MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Lisa M. Johnson
Brownsburg, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Caroline G. Templeton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jacob L. Wilson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 8, 2022

Court of Appeals Case No. 21A-CR-1238

Appeal from the Gibson Circuit Court

The Honorable Jeffrey F. Meade, Judge

Trial Court Cause No. 26C01-1803-MR-292

Weissmann, Judge.

[1] Jacob L. Wilson appeals his murder conviction, claiming that he was unfairly prejudiced by evidence that he committed other uncharged crimes, including rifle and car thefts. But Wilson admitted to the killing. Given his confession, we find that Wilson was not significantly prejudiced even if the trial court mistakenly admitted the evidence. Rejecting Wilson's claim of fundamental error, we affirm.

Facts

[2] Firefighters responding to a fire at Samuel Bethe's trailer found his body inside, laying on top of a Weatherby .22 caliber rifle. Experts determined that Bethe died from a shot to the head before the blaze, which was intentionally set with a liquid accelerant. The bullet fragments removed from Bethe's brain were too small to determine if they were fired from the rifle found at the scene.

[3] Wilson and his fiancée, Ashley Robling, had been at Bethe's home before the fire. Several people saw Wilson with a .22 caliber rifle on the day before Bethe's murder. Bethe's neighbor, Danny Siekman, reported that when he honked his horn as he drove by Bethe's trailer on the morning of the murder, Siekman saw Wilson look through the blinds of the trailer and then fire at him.

[4] Later that afternoon, after Bethe's body was discovered, two people who resembled Wilson and Robling arrived at a gas station in Paducah, Kentucky, in Bethe's truck. They abandoned the truck there. The next day Wilson and Robling were found running in a field close to a vehicle parked off the road behind trees in Union County, Illinois. After their arrest, Wilson admitted

shooting Bethe. Wilson claimed he shot Bethe to prevent him from harming Robling, but Wilson denied setting the fire.

[5] The State charged Wilson and Robling with murder and also alleged that Wilson was a habitual offender. Robling pleaded guilty to murder and was sentenced to 50 years imprisonment. Before Wilson's jury trial, the State filed a notice of intent to introduce evidence under Indiana Evidence Rule 404(b). In response, the trial court permitted the State to introduce evidence that: the Weatherby rifle was stolen; Wilson possessed the rifle; Wilson shot at Siekman; Bethe's trailer was set on fire; and Wilson stole a car in Kentucky. Wilson did not object when this evidence was admitted at his jury trial. The jury returned a verdict of guilty as to murder, and Wilson admitted he was a habitual offender. Tr. Vol. V, pp. 7-8. The trial court sentenced Wilson for the murder to 65 years imprisonment, enhanced by 20 years by the habitual offender finding.

Discussion and Decision

[6] Wilson raises only one issue on appeal: whether the trial court committed fundamental error by admitting evidence of uncharged misconduct. Wilson challenges the admission of evidence showing that he: 1) stole the Weatherby rifle found under Bethe's body; 2) stole a vehicle at the Kentucky gas station where he abandoned Bethe's truck; and 3) shot at Siekman from Bethe's trailer on the morning of the murder. Conceding he did not object at trial to the admission of that evidence, Wilson relies on the doctrine of fundamental error to save his claim from waiver. *See Benefield v. State*, 945 N.E.2d 791, 801 (Ind.

Ct. App. 2011) (ruling that fundamental error exception permits appellate court to review claim waived by defendant's failure to raise contemporaneous objection).

[7] A fundamental error is a mistake so prejudicial to the defendant that it renders a fair trial impossible "or constitute[s] a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm.'" *Kelly v. State*, 122 N.E.3d 803, 805 (Ind. 2019) (quoting *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018)); *see also Benefield*, 945 N.E.2d at 801 (quoting *Perez v. State*, 872 N.E.2d 208, 210 (Ind. Ct. App. 2007)), *trans. denied*. The fundamental error exception is very narrow, including "only errors so blatant that the trial judge should have acted independently to correct the situation." *Kelly,* 122 N.E.3d at 805.

[8] Wilson has not established the significant prejudice that is vital to any successful fundamental error claim. In a videotaped interview with police about Bethe's death, Wilson admitted he "popped that dude" and that Bethe "had it coming." State's Exh. 67 at 6:50:00, 7:19:00. Wilson does not challenge the admission of his confession at trial. Although he originally told police that he shot Bethe to protect Robling from harm, Robling pleaded guilty to the murder, and the jury in Wilson's trial was not instructed as to self-defense. Wilson does not challenge the lack of a self-defense instruction on appeal nor does he suggest that he proved he acted in defense of Robling.

[9] Given Wilson's unchallenged confession, the evidence of other uncharged offenses reasonably had little, if any, impact on the verdict. Wilson admitted to killing Bethe, and the jury believed him, returning a guilty verdict as to murder. Thus, even if we were to accept, without deciding, Wilson's claim that the trial court erred in admitting the evidence of uncharged misconduct, Wilson could not prevail on his fundamental error claim because he has failed to establish prejudice.

[10] We reject Wilson's claim of fundamental error and affirm the trial court's judgment.

Najam, J., and Vaidik, J., concur.