MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Stephen Michael Shelton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 5, 2021

Court of Appeals Case No. 20A-CR-2402

Appeal from the Lake Superior Court

The Honorable Jamise Y. Perkins, Judge Pro Tempore

Trial Court Cause No. 45G02-1710-MR-8

Baker, Senior Judge.

Statement of the Case

[1] Stephen Michael Shelton appeals from his conviction of murder,[1] contending that there is insufficient evidence to establish that he committed the crime and that fundamental error occurred during the testimony of a law enforcement officer. Finding that the evidence is sufficient and that no fundamental error occurred, we affirm.

Issues

[2] Shelton asks the following restated questions on appeal:

> I. Absent eyewitness identification, is the DNA evidence linking Shelton to the ski mask, gun, and glove used by the perpetrator, and evidence of his distinctive gait sufficient to sustain his murder conviction?
>
> II. Did fundamental error occur when the trial court allowed Detective Luis Semidei's testimony interpreting Shelton's demeanor during police interviews, such that Shelton's conviction should be reversed?

Facts and Procedural History

[3] Alonzo Smith Sr. was murdered while sitting in his car outside Wallace Metals, his place of employment for over thirty years. According to Wanda McCoy, Alonzo's niece, he was known to be a mild-mannered and generous man, who also was known to carry large sums of cash with him. On April 29, 2017,

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[1] Ind. Code § 35-42-1-1 (2014).

Alonzo arrived at Wallace Metals at around 7:20 a.m., backed into a parking space, and waited in his "[b]rand new car." Tr. Vol. IV, p. 245. McCoy also testified that Alonzo was known to show up early to help protect co-workers who opened the shop. On that morning, after Alonzo's arrival, a man, later identified through DNA evidence as Shelton, who was dressed entirely in black, walked with a limp, and wore gloves and a ski mask, entered the Wallace Metals parking lot. Shelton approached the driver's side of Alonzo's car and shot him twice. At that point, Alonzo's car began to roll out of the parking lot and into the street. As the car began to roll forward, Shelton fled the parking lot.

[4] Meanwhile, Daniel Runyan, a Korellis Roofing foreman, was leaving a jobsite with several employees following behind him in separate vehicles. As Runyan drove down the street, he observed Alonzo's car gradually inching out from the parking lot of Wallace Metals and into the street. Runyan saw that the car was not going to stop, so he switched lanes to avoid a collision. Despite those efforts, Alonzo's car struck a crane on the back of Runyan's truck and then continued to coast across the street. The car rolled through a parking lot in front of a dialysis center before coming to a stop against a fence after rolling into a group of poles on the ground.

[5] Runyan and his employees stopped their vehicles after the crash, and he called 911 to report the accident. His employees followed Alonzo's vehicle into the dialysis center parking lot. There they found the driver's side window of Alonzo's car was broken and falling onto the door. There was blood on the

passenger door behind the driver. Alonzo, who was the only person in the car, was unconscious.

[6] At around 8:10 a.m. that morning, Victoria Oosterhoff was sitting in her car sending text messages to her husband while on her breakfast break outside Fresenius Kidney Care, the dialysis center across from Wallace Metals. She first heard a bang and then saw a truck in their parking lot and men running toward the alleyway. She also saw Alonzo in his car in the dialysis center parking lot. A security guard and others from the dialysis center ran out of the building after hearing the crash.

[7] While Runyan was on the phone with a 911 operator, he observed Shelton cross the road, fleeing from the area. No one else was in the area, and Shelton continued to look in the direction of Alonzo's car as he crossed the road. Eric Sizemore, one of Runyan's employees who was driving the last pickup truck in the convoy, also saw Alonzo's car "creeping out" from the Wallace Metals parking lot. Tr. Vol. III, p. 108, 109. Once Sizemore had parked his truck and exited, Andrew Robledo, another of Runyan's workers, told him to "keep an eye out" because "the whole thing just seemed suspicious." *Id.* at 92. Sizemore remembered Robledo telling him "to keep an eye on" Shelton who "was walking down the street." *Id.* at 110. There was no one else walking in the area at that time.

