MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Luther Briones,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 29, 2022

Court of Appeals Case No. 21A-CR-2452

Appeal from the La Porte Circuit Court

The Honorable Thomas J. Alevizos, Judge

Trial Court Cause No. 46C01-1910-F4-1402

Brown, Judge.

[1] Luther Briones appeals his conviction for possession of a firearm by a serious violent felon as a level 4 felony. Briones raises two issues which we revise and restate as:

I. Whether the trial court committed fundamental error when it did not *sua sponte* bifurcate his trial; and

II. Whether the State presented sufficient evidence to support his conviction.

We affirm.

Facts and Procedural History

[2] On October 14, 2019, Briones and Emily Pera made plans to meet after Pera finished working. After work, Pera picked up fifteen-year-old A.S. at her house and then met Briones before driving to the beach. Briones drove with Lorenzo Taylor in a separate vehicle and followed Pera's vehicle to Stone Lake Beach. At the beach, Briones, who was carrying a backpack, and Taylor entered Pera's vehicle and sat behind A.S. and Pera, respectively. The group began smoking marijuana. Around 1:20 a.m., LaPorte County Sheriff's Deputy William Masterson pulled into a parking lot after noticing a reflective surface in the lot, observed two vehicles in the parking lot of the closed park, pointed his headlights in the direction of the lot, parked perpendicularly to the vehicle closest to the entrance, and approached the vehicle. Deputy Masterson observed the odor of marijuana upon exiting his vehicle. Pera gave her driver's license and vehicle registration to Deputy Masterson, and Briones and Taylor refused to give identification multiple times.

[3] Deputy Masterson returned to his vehicle to run Pera's information and noticed Briones bending over and reaching underneath the seat. Additional officers arrived who helped remove the occupants of Pera's vehicle and placed Briones and Taylor in handcuffs. Officers observed a glass pipe and pistol magazine on the floor and a marijuana cigarette in the back seat. Pera consented to a search of her vehicle. Reaching underneath the front passenger seat from behind, LaPorte City Police Officer Nathan Thode discovered a gun "where the feet could be pushed up underneath the seat," and Pera stated that the firearm did not belong to her. Transcript Volume II at 169. Taylor was released, LaPorte County Sheriff's Captain Andrew Hynek transported Briones to jail, and officers drove A.S. and Pera home. At the station, Deputy Masterson checked Briones's criminal history and found that he had a conviction for battery as a class C felony.

[4] On October 16, 2019, the State charged Briones with: Count I, possession of a firearm by a serious violent felon as a level 4 felony; Count II, possession of paraphernalia as a class C misdemeanor; and Count III, refusal to provide information or a driver's license as a class C misdemeanor. On August 20, 2021, the State filed a Motion to Amend Criminal Information "by changing the language in Count I so as to correspond with the Indiana Pattern Jury Instruction." Appellant's Appendix Volume II at 220.

[5] At the start of the jury trial, Briones's counsel stated: "(Indiscernible) bifurcate it. I just can't figure out a way when the law says it does." Transcript Volume II at 6. The prosecutor later mentioned the issue of bifurcation. The court

stated, "you can't really bifurcate it because it's an element," and counsel for Briones stated:

> Again, I have to concede, Your Honor, I did not find any research. Because, otherwise, to bifurcate it you have to have an underlying offense of which that remaining part could be given an instruction. It's not like, well, you found him in possession of a handgun. That's in and of itself a crime.

Id. at 14. Briones's counsel did not object to the reference to Briones's prior conviction during the trial, during the closing arguments, or when the State introduced, and the court admitted, an exhibit containing documentation regarding the prior conviction. The court heard testimony from, among others, Pera, A.S., Deputy Masterson, Officer Thode, and Captain Hynek. During his closing argument, Briones's counsel referred to Briones's prior conviction, stating that "out of all of these matters, only Mr. Briones was charged," "[n]ot the owner of the vehicle," "[n]ot the little girl," "[n]ot the owner bringing the little girl there to smoke marijuana," "[j]ust, let's take out on [sic] the guy that has a felony." Transcript Volume III at 57.

[6] The jury found Briones not guilty on Count II and guilty on Counts I and III. The court sentenced Briones to concurrent terms of eight years for possession of a firearm by a serious violent felon as a level 4 felony under Count I and sixty days for refusal to provide information or a driver's license as a class C misdemeanor under Count III.

