

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Peter Capofari
Sorrell and Associates
Fortville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Sierra A. Murray
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Lanny Fultz,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 29, 2022

Court of Appeals Case No.
21A-CR-2475

Appeal from the Wayne Superior
Court

The Honorable Charles K. Todd,
Jr., Judge

Trial Court Cause No.
89D01-1808-F3-23

Brown, Judge.

[1] Lanny Fultz appeals his conviction for possession of methamphetamine as a level 5 felony. Fultz claims the trial court committed fundamental error in admitting certain testimony. We affirm.

Facts and Procedural History

[2] At approximately 1:37 a.m. on August 1, 2018, Richmond Police Officer Paul Hutchison observed that a license plate light on a Nissan was out and initiated a traffic stop. Fultz was in the front passenger seat of the Nissan, Brandon Jackson was in the driver's seat, and Cheyenne Ross was in the back seat. Officer Brett Haskett and Officer Jordan Tudor arrived to assist Officer Hutchison. Jackson consented to a search of the vehicle and Officers Haskett and Tudor searched the vehicle. Officer Tudor found a black case under the front passenger seat which contained a digital scale and two plastic baggies containing a crystalline substance which the officers believed was methamphetamine. Officer Hutchison asked Fultz "if the substance located where he was seated was his," and Fultz "stated it was his." Transcript Volume III at 65. A subsequent examination revealed that one of the baggies contained methamphetamine and the net weight of the examined baggie was 1.06 grams.¹

[3] The State charged Fultz with dealing in methamphetamine as a level 3 felony and alleged he was an habitual offender. The court held a jury trial at which

¹ The other baggie was not examined.

Officers Hutchison, Haskett, and Tudor testified. Officer Tudor testified that he assisted Officer Hutchison in the traffic stop. When asked about his role in the investigation, Officer Tudor stated “from the report, I helped search the car, and again from the report, I located a black case with [a] crystal like substance under the passenger seat.” *Id.* at 102-103. When asked if he turned the case over to another officer for processing, he answered “I believe I gave it to Officer Haskett.” *Id.* at 103. On cross-examination, Fultz’s counsel stated “you responded to the prosecutor . . . based upon the report I did this” and asked Officer Tudor if he had “an independent recollection today of having been involved in this case August 1 of 2018,” and Officer Tudor answered “[n]o.” *Id.* at 104. He also indicated that he did not recall whether another officer assisted him with the search of the vehicle. Fultz did not object to Officer Tudor’s testimony.

[4] The jury found Fultz not guilty of dealing in methamphetamine and guilty of the lesser-included offense of possession of methamphetamine as a level 6 felony. The court found that Fultz stipulated that he had a prior conviction for dealing in cocaine or narcotic drug as a class B felony and entered judgment of conviction as a level 5 felony. The court also found that Fultz admitted to being an habitual offender. The court sentenced Fultz to four years for possession of methamphetamine as a level 5 felony and enhanced the sentence by four years for being an habitual offender.

Discussion

[5] Fultz contends the trial court committed fundamental error in allowing Officer Tudor to testify in violation of Ind. Evidence Rule 602. He argues that Officer Tudor was a central witness for the State and was the officer who found the methamphetamine. The State maintains Officer Tudor's testimony was largely cumulative and the conviction is supported by substantial independent evidence of guilt.

[6] We generally review the trial court's ruling on the admission of evidence for an abuse of discretion. *Brittain v. State*, 68 N.E.3d 611, 616-617 (Ind. Ct. App. 2017), *trans. denied*. However, where the trial court has erred in the admission of evidence, we will not reverse the conviction if that error was harmless. *Turner v. State*, 953 N.E.2d 1039, 1058 (Ind. 2011). Generally, errors in the admission of evidence are to be disregarded unless they affect the substantial rights of a party. *Id.* at 1059. The improper admission is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court there is no substantial likelihood the challenged evidence contributed to the conviction. *Id.* Moreover, any error in the admission of evidence is not prejudicial, and is therefore harmless, if the same or similar evidence has been admitted without objection or contradiction. *Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012) (citation omitted), *reh'g denied*. See *Crawford v. State*, 770 N.E.2d 775, 781 (Ind. 2002) ("The erroneous admission of evidence which is merely cumulative of other admissible evidence is not grounds for reversal.") (citation omitted). Further, a failure to timely object to

