

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Jordan Lancaster,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 28, 2023

Court of Appeals Case No.  
22A-CR-2614

Appeal from the Marion Superior  
Court

The Honorable Mark D. Stoner,  
Judge

Trial Court Cause No.  
49D32-1909-F3-36890

**Memorandum Decision by Judge Bailey**  
Judges Brown and Weissmann concur.

**Bailey, Judge.**

## Case Summary

- [1] Jordan Lancaster appeals his convictions, following a jury trial, of three counts of armed robbery, as Level 3 felonies.<sup>1</sup> The only issue he raises is whether the trial court abused its discretion when, under Indiana Rule of Evidence 404(b), it admitted evidence found during a vehicular stop of Lancaster that took place subsequent to the charged crimes.
- [2] We affirm.

## Facts and Procedural History

- [3] Around 7:30 p.m. on July 17, 2019, Jennifer Montero was working at the drive-through of the Subway restaurant near the intersection of East 38th Street and Post Road in Indianapolis. A black SUV that was missing a spare tire on its rear backed into a parking space directly outside the front door of the restaurant. As Montero worked, her two co-workers ran past her and yelled, “[T]hey have guns, they have guns.” *Tr. v. III* 127. Montero was “confused” and “froze,” and then she heard the door of the restaurant open “like someone opened the door really hard.” *Id.* A man carrying a gun and wearing a gray “hoodie” that covered his face (hereinafter, “the man in gray”) appeared and demanded money from her. *Id.* at 128. Montero walked toward the cash register area and saw a second man wearing a black hoodie, black pants, and a

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<sup>1</sup> Ind. Code § 35-42-5-1(a).

white bandana covering his face (hereinafter, “the man in black”) with a “bigger” gun that had “something...bigger in the bottom.” *Id.* The man in black was “pointing [his] gun everywhere” and carrying a black and green gym bag. *Id.* at 135. Montero placed money from the cash registers into the bag, and the men ran out of the store. They entered the black SUV and drove away.

[4] Approximately an hour later, Jessica Kirchmeier and Yavette Akintokunbo were working at the Dollar General store near the intersection of East 21st Street and Central Avenue. It was almost time to close the store, and Kirchmeier exited the front door to smoke a cigarette. While outside, she saw “a four-door, black Hummer 3” with “dark-tinted windows” that was missing a spare tire on its rear parked in the parking lot. *Id.* at 144. A few minutes passed and the Hummer drove to the front of the store and parked near the front door. Kirchmeier returned inside the store and began the closing process with Akintokunbo.

[5] A short time later, two men “busted in[to],” *id.* at 160, the store with their faces covered and “ambushed,” *id.* at 145, Kirchmeier and Akintokunbo. The man in gray carried a handgun and wore a gray hooded sweatshirt, blue jeans, and black shoes. The man in black was clothed in all black with a white scarf around his face and carrying a “[g]reen and black” gym bag. *Id.* at 146. The man in black carried “a little medium machine gun,” and told Kirchmeier she “had two seconds to open up the register or he was going to put a bullet in [her] head.” *Id.* The man in black then said, “[B]etter yet, if you don’t hurry up and open that f-ing drawer, I’m going to have my partner shoot your co-worker and

kill her.” *Id.* Akintokunbo said, “[P]lease don’t hurt me.” *Id.* at 161.

Kirchmeier and Akintokunbo opened the cash register and safe and gave the money to the two men. The men then ran out of the store; the man in gray carried the gym bag and a handgun, and the man in black carried the “machine gun.” *Id.* at 146. The men entered the black SUV and drove away.

[6] The next day at around 9:00 p.m., Gary Gould and Irene Schafer were working at the Dollar General store located at 655 North Shadeland Avenue. A few minutes before the store was due to close, a “big black Hummer pull[ed] up and park[ed]...next to the building but not in a parking spot.” *Id.* at 166. The man in black, who was “covered head to toe,” *id.*, and wore a “full white mask,” *id.* at 184, entered the store and ordered Schafer to give them money from the cash register. The man in black carried a gun that looked “kind of like...an automatic weapon” with a “long...front part.” *Id.* at 166-67. Gould ran toward the back of the store to call 911. Schafer opened the cash register, took the money inside, and gave it to the man in black. The man in black then ran out of the store.