Discussion

I.

[7] Briones "does not dispute Count III, Refusal to Provide Information or Driver's License, as a Class C Misdemeanor." Appellant's Brief at 5. He asserts the trial court committed fundamental error when it did not *sua sponte* bifurcate his trial and by permitting reference throughout the trial to his prior conviction for battery as a class C felony. The State argues that Briones invited any error by failing to object to reference to his prior conviction and that the trial court did not commit fundamental error.

[8] The invited-error doctrine generally precludes a party from obtaining appellate relief for his own errors, even if those errors were fundamental. *Miller v. State*, 188 N.E.3d 871, 874-875 (Ind. 2022) (citing *Brewington v. State*, 7 N.E.3d 946, 974-975 (Ind. 2014), *cert. denied*, 574 U.S. 1077 (2015)). A party invites an error if it was "part of a deliberate, 'well-informed' trial strategy." *Id.* at 875 (citing *Batchelor v. State*, 119 N.E.3d 550, 558 (Ind. 2019) (quoting *Brewington*, 7 N.E.3d at 954)). This means there must be "evidence of counsel's strategic maneuvering at trial" to establish invited error. *Id.* (citing *Batchelor*, 119 N.E.3d at 557). "[M]ere 'neglect' or the failure to object, standing alone, is simply not enough." *Id.* (citing *Batchelor*, 119 N.E.3d at 557-558). And "when there is no evidence of counsel's strategic maneuvering, we are reluctant to find invited error." *Id.* (citing *Batchelor*, 119 N.E.3d at 558).

[9] The record reveals that Briones did not request that the trial court bifurcate the proceedings, and throughout the trial he did not object to any reference to his prior conviction. When discussing bifurcation, Briones's counsel stated that he "did not find any research." Transcript Volume II at 14. After the court decided it would not bifurcate the trial, Briones's counsel stated further, "other than doing it in such a fashion I think it is right for appeal where you basically cut the statute up toward what they're getting in the first round as your crime." *Id.* at 15. During closing argument, Briones's counsel referred to Briones's prior conviction in arguing that Briones was unfairly charged.

[10] Whether or not Briones invited any error, we cannot say that reversal is warranted. The standard for fundamental error is whether the error was so prejudicial to the rights of the defendant that a fair trial was impossible. *Boatright v. State*, 759 N.E.2d 1038, 1042 (Ind. 2001). The fundamental error doctrine is extremely narrow and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. *Boesch v. State*, 778 N.E.2d 1276, 1279 (Ind. 2002) (citations omitted), *reh'g denied*. Briones cites Ind. Evidence Rule 403[1] and claims that the references to his prior felony had an "extremely prejudicial effect on the jury" and that effect "was not outweighed by the probative value of the offense during

[1] Ind. Evidence Rule 403 provides that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence."

the State's case in chief." Appellant's Brief at 21. Briones does not cite Ind. Evidence Rule 404,[2] but he suggests that "allowing the jury to hear about [his] prior C Felony Battery" "had an extremely prejudicial effect on the jury." *Id.* The standard for assessing the admissibility of Rule 404(b) evidence is: (1) the court must determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant's propensity to commit the charged act; and (2) the court must balance the probative value of the evidence against its prejudicial effect pursuant to Ind. Evidence Rule 403. *Boone v. State*, 728 N.E.2d 135, 137-138 (Ind. 2000), *reh'g denied*. The purpose of the rule is to prevent the jury from making the "forbidden inference" that a defendant is guilty of the charged offense on the basis of other misconduct. *Hicks v. State*, 690 N.E.2d 215, 218-219 (Ind. 1997). Regarding Ind. Evidence Rule 403, only where the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, or needless presentation of cumulative evidence will that evidence be excluded. The trial court has wide latitude in weighing the probative value of the evidence against the possible prejudice of its admission. *Crain v. State*, 736 N.E.2d 1223, 1235 (Ind. 2000). If evidence has some purpose besides behavior in conformity with a character trait and the balancing test is favorable, the trial

[2] Ind. Evidence Rule 404(b) provides in part that 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. Rule 404(b)(2) provides "[t]his evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."

court can elect to admit the evidence. *Boone*, 728 N.E.2d at 138. For instance, evidence which shows the defendant's motive or plan may be admissible. *See* Ind. Evidence Rule 404(b)(2). Evidence admitted in violation of Evidence Rules 403 or 404 does not require a conviction to be reversed "if its probable impact on the jury, in light of all the evidence in the case, is sufficiently minor so as not to affect a party's substantial rights." *Houser v. State*, 823 N.E.2d 693, 698 (Ind. 2005) (citations omitted).

