Level 4 felony unlawful possession of a firearm by a serious violent felon, Class A misdemeanor resisting law enforcement, and Class A misdemeanor operating a vehicle while suspended.

[7] At sentencing, the trial court found three aggravators: (1) Grays's criminal history, including a juvenile adjudication for battery and four felony adult convictions: one for theft, one for dealing in cocaine, heroin, or another narcotic, and two for robbery; (2) Grays violated probation in the past; and (3) the handgun was found "loaded in a position where it could readily be used." *Id.* at 218. The court found one mitigator: Grays's conduct while out on bond in this case was a "substantial improvement." *Id.* The trial court sentenced Grays to the following: twenty-five years for Level 2 felony dealing, fully executed, eight years for Level 4 felony unlawful possession, fully suspended to probation, and one year for each of the Class A misdemeanors. The court ordered the felony sentences be served consecutively and the misdemeanor sentences

concurrently, for an aggregate sentence of thirty-three years, with twenty-five years executed and eight years suspended to probation.

[8] Grays now appeals.

Discussion and Decision

I. Fourth Amendment Violation

[9] Grays first argues the trial court erred in denying his motions to suppress because "the use of I.C. § 9-21-8-25 to justify a traffic stop was arbitrary" and thus not "reasonable under the Fourth Amendment." Appellant's Br. pp. 21-22.[2]

[10] As an initial matter, the State argues Grays has waived this issue by asserting a different reason for suppression of the evidence on appeal than he asserted before the trial court. Grays responds by contending that his November 2019 motion to suppress was based on Corporal Hamlin "illegally" stopping him in violation of the Fourth Amendment, and that in his July 2021 motion to suppress, he noted that stops under the statute are often "arbitrary." Appellant's Reply Br. p. 6. Thus, he asserts,

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[2] Grays also asserts the stop and search violated Article 1, Section 11 of the Indiana Constitution. However, he does not make a separate analysis under the Indiana Constitution. We therefore address only his argument under the Fourth Amendment. *See White v. State*, 772 N.E.2d 408, 411 (Ind. 2002) ("Because the defendant does not argue that the search and seizure provision in the Indiana Constitution requires a different analysis than the federal Fourth Amendment, his state constitutional claim is waived, and we consider only the federal claim.").

> The appropriateness of the traffic stop, including arguments that it was arbitrary, was based on a statute that permitted arbitrary traffic stops, and that it resulted in a violation of Grays's constitutional rights to be free from unreasonable searches and seizures, was squarely in front of the trial court.

Id.

[11] Regardless of whether Grays waived this issue, his argument fails on the merits. Grays contends the drugs and gun should not have been admitted into evidence because they were discovered in violation of his rights under the Fourth Amendment to the United States Constitution, which "protects persons from unreasonable search and seizure by prohibiting, as a general rule, searches and seizures conducted without a warrant supported by probable cause." *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013). "The constitutionality of a search or seizure is a question of law, and we review it de novo." *Kelly v. State*, 997 N.E.2d 1045, 1050 (Ind. 2013).

[12] Indiana Code section 9-21-8-25 provides in part, "A signal of intention to turn right or left shall be given continuously during not less than the last two hundred (200) feet traveled by a vehicle before turning or changing lanes." This Court has interpreted the statute to require the signal "at all times, not only when another vehicle will be affected." *State v. Geis*, 779 N.E.2d 1194, 1196 (Ind. Ct. App. 2002). Grays argues his failure to adhere to the turn-signal statute "did not present any danger to the public" and thus the application of the statute to justify the stop "cannot be considered reasonable under the Fourth Amendment." Appellant's Br. pp. 21-22. But as our Supreme Court has

explained, "It is unequivocal under our jurisprudence that even a minor traffic violation is sufficient to give an officer probable cause to stop the driver of a vehicle." *Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013); *see also Farris v. State*, 144 N.E.3d 814 (Ind. Ct. App. 2020) (traffic stop was reasonable under Fourth Amendment where driver failed to signal two hundred feet before turning). Grays's argument asks us to reconsider this long-established precedent and hold a law-enforcement officer cannot stop a driver who commits a traffic infraction unless that infraction endangers others. He has not given us a compelling reason to do so.

[13] Gray has not shown that the trial court erred in denying his motions to suppress.

II. Jury Instruction

[14] Grays next argues the trial court erred in "fail[ing] to give a separate instruction on intent to deliver," a "material element" of the offense of dealing in cocaine. Appellant's Br. p. 24. "The purpose of a jury instruction is to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict." *Batchelor v. State*, 119 N.E.3d 550, 553 (Ind. 2019) (quotation omitted). We review a trial court's decision to give or refuse a jury instruction for an abuse of discretion. *Hernandez v. State*, 45 N.E.3d 373, 376 (Ind. 2015). We must consider: "(1) whether the instruction correctly states the law; (2) whether there is evidence in the record to support the giving of the instruction; and (3)

whether the substance of the tendered instruction is covered by other instructions which are given." *Id.* (quotation omitted).

