

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Trenton D. Fye,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

June 28, 2022

Court of Appeals Case No.
21A-CR-2074

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2006-F3-49

Robb, Judge.

Case Summary and Issues

- [1] Following a jury trial, Trenton Fye was found guilty of murder and was found to have knowingly or intentionally used a firearm during the commission of the offense. Fye now appeals, raising multiple issues for our review which we restate as: (1) whether the trial court committed fundamental error by admitting impermissible character evidence; (2) whether the trial court committed fundamental error by allowing the State to ask a witness a leading question during direct examination; and (3) whether the trial court abused its discretion by denying Fye's motions for continuance. Concluding the trial court did not commit fundamental error as to the character evidence or the leading question and did not abuse its discretion in denying Fye's motions for continuance, we affirm.

Facts and Procedural History

- [2] In June 2020, Kenneth Frierson was living with his mother, Evelyn, at their home in Fort Wayne. In the early hours of June 19, 2020, Frierson was playing video games in his bedroom and Evelyn was sleeping in her bedroom. By approximately 1:00 a.m., Frierson had been joined in his bedroom by Fye and Taya Brown. An altercation ensued and Frierson was shot multiple times and killed. Evelyn heard the shots and opened her bedroom door which entered a hallway that joined her and Frierson's rooms. Evelyn was met by Fye, who

was wearing a red hooded sweatshirt and a face mask.¹ Evelyn closed her door, grabbed her handgun, and fired shots in the direction of Fye. During the exchange of gunfire, Fye was shot in the stomach and Taya in the leg. Fye and Taya then left Frierson's home, with Fye carrying multiple guns. Following the shooting, Evelyn called 911.

[3] At the time of the shooting, a neighbor heard the gunshots coming from Frierson's home and looked out her window. The neighbor observed a man, wearing a hooded sweatshirt, and a woman running across the street together. The neighbor then called the police. The police arrived at Frierson's home soon thereafter and found Frierson, now deceased, lying face down on his bedroom floor in a pool of blood. He had been shot at close range approximately five times, including twice in the head. His body was surrounded by numerous shell casings.

[4] After the shooting, Fye and Taya parted ways. Fye made his way to the nearby home of Taya's mother, Cheryl Brown. Once at Cheryl's home, Fye stashed the guns he was carrying near a trash can outside, entered the house alone, and woke Cheryl. Fye told Cheryl he had been shot in the stomach and showed her the wound. Cheryl wanted to call the police, but Fye would not let her and demanded she take him to the hospital. While driving, Cheryl flagged down a

¹ Evelyn testified she could not identify the shooter, but that the shooter was a "petite" male with a light complexion and wearing a red hooded sweatshirt and face mask. *See* Transcript, Volume 2 at 212-13. Fye admitted to being in the room with Taya and Frierson when Frierson was shot and evidence at trial put Fye in a red hooded sweatshirt prior to the shooting.

police officer and said that Fye had been shot. When the police officer came to Cheryl's vehicle, he observed Fye in the passenger seat and the officer took over attending to Fye and called for an ambulance.² Cheryl then asked Fye where Taya was. He would not tell her but indicated that she was okay.

[5] Cheryl and Fye were only about a thirty second drive from the location of the shooting and as a result, the attending police officer was immediately suspicious of a possible connection between Fye's gunshot wound and the reported shooting at Frierson's home. Police searching the area surrounding Frierson's home observed fresh blood near Cheryl's house and obtained permission from Cheryl to search her yard. While searching the yard, police observed blood on the fence surrounding Cheryl's back yard and found two guns between a propane tank and trash can outside of Cheryl's house. Both guns had fresh blood on them. Forensic analysis would later determine that the blood near Cheryl's home and on the fence belonged to Frierson and Taya. Further, one of the guns, a .40 caliber Glock, had fired several of the casings that police found near Frierson's body and throughout Frierson's home.³ Fye's and Frierson's DNA were found on both guns.

² Neither Cheryl nor the attending police officer indicated that Fye was wearing a red hooded sweatshirt. Further, during the investigation of Frierson's death, a red hooded sweatshirt was never found.

³ The other gun did not fire any of the casings found in Frierson's home. The only other casings found were from Evelyn's gun.