[11] The record reveals that evidence of Briones's prior battery conviction was introduced to satisfy an element of Ind. Code § 35-47-4-5, that Briones was a serious violent felon, and that the prior conviction was not introduced to show his propensity to engage in crime or that his behavior was in conformity with a character trait. Evidence of his prior conviction could have established a motive for Briones not to identify himself to law enforcement or could have explained a reason for Briones not to carry a firearm. We note that the prosecution's reference to Briones's prior conviction was limited to satisfying an element of the statute and that the prosecution did not refer to Briones during the trial as a serious violent felon or explore the details of his prior conviction. The court instructed the jury regarding Briones's presumption of innocence, on the State's burden, not to convict Briones on suspicion or speculation, and that the State must prove each element by evidence which firmly convinced them and left no reasonable doubt.

[12] Under these circumstances, and in light of the jury finding Briones not guilty of Count II and Briones's assertion on appeal that he does not challenge his

conviction for Count III, we cannot say the admission of the challenged evidence or the fact the trial court did not *sua sponte* bifurcate the proceedings resulted in an error so prejudicial to the rights of Briones that a fair trial was impossible or that reversal is warranted.[3]

II.

[13] The next issue is whether the evidence is sufficient to sustain Briones's conviction for possession of a firearm by a serious violent felon. Briones argues the State failed to show that he knowingly or intentionally possessed a firearm and did not demonstrate that he had actual or constructive possession of the firearm, and he questions the credibility of Pera.

[14] When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh'g denied*. We look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* The conviction will be affirmed if there exists evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Id.* It is well established that "circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant

[3] To the extent Briones cites *Hines v. State*, 801 N.E.2d 634 (Ind. 2004), we find that case to be distinguishable in that the defendant Hines was charged with robbery, and the prior conviction was not relevant to that charge. *See Talley v. State*, 51 N.E.3d 300, 305-306 (Ind. Ct. App. 2016) (noting *Hines* was distinguishable and finding the defendant's prior robbery conviction was relevant to show his motive to resist law enforcement), *trans. denied*.

guilty beyond a reasonable doubt." *Pratt v. State*, 744 N.E.2d 434, 437 (Ind. 2001).

[15] Ind. Code § 35-47-4-5 provided at the time of the offense that a person who is a serious violent felon and who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon as a level 4 felony.[4]

[16] The record reveals Deputy Masterson noticed that Briones bent over and reached under the front passenger seat while sitting with a backpack in the back seat of Pera's vehicle. A.S. testified that, once Deputy Masterson arrived on the scene, she could "see that [Briones and Taylor] were doing something in the back, so [she] told them . . . '[d]on't hide nothing under our seats. Don't do any of that,'" and she informed an officer that she "told them, '[d]on't put nothing under the seats or nothing, like, that's not ours.'" Transcript Volume II at 76. She stated that Briones and Taylor were hiding items, they were "bent over kind of, slouching down, and you could tell," she had informed Pera that they were hiding items under the seat, and "[y]ou could just tell . . . the way they were doing it." *Id.* at 79. Deputy Masterson, Captain Hynek, and Officer Thode testified they observed a pistol magazine in plain view. Captain Hynek further testified that, once he removed Briones from the back seat on the passenger side, he noted "in the middle of the floorboard there was a magazine

[4] Subsequently amended by Pub. L. No. 142-2020, § 74 (eff. July 1, 2020).

for a gun. . . . [I]f you're sitting, [it] would be towards your left foot." *Id.* at 151. Pera testified that a firearm had not been present in the vehicle earlier that day and that she did not own a firearm. Briones refused multiple times to identify himself to the police officers. The jury was able to consider the testimony of the witnesses, including Pera, and assess their credibility.

[17] Based upon the record, we conclude that the State presented evidence of a probative value from which a trier of fact could have found Briones guilty beyond a reasonable doubt of knowingly or intentionally possessing a firearm.

[18] For the foregoing reasons, we affirm Briones's conviction for possession of a firearm by a serious violent felon.

[19] Affirmed.

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