[15] Because Grays did not object to the instruction at trial, his claim is waived; therefore, he must demonstrate fundamental error before we may reverse. *See Pattison v. State*, 54 N.E.3d 361, 365 (Ind. 2016). "Error is fundamental if it is a substantial blatant violation of basic principles and where, if not corrected, it would deny a defendant fundamental due process." *Id.* (quotation omitted). When determining whether an incorrect jury instruction amounts to fundamental error, we look not to the erroneous instruction in isolation, but in the context of all relevant information given to the jury, including closing argument and other instructions. *McKinley v. State*, 45 N.E.3d 25, 28 (Ind. Ct. App. 2015), *trans. denied*.

[16] Grays challenges Instruction 5, which states in part,

> The crime of Dealing in Cocaine is defined as follows:
>
> A person who knowingly possesses with intent to deliver cocaine, pure or adulterated, commits dealing in cocaine, a level 5 felony. The offense is a level 2 felony if the amount of the drug involved is at least ten (10) grams.
>
> Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:
>
> 1. The Defendant;

2. Knowingly;

3. Possessed with intent to deliver;

4. Cocaine, pure or adulterated; and,

5. The amount of the drug involved was at least ten (10) grams.

If the State failed to prove each of these elements beyond a reasonable doubt, you should find the Defendant not guilty of Dealing in Cocaine, a level 2 felony, charged in Count I.

Appellant's App. Vol. IV p. 37. This tracks the language of the statute, which states a person who knowingly or intentionally

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

cocaine or a narcotic drug, pure or adulterated, classified in schedule I or II; commits dealing in cocaine[.]

Ind. Code § 35-48-4-1(a). "[A]n instruction which tracks verbatim the language of a statute is presumptively correct." *Campbell v. State*, 19 N.E.3d 271, 277 (Ind. 2014).

[17] Grays does not argue the instruction is an incorrect statement of law. Rather, he argues the element "intent to deliver" should have been separate from the element of "possessed." Specifically, he argues that due to the "coupling of intent to deliver with possession in listing the necessary elements of the charged offense, the jury was given the impression that if they found that [he] had possession . . . then it was a foregone conclusion that he also had the requisite intent to deliver." Appellant's Br. p. 24. We disagree.

[18] There is no indication the phrase "possessed with intent to deliver" misled the jury into thinking that if Grays possessed the drugs then he necessarily had the intent to deliver. That Grays needed to have intent to deliver, in addition to simple possession, was made clear at trial. The State played video of Corporal Hamlin explaining to Grays why he was being charged with dealing rather than possession. At closing, the State emphasized to the jury that it needed to find not only possession, but intent to deliver, and discussed what evidence it presented to show intent. Additionally, the jury was instructed on the lesser-included offense of possession of cocaine. Given that the only difference in the instructions for dealing in cocaine and possession of cocaine was the element of intent to deliver, the jury was clearly aware of the need to find this element.

[19] Grays has failed to show there was any error, let alone fundamental error, with Instruction 5.

III. Inappropriate Sentence

[20] Grays also argues his thirty-three-year sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides that an appellate court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The court's role under Rule 7(B) is to "leaven the outliers," and "we reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). "Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[21] The sentencing range for a Level 2 felony is ten to thirty years, with an advisory sentence of seventeen-and-a-half years. I.C. § 35-50-2-4.5. The sentencing range for a Level 4 felony is two to twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. The sentencing range for a Class A misdemeanor is not more than one year. I.C. § 35-50-3-2. The trial court sentenced Grays to an

above-advisory sentence of twenty-five years for the Level 2 felony and an above-advisory sentence of eight years for the Level 4 felony, consecutive to the Level 2 felony but fully suspended to probation. The court sentenced Grays to one year for each Class A misdemeanor, to be served concurrently to each other and the felonies, for an aggregate sentence of thirty-three years, with twenty-five years executed and eight years suspended to probation.

[22] This is not an exceptional case that warrants the use of our 7(B) authority. Grays argues the nature of the offenses is "run of the mill" and does not warrant an above-advisory sentence. Appellant's Br. p. 30. But Grays's criminal history supports an enhanced sentence. Grays has one juvenile adjudication for burglary, as well as felony convictions for theft, dealing in cocaine, heroin, or another narcotic, and robbery. And the record shows that, for each of these offenses, Grays served his sentence and then reoffended again within a few months of release. That Grays continues to reoffend indicates he "has no respect for the law" or "desire to conform his conduct to that of a law-abiding citizen." *Mateo v. State*, 981 N.E.2d 59, 75 (Ind. Ct. App. 2012), *trans. denied*.

[23] Grays has failed to persuade us his sentence is inappropriate.

[24] Affirmed.

Crone, J., and Altice, J., concur.