the erroneous admission of evidence at trial will procedurally foreclose the raising of such error on appeal unless the admission constitutes fundamental error. *Stephenson v. State*, 29 N.E.3d 111, 118 (Ind. 2015). Fundamental error is an extremely narrow exception that allows a defendant to avoid waiver of an issue and is error that makes a fair trial impossible or constitutes clearly blatant violations of basic and elementary principles of due process presenting an undeniable and substantial potential for harm. *Cooper v. State*, 854 N.E.2d 831, 835 (Ind. 2006). Ind. Evidence Rule 602 states “[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter” and “[e]vidence to prove personal knowledge may consist of the witness’s own testimony.”

[7] Even if the trial court erred in admitting Officer Tudor’s testimony, reversal is not warranted. The State presented the testimony of Officer Hutchison and Officer Haskett regarding the search of the vehicle and the discovery of the methamphetamine. Officer Haskett testified that he and Officer Tudor conducted the search of the vehicle and that Officer Tudor discovered the case believed to contain methamphetamine. When asked, “[a]nd that case was located where, if you have personal knowledge of it,” Officer Haskett testified: “Just under the front passenger seat.” Transcript Volume III at 114. When asked “is that the location Mr. Fultz had been seated,” he answered “[c]orrect.” *Id.* He testified that he observed Officer Tudor in possession of the case, described photographs of the case, scale, and baggies, and indicated the items in the photographs were the same items which were found in the vehicle and

which he observed in possession of Officer Tudor. During cross-examination, Officer Haskett used a chair and demonstrated where the case was found relative to where Fultz was seated in the vehicle and stated “[t]here’s a void space under my legs here.” *Id.* at 131. When asked “you’re showing under your thighs. Okay, now, how far is the bag, so there’s a bag, is it under his - off the chair, under his thighs down to the floor, or is it just under his legs, under his thighs on the floor, floorboard,” Officer Haskett replied “[i]t is on the floorboard, right in this area, general area.” *Id.*

[8] Officer Hutchison testified that he initiated the traffic stop, approached the vehicle, and observed three people in the vehicle, including Fultz in the front passenger seat, Jackson in the driver’s seat, and Ross in the back behind Fultz. He stated he confirmed that Jackson was the owner of the vehicle and asked Jackson if he could search the vehicle and that Jackson ultimately consented to the search. He testified the officers had Jackson, Fultz, and Ross exit the vehicle and patted them down. He testified that he asked Jackson if there was anything illegal in the vehicle, Jackson stated “not that he was aware of,” and shortly after that Officer Tudor “located some substances where Mr. Fultz was sitting.” *Id.* at 60. When asked about the item Officer Tudor located, Officer Hutchison testified: “It was a black zip-up case. Inside the case there was a digital scale and it had some writing on it, and there was [sic] two plastic baggies that contained the off-white crystalline substance.” *Id.* Officer Hutchison indicated that he believed the baggies contained methamphetamine and that he processed the evidence himself. He testified the digital scale had “a

plastic covered piece on it with the words ‘Slo Money.’” *Id.* at 62. Officer Hutchison further testified that he spoke with Jackson, “kind of went down the line and spoke with all the other occupants,” and asked Fultz “if the substance located where he was seated was his,” and Fultz “stated that it was his.” *Id.* at 65. When asked “is that name ‘Slo Money’ identified with Mr. Fultz,” Officer Hutchison replied affirmatively and testified that Fultz “has a tattoo on his chest that says ‘Slo Money.’” *Id.* at 71. On cross-examination, when asked whether the case was “actually found under the front passenger seat, or was it found someplace else,” he testified “[f]rom my recollection, it was found underneath the passenger seat, on the floorboard.” *Id.* at 78.

[9] The State presented substantial evidence of Fultz’s guilt, and the testimony challenged by Fultz was cumulative of other evidence properly before the jury. We find no reversible error. *See Hoglund*, 962 N.E.2d at 1240 (finding the State presented substantial evidence of the defendant’s guilt and the erroneously admitted testimony was cumulative of other evidence properly before the jury and affirming the judgment of the trial court).

[10] For the foregoing reasons, we affirm Fultz’s conviction.

[11] Affirmed.

Mathias, J., and Molter, J., concur.