[6] Meanwhile, Taya had gone to the home of her friend, Breanna Moore, which is located a few minutes from Cheryl's house. Moore asked Taya about her leg wound and Taya told her she had been shot but would not tell her any additional information. Rather, she stated she did not want Moore to get involved and would not let Moore call the police for help. Eventually, Cheryl called and indicated that police were looking for Taya and convinced Taya to allow an ambulance to come and take her to the hospital.

[7] Fye was arrested in connection with Frierson's death and the State charged him with murder and added a firearm sentencing enhancement.⁴ While incarcerated, Fye made several phone calls to Moore and questioned Moore as to what she had told police. Moore indicated that she told the authorities she had been with Fye and Taya prior to the shootings and on the night in question, Fye had been wearing a red hooded sweatshirt. Fye became upset at this news and at one point, Moore believed that Fye threatened her for divulging such information to the police.

[8] A jury trial was originally scheduled for September 2020; however, due to multiple continuances, the trial did not begin until June 29, 2021. On June 18, the State filed a motion to amend its witness list to add three new witnesses, including a fellow jail inmate of Fye's, Allison Miller. As a result, Fye filed a motion for continuance to prepare for these additional witnesses. Fye also

⁴ Taya was never charged. Shortly after Frierson's death, she passed away. Her cause of death was unrelated to this case.

scheduled a deposition for Miller. At a hearing on the morning of June 23, the trial court granted the State's motion to amend and denied Fye's motion for a continuance because Fye had a deposition scheduled with Miller later that day.

[9] The next day, the State filed a verified petition to terminate Fye's communication privileges on the basis that he had been contacting Moore from jail and threatening her. The State alleged that in telephone calls made by Fye, he stated he would "engage outside assistance if necessary to prevent" Moore from testifying. Appendix of Appellant, Volume II at 115. Following a hearing, the trial court granted the State's petition and terminated Fye's communication privileges. After the hearing, Fye was escorted from the courtroom by Officer Michael Barger of the Allen County Sheriff's Department. As they were leaving, Officer Barger heard Fye mumble, "If I really wanted her dead, she'd be dead already[.]" Transcript, Volume 3 at 147. On June 25, the State moved to amend its witness list to include Officer Barger.

[10] On June 29, prior to voir dire, Fye orally renewed his previously denied motion for a continuance due to the State's June 18 motion to amend its witness list to include three additional witnesses. The trial court determined that each of the additional witnesses had been deposed in the previous week and that Fye was present for those depositions and had the opportunity to question the witnesses. Fye did not explain why additional time was needed to prepare for these witnesses and the trial court denied his motion.

[11] The trial court then addressed the State’s motion to amend its witness list to include Officer Barger. Fye argued that he needed additional time to talk to Officer Barger and depose him and again made a motion for continuance. The State argued that Officer Barger would only be testifying about Fye’s statement regarding Moore from June 24 that “[i]f [Fye] wanted her dead, she’d already be dead” and assured the trial court that Officer Barger would be available to speak with Fye either in person or on the phone “over the next day or so” before he would be called as a witness. Tr., Vol. 2 at 61. The trial court granted the State’s motion to add Officer Barger and denied Fye’s motion to continue the trial because there was “time to question [Officer Barger] about the one statement that [Fye] allegedly made.” *Id.*

[12] The trial court then proceeded with the jury trial. Over the course of three days, the State presented numerous witnesses as part of its case in chief. One of those witnesses was Moore, who testified that she had been with Fye and Taya on the night in question and that Taya had come to her home after Frierson was killed and Taya was shot. Moore testified about her conversation with Taya regarding Taya’s wound and the events that took place at Frierson’s home. During her testimony, the following exchange took place:

[Moore]: . . . I mean, she told me it was a gunshot wound, she did tell me that, but, like, she just kept saying – like, she was just very vague about what happened. She wouldn’t tell me what happened.

[State]: Okay. Was there a time during that conversation that she said it wasn’t supposed to happen like that?

[Defense Counsel]: Objection: Leading.

[State]: It's impeachment, Your Honor, based on the conversation so far or the testimony so far.

The Court: Sustained, it's leading.

[Moore]: She said that once.

[State]: I'm sorry?

[Moore]: She said that once.