[8] Robledo watched as Sizemore followed Shelton behind a bar. He heard Sizemore yell for Shelton "to stop" or "to come back." *Id.* at 96. Next,

Robledo heard Shelton reply, "I didn't have anything to do with that." *Id.* Robledo saw Shelton open a Waste Management dumpster that was behind the bar, and "throw something in there." *Id.* at 98. At that point, Shelton "wasn't running or anything." *Id.* Robledo noticed that Shelton "walked with like a limp" and that he was wearing a "black mask," the kind that "you would pull over your head with like a[sic] opening just right here. You could see just this part of your face." *Id.* at 100.

[9] Sizemore similarly testified that Shelton was dressed "all in black," and "had a facemask on." *Id.* at 112. Shelton first hid, then stood up behind the dumpster after Sizemore yelled "you gotta[sic] stop." *Id.* at 113. Shelton replied in "a deep voice," "I didn't do it." *Id.* Shelton then proceeded down an alley. He had his hands in shallow pockets, and Sizemore observed that Shelton was wearing a glove on his right hand and he "saw blood on that side." *Id.* at 134. Next, Sizemore saw "a guy in a black Suburban. And I told him to keep an eye on [Shelton]." *Id.* at 115. Sizemore chased after Shelton and observed Shelton's gait, describing Shelton's right leg as what he called "a gimp leg. A bad leg." *Id.* at 118.

[10] The person in the black Suburban was Joel Markovich. Markovich testified that he saw the melée after Alonzo's car crash and stopped to see what had happened. He assumed that because men were running, someone was fleeing from the scene of the accident, so he drove after them. Not far from the scene, Markovich observed "a male individual laying underneath an old U-haul truck." *Id.* at 143. He tried to get the man to come over to him, but "he got out

from underneath the U-haul, and proceeded south over some fences." *Id.* at 143. Markovich said that he momentarily lost sight of him, but that when he located him again, the man "flipped over" a "7-foot high" fence, proceeded south, and was "different from running," "just moving quickly." *Id.* at 144. He then saw the man flip over a "4-foot cyclone fence." *Id.* at 146. When he fell to the ground after flipping over that fence, "[h]is hat came off his head." *Id.* at 147. The man "struggled," "had really difficulty and he fell" when trying to get over the fences. *Id.* at 197.

[11] Markovich did not pursue the man on foot because he was on the phone with "Lake County Police." *Id.* at 147. He waited for officers to arrive at his location and, when they did, he identified the hat as the one that fell off the man's head after he flipped over the fence. He had made eye contact with him and was able to provide officers with information about his race and dark-colored clothing.

[12] Various officers responded to the dispatch. One of those officers, Officer Jimmie Manuel responded to the dispatch of an accident with bodily injury and, because of his proximity to the scene, left his patrol area to offer his assistance with traffic control. After he arrived at the scene, he received information from Sizemore that the person who fled the scene had dropped something in a dumpster behind the bar. Officer Manuel looked in the dumpster and saw "a silver handgun revolver and a glove." *Id.* at 202. He believed the gun was a Smith and Wesson. Sizemore observed Manuel radio information to other officers.

[13] From there, Officer Manuel proceeded down the alley where he encountered Markovich in his SUV. Markovich told him that the man had entered the yard but had not left. Manuel then radioed for backup as it was apparent that this was more than a traffic accident with bodily injury. Officer Anthony Rais of the East Chicago Police Department, with 26 years of experience as a patrolman, responded to Markovich's call and secured the area where he found the mask. Officer Jimmie Manuel stayed in the yard where the mask was found while Officer Rais talked with the homeowner. The officers deemed the area secure, taped it off with crime scene tape, and advised the homeowner to stay out of the yard while the investigation continued.

[14] Officer Rais then returned to the scene where Alonzo's car had come to rest and talked to the witnesses who had remained at the crime scene. East Chicago Police Detective Luis Semidei was the on-call detective on the day of Alonzo's murder. After he received the call from the Lake County Dispatch, he met with his supervisor Detective Sergeant Terrence Fife, who was already there near the car. Detective Semidei testified that there were four crime scenes involved– Wallace Metals' parking lot, Alonzo's car at rest in the dialysis center parking lot, the dumpster behind the bar, and the yard where the mask was found. With approval from his supervisor, Detective Semidei took Robledo, Runyan, Sizemore, and Matthew Bajza, another roofing employee, from the parking lot to the station to have their statements videotaped.