[7] About forty-five minutes later, Erica Carman was working at the Dollar General store located at the intersection of South Emerson Avenue and Southeastern Avenue. A black SUV that was missing a spare tire on its rear parked near the front door of the store. The man in black exited the vehicle and entered the store wearing all black clothing with a white cloth covering his face and carrying “a semiautomatic weapon” that “looked like an AK-looking type gun.” *Tr. v. IV* at 6, 19. He jumped over the counter near where Carman was

standing and told Carman to take the money from the cash register and the safe and to place it inside a black, green, and white Nike gym bag. After Carman complied with the man's demands, the man ran out the front door, entered the black SUV, and drove away.

- [8] The police began looking for patterns in the robberies to identify suspects. The police determined that the stores were all robbed near closing time, the robbers wore similar clothing at each robbery, they carried a black and green Nike gym bag, "the gun was the same," and they drove a black Hummer H3 that was "distinct" in that it was missing a spare tire on its rear. *Id.* at 23. A detective began searching for stolen black Hummer H3s and discovered that a black Hummer H3 that was missing the spare tire on its rear had been reported stolen. The police obtained the license plate number of the stolen Hummer. Officers searched apartment complexes located near the "east side" robberies for the "black H3 Hummer" and located it at one of the nearby complexes. *Id.* at 24.
- [9] Beginning at around 8:00 p.m. on July 20, 2019, the police conducted surveillance on the black Hummer and followed it; the driver was later identified as Lancaster. Lancaster was wearing "all black" clothing. *Id.* at 54. Lancaster drove to a Dollar Store near 8300 East Washington Street and parked in the parking lot. After about five minutes, Lancaster drove the Hummer up near the front door and parked. There were "a lot" of customers entering and exiting the store, and after two minutes, Lancaster drove away. *Id.* at 25.

- [10] Police then followed Lancaster to a Dollar General store located at the intersection of East 38th Street and Keystone Avenue. Lancaster parked the Hummer in front of the store near the front door and exited the vehicle. He tried to open the front door, but it was locked, so he returned to the Hummer and drove away.
- [11] Lancaster then drove to the Dollar General store located at the intersection of East 38th Street and Mitthoeffer Road. Sometime after Lancaster drove away from the store in the black Hummer, the police stopped him based on the belief that he had just committed a robbery. Inside the Hummer, the police located a BB gun that “appeared to be a rifle with a collapsible stock” that could “extend out and come into your shoulder.” *Id.* at 46. Initially the officers believed the BB gun was a real firearm and only discovered it was a BB gun upon close inspection. The police also located in the vehicle a green and black Nike gym bag with white piping that contained cash.
- [12] Under Cause Number 49G06-1907-F3-28843 (hereinafter, “F3-28843”), Lancaster was charged with armed robbery of a Dollar General store alleged to have taken place on July 20, 2019, and he pled guilty to the same. In a separate criminal action—the one that is being appealed, i.e., Cause Number 49G06-1909-F3-36890 (hereinafter, “F3-36890”)—Lancaster was charged with five counts of armed robberies alleged to have taken place on July 9, 17, and 18 of 2019. Prior to the jury trial in F3-36890, the State filed a Notice of Intent to Offer 404(b) Evidence—specifically, evidence obtained at the July 20, 2019, stop of Lancaster’s vehicle. Following a hearing on the State’s 404(b) notice,

the trial court allowed admission of the evidence found during the July 20, 2019, stop of Lancaster's vehicle but not evidence of his armed robbery charge, guilty plea, and/or conviction in F3-28843.

[13] At Lancaster's September 19 and 20, 2022, jury trial, the State presented testimony and evidence regarding the armed robberies, including surveillance footage from each establishment that had been robbed. The surveillance footage contained in State's Exhibit 2 is from July 17, 2019, and shows a black SUV with no spare tire on its rear backing into a parking space by the front door of the Subway restaurant located near 38<sup>th</sup> Street and Post Road. It also shows the man in gray and the man in black later getting into the vehicle and driving away. State's Exhibit 12 is surveillance footage from July 17, 2019, and shows a black SUV with no spare tire on its rear parking near the front door of the Dollar General store at the intersection of East 21<sup>st</sup> Street and Central Avenue. The footage also shows the man in gray and the man in black exiting the vehicle. The man in black has a white scarf around his face and is carrying a dark bag. The men later exited the store, with the man in black carrying an assault-style weapon and the man in gray carrying a bag and a handgun. The footage shows the two men entering the black SUV and driving away.