[Defense Counsel]: Objection. Judge, I would move to strike that at this point.

The Court: I will grant it and order the comment stricken from the record.

[State]: What else did she say? She said, "I don't want the police to be involved, I don't want you to be involved," and then she also said what?

[Moore]: It wasn't supposed to happen this way.

Tr., Vol. 3 at 86. Fye did not object to the final line of questioning and Moore's testimony continued. Moore further testified about the clothing Fye was wearing on the night Frierson was killed. However, when asked about Fye's clothing, Moore became emotional and began crying on the stand. *See id.* at 90-91. Although she indicated she could no longer remember the color or type of

shirt that Fye was wearing, she acknowledged she had previously said Fye was wearing a red hooded sweatshirt on the night in question. *See id.* at 91-92.

[13] Officer Barger testified regarding Fye’s statement to him about Moore, *see supra*, ¶ 9, and Miller said Fye told her he did not want Moore to testify that he had been wearing a red hooded sweatshirt. Specifically, Fye told Miller that “he’d . . . sic the wolves on [Moore] if he felt as if [Moore] was gonna testify he was wearing a red hoodie.” Tr., Vol. 3 at 141.

[14] Fye testified in his defense. Fye indicated that he and Taya went to Frierson’s to smoke and play video games and he admitted to being in the room when Frierson was shot and killed. But Fye said that an unidentified third party, wearing a red hooded sweatshirt, had come into Frierson’s bedroom and started shooting. Fye testified that after the shooting ended and the shooter left, he grabbed two guns that had been left inside the house,⁵ went to Cheryl’s home alone, and stashed the guns outside the house prior to seeking Cheryl’s help. Further, Fye admitted to speaking with Miller about the case while the two were incarcerated but denied threatening Moore, shooting Frierson, or wearing a red sweatshirt.

[15] In closing arguments, after discussing Officer Barger’s testimony, the State argued, “That’s how [Fye] thinks, that’s who [Fye] is[.]” Tr., Vol. 4 at 85. The

⁵ Fye testified that he took the guns because he did not want the shooter to have them and be able to shoot him while he was leaving. *See* Tr., Vol. 4 at 36.

State repeated that statement three additional times during its closing argument. *See id.* at 77, 84-85, 86. The State also highlighted the extensive evidence against Fye including witness testimony, Fye’s admission that he was present when Frierson was killed, and DNA evidence linking Fye to the murder weapon as proof of guilt.

[16] The jury found Fye guilty of murder and determined that he knowingly or intentionally used a firearm in the commission of the offense. The trial court sentenced Fye to an aggregate term of eighty-five years to be served in the Indiana Department of Correction. Fye now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Admission of Evidence

[17] Fye argues the trial court denied him a fair trial when it allowed Officer Barger to testify that Fye claimed, “If I really wanted [Moore] dead, she’d be dead already[.]” Tr., Vol. 3 at 147. We typically review a trial court’s ruling on the admission of evidence for an abuse of discretion. *Baumholser v. State*, 62 N.E.3d 411, 414 (Ind. Ct. App. 2016), *trans. denied*. However, Fye admits he did not object to Officer Barger’s testimony. *See* Appellant’s Brief at 17. When a party fails to object to the admission of evidence at trial, that issue is waived on appeal unless fundamental error occurred. *Baumholser*, 62 N.E.3d at 414.

[18] Fundamental error is an extremely narrow exception that only applies when the error amounts to a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. *Id.* Fundamental error is defined as an error so prejudicial to the rights of the defendant that a fair trial is rendered impossible. *Wilson v. State*, 931 N.E.2d 914, 919 (Ind. Ct. App. 2010), *trans. denied*. The fact that error occurred and it was prejudicial is not enough to satisfy the fundamental error rule. *Id.*

[19] Fye now argues that Officer Barger’s testimony amounted to fundamental error because it was “highly prejudicial character evidence” allowing for the inference that he had the propensity to commit murder. Appellant’s Br. at 12. Indiana Evidence Rule 404(a) prohibits using evidence of a defendant’s “character or character trait . . . to prove that on a particular occasion the person acted in accordance with the character or trait.” This rule is meant to “deter a jury from pursuing a path of reasoning that leads to ‘the forbidden inference’” that the defendant is guilty of the alleged crime because he possesses a bad character trait. *Baumholser*, 62 N.E.3d at 414-15.