[15] Crime scene investigators arrived at the dialysis center parking lot at about the time Detective Semidei arrived. Lake County Police Department Detective

James Tomko, a "crime scene tech," and "evidence tech," arrived at about the same time as his partner, Lake County Police Department Detective Hollister. *Id.* at 235. Once there, they spoke with Detective Semidei. They first processed the dialysis center parking lot where Alonzo's car remained, then turned to the other crime scenes.

[16] After Detective Tomko made initial observations about the vehicle crime scene, he moved on to the dumpster. Inside the dumpster, he and his partner found a gun and a left-hand glove. *Id.* at 241. The gun and glove were collected and marked on the inventory list. The gun was swabbed for DNA and was submitted to Officer Samuel Perez, a forensics firearm examiner with the Lake County Sheriff's Office for ballistics testing. Detective Tomko and his partner then went to the yard. There, they collected the mask and a pair of sunglasses.

[17] Alonzo had been transported to the hospital where he was pronounced dead. Dr. Zhuo Wang, a forensic pathologist with the Lake County Coroner's Office testified that she took a blood stain during the autopsy to collect Alonzo's DNA. She also testified that Alonzo's cause of death was multiple gunshot wounds. The three gunshot wounds were to his left shoulder, left chest, and two on the left arm. He had two entrance wounds, one reentry wound and one exit wound. Alonzo also had bruising to the right side of his chest caused by a bullet underneath his skin. Two spent bullets were recovered from his body, and one bullet, that went through Alonzo's body went through his heart, causing massive bleeding. Another of Alonzo's wounds was a defensive wound, occurring when he raised his arm. That bullet went through Alonzo's

arm and reentered through the side of his body. He suffered multiple internal injuries and massive bleeding. At the time of his death, Alonzo had between $2,400 and $2,600 in his possession.

[18] Detective Semidei reviewed video footage obtained from the nearby businesses. One showed Alonzo's car backing into a parking spot at Wallace Metals and a man, later identified through DNA evidence as Shelton, approach the driver's side door of Alonzo's car. Detective Semidei then discussed with Detective Tomko which of the recovered items should be sent to the Indiana State Police Laboratory for testing because of limitations on the number of items that could be tested. They concluded that the items that would likely yield the strongest evidence were the gun, the glove, the mask, the sunglasses, and the blood swabs from the car.

[19] The gun was determined to be a Smith and Wesson .38 Special revolver with a six-round capacity. It contained four live rounds and two cartridge cases in the cylinder. Officer Perez examined the bullets collected from Alonzo's body and tested them against the recovered revolver. The first bullet was not excluded as having been fired from the recovered gun. The second bullet was fired from it.

[20] The glove, sunglasses, ski mask, blood from Alonzo's car, and gun were all tested for DNA against samples from Alonzo, Shelton, and Brett Battle. Battle lived in the area of the crime scene and also walked with a distinctive limp. Battle was eliminated as a DNA contributor on each item that was submitted for testing.

[21] Indiana State Police Forensic DNA Analyst Sean Stur testified that the blood on Alonzo's car came from him and that the sunglasses did not yield a DNA profile. Shelton was the single source of the DNA found on the mask. Three DNA profiles were located on both the inside and outside of the glove and on the gun. Eighty-five percent of the DNA on the gun came from Alonzo, ten percent came from Shelton, and five percent came from an unknown source.

[22] The DNA profiles on the glove originated from Alonzo, Shelton and an unknown contributor. Stur testified that the results of the samples from the inside of the glove showed that ninety-two percent came from Shelton, five percent from Alonzo, and three percent from an unknown contributor. Outside the glove, eighty-three percent of the sample came from Alonzo, fifteen percent from Shelton, and two percent from an unknown contributor. Stur explained that a low percentage of DNA contribution is considered a "trace contributor." Tr. Vol. IV, p. 241.

[23] After the identification of Shelton's DNA on the items recovered from the crime scenes, he became the primary suspect in Alonzo's murder. East Chicago Police Department Crime Scene Investigator Jerry Lewis retrieved a buccal swab sample of Shelton's DNA. Next, Shelton voluntarily participated in two police interviews with Detective Semidei on October 18, 2017.