[14] The surveillance footage contained in State's Exhibits 26, 27, 28, and 29 are from July 18, 2019. Exhibit 29 shows a black SUV with no spare tire on its rear drive up to the front door of the Dollar General store located at the intersection of South Emerson Avenue and Southeastern Avenue and park there. It then shows a man in all black with a white scarf around his face exit the vehicle and

enter the store. The man carries a dark bag and an assault-style weapon. Exhibits 26 through 28 show the man in black, still carrying the bag and weapon, jump over the counter inside the store and stand over an employee as she puts money into the bag. Exhibit 29 shows the man in black subsequently leave the store, get into the black SUV, and drive away.

[15] State's Exhibits 30 through 34 are photographs taken by police when they stopped Lancaster's vehicle on July 20, 2019, and all were admitted into evidence over Lancaster's continuing objections. Exhibits 30 and 31 were identified as photographs of the back of the black Hummer H3 SUV Lancaster was driving. They show the license plate and no spare tire on the rear of the vehicle. Exhibit 32 was identified as a photograph of the black Nike gym bag with white piping laying on the front floor of the vehicle Lancaster was driving. Exhibit 33 was identified as a photograph of the black bag with white piping opened on the ground, showing its green interior and cash inside it. Exhibit 34 was identified as a photograph of the assault-style BB gun found in Lancaster's vehicle.

[16] The jury found Lancaster guilty of three counts of Level 3 felony armed robbery, and the court imposed an aggregate sentence of twenty-seven years of imprisonment. This appeal ensued.

## Discussion and Decision



[17] Lancaster challenges the trial court's admission of evidence found when his vehicle was stopped on July 20, 2019; specifically, he challenges the admission of evidence of the vehicle he was driving, the bag and weapon that were in the vehicle, and the clothes that he was wearing at the time of the stop.

The admission or exclusion of evidence is entrusted to the discretion of the trial court. *Farris v. State*, 818 N.E.2d 63, 67 (Ind. Ct. App. 2004). We will reverse a trial court's decision only for an abuse of discretion. *Id.* We will consider the conflicting evidence most favorable to the trial court's ruling and any uncontested evidence favorable to the defendant. *Taylor v. State*, 891 N.E.2d 155, 158 (Ind. Ct. App. 2008). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or it misinterprets the law. *Id.* In determining whether an error in the introduction of evidence affected an appellant's substantial rights, we assess the probable impact of the evidence on the jury. *Oldham v. State*, 779 N.E.2d 1162, 1170 (Ind. Ct. App. 2002). Admission of evidence is harmless and is not grounds for reversal where the evidence is merely cumulative of other evidence admitted. *Pavey v. State*, 764 N.E.2d 692, 703 (Ind. Ct. App. 2002).

*Collins v. State*, 966 N.E.2d 96, 104 (Ind. Ct. App. 2012).

[18] Lancaster asserts that the challenged evidence was inadmissible under Indiana Rule of Evidence 404(b)(1), which states: "Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." This restriction is designed to prevent the jury "from indulging in the forbidden inference that a criminal defendant's prior wrongful conduct suggests present

guilt.” *Fairbanks v. State*, 119 N.E.3d 564, 568 (Ind. 2019) (internal quotation and citation omitted). However, here, the challenged evidence does not appear to be evidence of prior wrongful conduct for purposes of Rule 404(b). That is, there is nothing intrinsically “wrong” with driving a black SUV with no spare tire on its rear, wearing all black clothing, or possessing a black, green, and white gym bag. *See, e.g., Pinkins v. State*, 799 N.E.2d 1079, 1090 (Ind. Ct. App. 2003) (finding evidence of patronage of strip clubs was not evidence of uncharged misconduct to which Rule 404(b) is directed), *trans. denied*. Similarly, “it is by no means clear that weapons possession” is “necessarily [a] prior bad act[]” within the meaning of Rule 404(b).<sup>2</sup> *Pickens v. State*, 764 N.E.2d 295, 299 (Ind. Ct. App. 2002) (quotations omitted) (citing *Williams v. State*, 690 N.E.2d 162, 174 (Ind. 1997)).

[19] However, even assuming for the sake of argument that the challenged evidence related to wrongful conduct within the meaning of Rule 404(b), that evidence was nevertheless admissible as intrinsic evidence. Rule 404(b) does not bar “evidence of uncharged criminal acts that are intrinsic to the charged offense.” *Lee v. State*, 689 N.E.2d 435, 439 (Ind. 1997). Uncharged acts are “intrinsic” to the charged offenses if they occurred at the same time and under the same circumstances as the crime charged. *E.g., Bennett v. State*, 5 N.E.3d 498, 509

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<sup>2</sup> To the extent Lancaster argues his possession of the challenged items may have *implied* misconduct, we have held that “evidence which creates a mere inference of prior bad conduct does not fall within the purview of Rule 404(b).” *Rogers v. State*, 897 N.E.2d 955, 960 n.3 (Ind. Ct. App. 2009) (citations omitted), *trans. denied*.