[20] Fye relies on our decision in *Oldham v. State*, 779 N.E.2d 1162 (Ind. Ct. App. 2002), *trans. denied*, to support his argument that by allowing Officer Barger’s testimony, the trial court denied Fye a fair trial. Like Fye, Oldham was convicted of murder. However, the murder weapon was never found, Oldham could not be placed inside the car the victim had been murdered in, and DNA evidence did not tie Oldham to the murder. At trial, the State introduced a

novelty photo of Oldham with text reading, “America’s Most Wanted,” “Wanted for: robbery, assault, arson, jaywalking,” “Considered armed and dangerous,” and “Approach with extreme caution.” *Id.* at 1171. On appeal, Oldham argued that admission of this evidence was fundamental error that prevented him from receiving a fair trial. We agreed with Oldham that the manner in which the State presented the evidence suggested that Oldham had the characteristics of one who would arm himself and harm another. Accordingly, Oldham would have been required to refute both the charged crime of murder and the character evidence and as a result fundamental error occurred. *See id.* at 1174. Moreover, the independent evidence presented by the State was not enough to overcome the impermissible inference that Oldham was a killer. *Id.* at 1173. Similarly, Fye argues that Officer Barger’s testimony forced Fye to defend against both the murder charge and the inference that he had a propensity to kill.

[21] We do not find Fye’s argument persuasive. Fye is correct that if Officer Barger’s testimony was offered to prove his propensity for murder, then it was error to allow it into evidence at trial. However, such an error is not fundamental when there is overwhelming evidence of guilt. *Taylor v. State*, 86 N.E.3d 157, 162 (Ind. 2017), *cert. denied*, 139 S. Ct. 591 (2018). Unlike the court in *Oldham*, we find that the evidence against Fye is overwhelming. Fye and Taya were both in Frierson’s bedroom when Frierson was shot and killed. Frierson’s mother fired shots at the people fleeing the house, including a person in a red hooded sweatshirt. Fye was shot in the stomach and Taya in the leg.

A neighbor observed a man, wearing a hooded sweatshirt, and a woman leaving Frierson's home after the shooting. Shell casings from a .40 caliber Glock were found strewn about Frierson's home including in his bedroom and surrounding his body. Fye admitted going to Cheryl's home after the shooting and stashing that same .40 caliber Glock outside of Cheryl's house. The Glock was covered in blood and tested positive for DNA from both Fye and Frierson. Although she was no longer able to say Fye was wearing the same clothing as the shooter, Moore testified she had previously told authorities that Fye was wearing a red hooded sweatshirt prior to Frierson's death. Further, Miller testified that Fye did not want Moore to testify about his red hooded sweatshirt and that he said he would "sic the wolves on [Moore]" if he felt that would be her testimony. Tr., Vol. 3 at 141. Accordingly, we cannot say the admission of Officer Barger's testimony amounted to fundamental error.

[22] Fye also contends that Officer Barger's testimony was utilized by the State as part of a "campaign [during closing argument] of telling the jury 'that's who [he] is, that's how he thinks[,] as opposed to 'that's what he did[,]'" and the law is meant to punish individuals for what they do, not who they are. Appellant's Br. at 10. During its closing argument, after discussing Officer Barger's testimony, the State argued, "That's how [Fye] thinks, that's who [Fye] is[.]" Tr., Vol. 4 at 85. The State repeated that statement three additional times during its closing argument. *See id.* at 77, 84-85, 86. However, we do not believe these statements resulted in fundamental error. Of the State's twenty-three witnesses, Officer Barger's brief testimony is the only testimony that Fye

contends was impermissible character evidence. Further, as previously expressed, the other evidence against Fye was strong, minimizing the danger that the jury would have found him guilty based upon Officer Barger's testimony alone. *See supra*, ¶ 21; *see also Taylor*, 86 N.E.3d at 162 (holding that four impermissible references to the defendant's nickname during closing argument did not amount to fundamental error in light of the overwhelming evidence supporting a conviction of conspiracy to commit murder). Therefore, we find no fundamental error in allowing Officer Barger's testimony.