[24] On October 20, 2017, the State charged Shelton with murder. At the conclusion of the jury trial, Shelton was found guilty as charged. The trial court

sentenced Shelton to sixty years executed in the Department of Correction. Shelton now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[25] Having charged Shelton with murder, the State was required to establish beyond a reasonable doubt that Shelton knowingly or intentionally killed Alonzo. *See* Ind. Code § 35-42-1-1. Shelton challenges the sufficiency of the evidence supporting his conviction, claiming that absent positive eyewitness identification, among other things, his conviction cannot stand. We disagree.

[26] When reviewing the sufficiency of the evidence supporting a conviction, we will examine only the probative evidence and reasonable inferences that may be drawn therefrom in support of the verdict. *Morgan v. State*, 22 N.E.3d 570, 573 (Ind. 2014). We will neither reweigh the evidence nor assess witness credibility and will affirm unless no reasonable factfinder could find the elements of the crime proved beyond a reasonable doubt. *Id.* We will sustain the jury's verdict on circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. *Warren v. State*, 725 N.E.2d 828, 834 (Ind. 2000). Further, the evidence need not overcome every reasonable hypothesis of innocence. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007).

[27] Here, the evidence shows that Shelton matched the general description of the individual described by Runyan, Robledo, Sizemore, and Markovich, who said the perpetrator walked with a limp and that there was no one else walking in

the area. Markovich narrowed down his identification to two photographs, one of which was of Shelton, in a photographic array. Video obtained from surveillance cameras near three of the crime scenes showed the perpetrator approaching Alonzo's car and fleeing on foot from the scene after the shooting. After Shelton walked across the courtroom for the benefit of the jury, they were able to compare his gait with that described by Robledo and Sizemore, and that of the perpetrator, as depicted in the video. After reviewing the evidence, the jury concluded that Shelton and the perpetrator both walked with the same distinctive limp.

[28] Next, DNA evidence from the gun, glove, and mask, each discarded by the perpetrator, matched Shelton's DNA. Although there was another person, Brett Battle, who was known to visit Wallace Metals from time to time and to walk with a limp, his DNA was excluded from each of the items tested. The gun bearing Shelton's DNA was definitively identified as the murder weapon, and forensic DNA analysis showed that it was 4.8 quattuordecillion times more likely that the DNA samples came from Shelton, Alonzo, and a third unknown contributor instead of three unknown, unrelated individuals. The glove and the mask also bore Shelton's DNA, and he was identified as the single source of the DNA on the mask. Alonzo's and Shelton's DNA was found on the inside and outside of the glove found in the dumpster. The jury was reasonable in its conclusion that Shelton murdered Alonzo based on this DNA evidence.

[29] In sum, the jury reasonably concluded that Shelton murdered Alonzo based on the abundance of evidence linking Shelton to the crime and identifying him as

the perpetrator. Shelton's argument that, without positive eyewitness identification linking him to the murder or video evidence specifically identifying him as the perpetrator, his conviction cannot stand, invites us to reweigh the evidence. Further, his argument the State failed to prove motive and failed to rebut evidence of Shelton's age and physical limitations, similarly invites us to reweigh the evidence. Our standard of review prohibits us from doing so. *See Drane*, 867 N.E.2d at 146. There is sufficient evidence to support Shelton's conviction.

II. Fundamental Error

[30] Next, Shelton claims that his conviction should be reversed due to fundamental error. He argues that the trial court should not have allowed Detective Semidei to testify as to his demeanor during his interviews with law enforcement, claiming that it was inadmissible evidence of guilt in violation of Shelton's right to a fair trial.

[31] We acknowledge that the decision to admit or exclude evidence is left to the trial court's discretion and should be afforded great deference on appeal. *Bacher v. State,* 686 N.E.2d 791, 793 (Ind. 1997). However, here we have an allegation of fundamental error by way of a violation of Indiana Evidence Rule 704(b).

[32] Indeed, the argument Shelton raises now on appeal, the Rule 704(b) violation, was never raised at trial. The trial court never had an opportunity to rule on the evidentiary error claimed now on appeal. "A claim of evidentiary error may not be raised for the first time on appeal." *Stephenson v. State*, 29 N.E.3d 111,

121 (Ind. 2015). Appellate courts look with disfavor on issues raised by a party for the first time on appeal without first raising the issues in the trial court. *See State v. Peters*, 921 N.E.2d 861 (Ind. Ct. App. 2010). Claims waived by a defendant's failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred. *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010).