(Ind. Ct. App. 2014), *trans. denied*. Such “evidence of happenings near in time and place that complete the story of the crime is admissible even if it tends to establish the commission of other crimes not included among those being prosecuted.” *Id.* (quotation and citations omitted). The admissibility of intrinsic evidence “depends solely on the balance between the probative value of the evidence and the risk of unfair prejudice.” *Kyle v. State*, 54 N.E.3d 439, 444 (Ind. Ct. App. 2016).

[20] Here, the challenged evidence was obtained the day after the alleged robberies and in the general area of the alleged robberies—i.e., the east side of Indianapolis. The challenged evidence was Lancaster driving a stolen black Hummer SUV with no spare tire on its rear that looked like the black SUV depicted in the surveillance footage and described by witnesses. The all-black clothing Lancaster wore and the BB gun and gym bag he possessed in the vehicle also looked the same as, or strikingly similar to, those items as they were depicted in the surveillance footage and described by witnesses. Thus, evidence of all of those items was intrinsic to the crimes that had taken place only days before, in the same general area, and were highly probative of Lancaster’s identity as the man in black who had robbed the establishments on July 17 and 18, 2019.<sup>3</sup> The trial court found that the probative value of that

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<sup>3</sup> We do not address the robbery that allegedly took place on July 9 as Lancaster was not convicted of that robbery, and it is not raised in this appeal.

evidence outweighed any prejudice to Lancaster, and we cannot say that determination was an abuse of discretion.

[21] Furthermore, even if the challenged evidence was not intrinsic to the crimes charged, it was admissible under Rule 404(b)(2) to show identity. Even evidence of wrongful conduct is admissible if it is offered to show something other than that a person acted in conformity with their bad character. That evidence “may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Evid. R. 404(b)(2). When the State seeks to introduce such evidence, the court must

make three findings. *Camm v. State*, 908 N.E.2d 215, 223 (Ind. 2009). First, the court must determine that the proponent has sufficient proof that the person who allegedly committed the act did, in fact, commit the act. *Id.* Second, the court must determine that the evidence of the crime, wrong, or other act is relevant to a matter at issue other than the defendant's propensity to commit the charged act. *Id.* Last, the court must balance the probative value of the evidence against its prejudicial effect pursuant to Evidence Rule 403. *Id.*

*Caldwell v. State*, 43 N.E.3d 258, 264 (Ind. Ct. App. 2015), *trans. denied*. As to proving identity specifically, evidence of wrongful conduct is

generally evaluated based upon whether such crimes are “‘signature’ crimes with a common modus operandi.” *Thompson v. State*, 690 N.E.2d 224, 234 (Ind. 1997). The rationale behind this exception “is that the crimes, or means used to commit them, were so similar and unique that it is highly probable that the

same person committed all of them.” *Id.* (citing *Lockhart v. State*, 609 N.E.2d 1093, 1097 (Ind.1993)).

*Bishop v. State*, 40 N.E.3d 858, 952 (Ind. Ct. App. 2015), *trans. denied*.

[22] Here, there is no question that Lancaster was the person driving the black Hummer H3 with no spare tire on its rear on July 20, 2019, or that he was dressed in all black and had the bag and BB gun in the vehicle when he was stopped. Regarding the relevance of the challenged evidence, it is highly relevant to show Lancaster’s identity as the person who committed the robberies charged in F3-36890, as the person committing those robberies drove the same car, wore similar clothing, and possessed a similar bag and a similar weapon. And the trial court did not abuse its discretion when it found the probative value of the evidence outweighed any potential prejudice; any potential prejudice to Lancaster was especially low since the trial court did not allow any evidence that Lancaster had committed a similar crime on July 20 immediately prior to the stop of his vehicle and discovery of the challenged evidence.

## Conclusion

[23] The trial court did not abuse its discretion when it admitted evidence found when Lancaster was stopped in his vehicle on July 20, 2019, as that evidence did not relate to wrongful conduct within the meaning of Rule of Evidence 404(b). Moreover, even if the challenged evidence had been of wrongful conduct, it would have been admissible as intrinsic to the crimes charged, and

its high probative value to show identity outweighed any potential prejudice to Lancaster.

[24] Affirmed.

Brown, J., and Weissmann, J., concur.