II. Leading Question

[23] Fye argues the trial court also committed fundamental error when it allowed Moore to answer a rephrased question after sustaining an objection to the form of the previous question. The trial court is afforded wide discretion in allowing leading questions, and the court's decision will be reversed only for an abuse of discretion. *Stinson v. State*, 126 N.E.3d 915, 923 (Ind. Ct. App. 2019).

However, when there is no objection to a line of questioning, that issue is waived on appeal and will only be reviewed for fundamental error. *Konopasek v. State*, 946 N.E.2d 23, 27 (Ind. 2011). As discussed above, fundamental error is a narrow exception to waiver and is established only by a showing that the alleged error was so prejudicial that a fair trial was impossible. *Stinson*, 126 N.E.3d at 922 n.5.

[24] Here, Moore testified regarding her conversation with Taya after Taya had been shot in the leg. The court allowed Moore's testimony regarding Taya's

statements under the excited utterance exception to the rule against hearsay. *See Tr.*, Vol. 3 at 85. While Moore was testifying about the gunshot wound and how Taya said it happened, the State asked Moore, “Was there a time during that conversation that she said it wasn’t supposed to happen like that?” *Id.* at 86. Fye objected to the question as leading, and the trial court sustained the objection. However, Moore answered the question anyway and as a result, Moore’s answer was stricken from the record. The State then rephrased the question as follows:

[State]: What else did she say? She said, “I don’t want the police to be involved, I don’t want you to be involved,” and then she also said what?

[Moore]: It wasn’t supposed to happen this way.

Id. Fye did not object to the question or answer. He now argues that allowing Moore to answer the rephrased question was fundamental error because Moore simply had to remember the original leading question which would allow the inference that “there was a plan in place” and that the plan went awry when Frierson was killed. *See Appellant’s Br.* at 20-21.

[25] We find Fye’s argument unpersuasive. He did not object to the rephrased question and the line of questioning had already been deemed permissible under the excited utterance exception to the hearsay rule. An objection to one question does not serve as an objection to another distinct question. *Konopasek*, 946 N.E.2d at 27. Moreover, the evidence of guilt was overwhelming and

therefore, the questioning did not prevent Fye from receiving a fair trial. Accordingly, the State's questioning of Moore did not result in fundamental error.

III. Motions for Continuance

- [26] Fye argues that the trial court erred when it denied his motions for continuance on the morning of the trial “in light of the State’s late additions to the witness list.” Appellant’s Br. at 21. When a defendant’s motion for continuance is made due to the absence of material evidence, absence of a material witness, or illness of the defendant, and the specially enumerated statutory criteria are satisfied, then the defendant is entitled to a continuance as a matter of right. *Laster v. State*, 956 N.E.2d 187, 192 (Ind. Ct. App. 2011); *see also* Ind. Code § 35-36-7-1.
- [27] Here, there is no claim that would result in a continuance as a matter of right and therefore, on appeal, we review the trial court’s denial of a motion for continuance for an abuse of discretion. *Elmore v. State*, 657 N.E.2d 1216, 1218 (Ind. 1995). We will only find an abuse of discretion where a defendant was prejudiced as a result of not getting a continuance. *Gibson v. State*, 43 N.E.3d 231, 236 (Ind. 2015), *cert. denied*, 137 S. Ct. 54 (2016). However, there is always a strong presumption that the trial court properly exercised its discretion. *Laster*, 956 N.E.2d at 192 (citation omitted).
- [28] Fye first argues the trial court abused its discretion in denying his renewed motion for continuance regarding the addition of three witnesses by the State

on June 18. On the morning the trial was to begin, Fye argued that the timing of the State's additions to the witness list and his inability to properly prepare required that the trial be continued, but Fye made no argument as to how additional time would ultimately aid his defense. *See Tr.*, Vol. 2 at 57-58.

Indeed, depositions had already been conducted for each of the three additional witnesses in the week prior to the jury trial, Fye was able to question those witnesses at their depositions, and the State provided Fye with discovery related to each witness. Moreover, at trial, Fye had the opportunity to present his own evidence as well as cross-examine each witness.