[33] As respects fundamental error, our Supreme Court has stated,

> We stress that a finding of fundamental error essentially means that the trial judge erred . . . by not acting when he or she should have. Fundamental error is meant to permit appellate courts a means to correct the most egregious and blatant trial errors that otherwise would have been procedurally barred, not to provide a second bite at the apple for defense counsel who ignorantly, carelessly, or strategically fail to preserve an error.

Ryan v. State, 9 N.E.3d 663, 668 (Ind. 2014) (internal citations and quotations omitted). Further, fundamental error is extremely narrow and available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for harm cannot be denied, and which violation is so prejudicial to the rights of the defendant as to make a fair trial impossible. *Benson v. State*, 762 N.E.2d 748, 755 (Ind. 2002). We review Shelton's claim for fundamental error.

[34] At trial, Detective Semidei testified in pertinent part as follows on re-direct examination:

Q: Attorney Brown brought up your training and interrogations. Did you ever learn about a suspect[']s positions in interrogations?

A: Yes.

Q: What would you describe a suspect leaning back into a chair?

A: I was trained to read interviewing techniques. During that training I learned that part of interviewing a person who's a suspect, usually, leaning back means you're distancing yourself from the interview. Distancing yourself from the information you're receiving that you're being accused of.

. . . .

Q: Do you see Mr. Shelton in that position?

A: Yes.

Q: What did you learn in that training about that position with the head on the table?

A: When a person has their head on the table, through the training I received, it's considered a defeated position.

Q: What do you mean by defeated?

A: Defeated position. Basically, a persons[sic] knows what's going to happen. They may - - describe it like a sign of guilt. He was animated. He goes into almost a fetal position. Which is considered, through my training with interview techniques, it's considered a defeated position. The person is defeated.

Q: And during that interview, in your opinion, did Stephen Shelton do anything to display guilt?

A: Well he distanced himself from the area. Saying he's never been in that area[.]

Q: Was he ever inconsistent on that?

A: Yes.

Q: Changing his story a little bit?

A: Yes. With the mask, the hats, the car.

Q: Did he ever have long pauses on some of his answers?

A: Yes. Basically, trying to think as he's speaking. Just trying to find answers.

. . . .

Q: You said that - - we were talking about how he was pausing on a few answers, and what did you observe from that through your training and experience?

A: Basically, he's just trying to find answers--

. . . .

A: He's, he's - - he doesn't have an answer so he's looking for answers, and he's trying to think and talk at the same time.

Tr. Vol. V, pp. 81-84. The sole objection lodged was speculation, and that objection was overruled.

[35] As Shelton observes, Indiana Evidence Rule 704(b) provides that "Witnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions." Here, Detective Semidei testified that some of Shelton's behaviors during the interviews were "defeated" and like "a sign of guilt." *Id.* at 82. The State responds that, "It is only to the extent that the detective opined on the inferences to be drawn from those behaviors that Rule 704(b) is potentially implicated." Appellee's Br. p. 21.

[36] Here, it is clear that the line of questioning, culminating in Detective Semidei's remarks, resulted in a violation of Rule 704(b). That said, the other properly admitted evidence in this case overwhelmingly connected Shelton to the crime.

The witnesses and video evidence established the gait of the perpetrator, the path he took while fleeing from the crime scene, and the perpetrator's connection to the items used during the murder and recovered by law enforcement along that path. The DNA evidence definitively established that Shelton contributed the DNA on those items. We cannot say that the erroneous admission of Detective Semidei's testimony is one of the most egregious and blatant trial errors that would lead us to reverse Shelton's conviction on grounds of fundamental error. Instead, we do not find fundamental error because we are precluded from giving Shelton "a second bite at the apple" after Shelton's counsel failed to preserve an error, no prejudice resulted therefrom, and Shelton otherwise received a fair trial. *See Ryan*, 9 N.E.3d at 668. He has not shown that the error "amounted to fundamental error such as to override the procedural default." *See Stephenson*, 29 N.E.3d at 121.

Conclusion

[37] We conclude that the evidence was sufficient to sustain Shelton's conviction and that though error occurred, it did not amount to fundamental error requiring that Shelton's conviction should be reversed.

[38] Affirmed.

Vaidik, J., and Altice, J., concur.