[29] On appeal, again Fye makes no argument as to how additional time would have resulted in a different outcome or how he was prejudiced by the denial of his renewed motion. Rather, he simply argues that because the State would not have been prejudiced by a continuance, his renewed motion should have been granted. *See Appellant's Br.* at 23-24. However, to demonstrate that the denial of a continuance resulted in prejudice and therefore reversible error, the defendant must make a specific showing that additional time would have aided *his* counsel. *Gibson*, 43 N.E.3d at 236. Fye has not done that here. *See Vance v. State*, 640 N.E.2d 51, 55-56 (Ind. 1994) (reasoning that because the defendant failed to explain how his original strategy was impaired by a lack of additional time or how additional time would have produced new evidence or a new strategy, the trial court did not abuse its discretion in denying the defendant's motion for continuance). Therefore, we cannot say the trial court abused its discretion in denying Fye's renewed motion for continuance.

[30] Fye next contends the trial court abused its discretion in denying his motion for continuance after the addition of Officer Barger as a witness. At the time of Fye's motion, Fye argued that he needed time to talk to and depose Officer Barger. The trial court denied the motion after the State indicated that Officer Barger's testimony would only pertain to Fye's statement regarding Moore and assured the trial court that Officer Barger would be available to speak with Fye on the telephone or in-person prior to his testimony. Fye argues he was prejudiced as a result of the denial of his motion for continuance because he was denied his right to discovery and could not depose Officer Barger.

[31] In making his argument, Fye relies on *Brewer v. State*, 173 Ind. App. 161, 362 N.E.2d 1175 (1977). In *Brewer*, the State and its two witnesses failed to show up for a deposition prior to trial. The State was then ordered to make its witnesses available for questioning the day before the trial began, but again the State and the witnesses never showed for questioning. The defendant moved for a continuance due to an inability to question witnesses, but the trial court denied the motion. At trial, the defendant renewed his motion for continuance which was again denied. The two witnesses, who were central to the State's case, testified and the defendant was convicted. On appeal, we determined the State had not cooperated with the defendant and effectively denied the defendant the right to take depositions. *Id.* at 1177. Therefore, we found the trial court had erred in denying the defendant's motions for continuance. *Id.*

[32] The present case is easily distinguished from *Brewer*. Here, after Officer Barger heard Fye's statement, the State promptly notified Fye of its intent to add

Officer Barger to the witness list and disclosed the content of his testimony. Further, the State ensured that Officer Barger would be available to speak with Fye via telephone or in-person prior to his testimony. Officer Barger was one of twenty-three witnesses called by the State and his testimony was extremely brief, and his testimony was not central to the State's case in that the State presented extensive independent evidence of Fye's guilt. Thus, we find Fye's reliance on *Brewer* unpersuasive.

[33] Moreover, Fye has provided no evidence that he was unable to speak with Officer Barger prior to his testimony and has provided no specific argument as to how additional time to depose Officer Barger about a statement that Fye himself made would have changed the outcome of this case. Fye simply argues that a deposition of Officer Barger would have allowed him "to ask questions he did not know the answer to[.]" Appellant's Br. at 26. He does not indicate what those questions would have been or how the answers would have altered his defense. *See Gibson*, 43 N.E.3d at 236 (reasoning that failure to show how additional time would have specifically aided or avoided harm to the defendant demonstrates the trial court was within its discretion in denying a continuance). Therefore, the trial court was within its discretion in denying the continuance as it relates to Officer Barger.

[34] In summary, Fye has provided no argument as to how a continuance would have resulted in a different outcome. He was able to depose the three additional witnesses from the State's June 18 motion to amend its witness list, ask questions at those depositions, and was provided all discovery associated

with those witnesses. Moreover, Officer Barger was made available to Fye prior to his testimony, provided brief testimony, and was not essential to the State's case. At trial, Fye cross-examined each witness and presented evidence of his own, including his accounting of the events on the night in question. Accordingly, Fye has not demonstrated the necessary prejudice, and therefore the trial court did not abuse its discretion in denying his motions for continuance on the morning of the jury trial.

Conclusion

[35] As the trial court did not commit fundamental error regarding the character evidence or the leading question and did not abuse its discretion in denying Fye's motions for continuance, we affirm.

[36] Affirmed.

Pyle, J., and Weissmann, J., concur.