MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Gamron Tedford,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 11, 2022

Court of Appeals Case No. 21A-CR-1377

Appeal from the Marion Superior Court

The Honorable Cynthia L. Oetjen, Judge

Trial Court Cause No. 49G04-1808-MR-25147

Vaidik, Judge.

Case Summary

[1] Gamron Tedford appeals his conviction for murder, arguing the evidence is insufficient and the trial court erred in admitting evidence and responding to a jury question. We affirm.

Facts and Procedural History

[2] On July 16, 2018, Tedford and Mikyah Quiroz arranged to meet at a gas station in Indianapolis so Tedford could buy marijuana from Quiroz. Tedford arrived at the gas station as a passenger in a black Chevrolet Malibu. Quiroz drove to the gas station in a red Malibu. He was accompanied by Jeshon Cameron, who sat in the front passenger seat with a nine-millimeter Glock, with an extended magazine, on his lap. When Quiroz arrived, Tedford exited the black Malibu and approached the driver's door of the red Malibu. After talking with Quiroz for about fifteen seconds, Tedford entered the back seat of the red Malibu.

[3] According to Quiroz's trial testimony, this is what happened next: (1) Tedford pulled out a handgun, pointed it at Quiroz and Cameron, and said something like "you know what it is," Tr. Vol. IV p. 179; (2) Tedford and Cameron started "tussling" and "wrestling," *id.* at 181-83; (3) Quiroz exited the red Malibu; and (4) as Quiroz ran away, he heard gunshots. Tedford exited the red Malibu a few seconds later. The car, with Cameron still inside, rolled forward and came to a stop in front of the store. Cameron had seven gunshot wounds and died from his injuries. Tedford also had gunshot wounds, one to his left thigh and one to

his right arm. He stumbled back to the black Malibu, which then drove off and took Tedford to a hospital. Police found five bullet casings inside the red Malibu—one nine-millimeter casing and four .45 caliber casings. The nine-millimeter casing was fired from Cameron's Glock. The .45 caliber casings were fired from a gun that was not recovered.

[4] The State charged Tedford with murder, felony murder, and attempted robbery. A jury trial was held in April 2021. The State called thirteen witnesses, including Quiroz, and presented more than 180 exhibits. Tedford did not testify or call any witnesses, but his theory of defense was that he didn't have a gun in the car and that Quiroz, either accidentally or intentionally, shot Cameron. *See* Tr. Vol. V pp. 218-38. About an hour after the jury began deliberations, it sent out the following question: "[I]f the Defendant was acting in self-defense, would that avoid a murder charge[?]" Tr. Vol. VI p. 3. Because Tedford had not claimed self-defense, the jury had not been instructed on the issue. The trial court asked counsel how they wanted to respond. The State answered, "There's no evidence that would allow self-defense to come as an instruction to the jury." *Id.* Tedford's attorney said, "I don't know how you answer that." *Id.* The court then said, "I don't think we can answer that. The answer is re-read the instructions." *Id.* Tedford's attorney responded, "Yeah." *Id.* at 4. The court added, "I will tell them that they need to re-read their instructions. That's all I can do." *Id.* Tedford's attorney responded, "Okay." *Id.* The court then brought in the jury and told them to re-read the existing instructions.

[5] The jury found Tedford guilty of murder but not guilty of felony murder and attempted robbery. The trial court sentenced Tedford to fifty years in the Department of Correction with two years suspended to probation.

[6] Tedford now appeals.

Discussion and Decision

I. Sufficiency of Evidence

[7] Tedford first contends Quiroz's testimony should be disregarded under the doctrine of incredible dubiosity and that the remaining evidence is insufficient to support his conviction for murder. Under the incredible-dubiosity doctrine, we can impinge upon a fact-finder's responsibility to judge the credibility of the witnesses when "the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Hampton v. State*, 921 N.E.2d 27, 29 (Ind. Ct. App. 2010), *trans. denied*. The doctrine "requires that there be: 1) a sole testifying witness; 2) testimony that is inherently contradictory, equivocal, or the result of coercion; and 3) a complete absence of circumstantial evidence." *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015). Application of this rule is rare. *Leyva v. State*, 971 N.E.2d 699, 702 (Ind. Ct. App. 2012), *trans. denied*.

[8] Tedford argues Quiroz's testimony was incredibly dubious for several reasons: it is "improbable" that Tedford would have "attempted to rob a drug dealer, in the middle of the day, in a public place . . . while the dealer's companion had a

handgun, with an extended magazine, sitting on his lap in plain sight"; Quiroz admitted that before trial he "told about six versions of what happened in that car"; Quiroz "had a motive to lie because he wanted to avoid criminal liability"; and Quiroz lied about numerous details in his initial statements to police. Appellant's Br. pp. 16-20. While these facts might lead a reasonable person to question Quiroz's credibility, they do not make the account he gave at trial "so incredibly dubious or inherently improbable that no reasonable person could believe it." *See Hampton*, 921 N.E.2d at 29. Moreover, Tedford's argument focuses largely on inconsistencies between Quiroz's trial testimony and his pretrial statements. But as we have explained:

> When a witness's trial testimony contradicts a statement she made before trial, it is the jury's province to decide which statement to believe. Discrepancies between pretrial statements and trial testimony go to the weight of testimony and credibility of the witness but do not render such testimony incredibly dubious.

Chambless v. State, 119 N.E.3d 182, 193 (Ind. Ct. App. 2019), *trans. denied*. In short, Tedford has failed to satisfy the second requirement of the incredible-dubiosity doctrine.[1]

[1] Tedford contends it is "obvious" the jury did not believe Quiroz's testimony that Tedford attempted a robbery because the jury found him not guilty of attempted robbery and felony murder. Appellant's Br. p. 16. Given the jury's guilty verdict on the murder count, the reason for the not-guilty verdicts on the other counts is anything but obvious.

[9] The third requirement is not satisfied either, as there is not "a complete absence of circumstantial evidence." *See Moore*, 27 N.E.3d at 756. As the State notes, Cameron's injuries and the locations of his gunshot wounds are "consistent with [Cameron] turning around in his seat and facing Tedford, struggling in the space between the front and rear seats, as Quiroz testified." Appellee's Br. p. 25. The State describes the wounds and injuries as follows, with no dispute from Tedford:

> [G]unshot wound number one entered the base of [Cameron's left neck], entering his body in a head-to-toe, left-to-right direction, penetrating his left lung, heart and aorta, and striking his liver before coming to rest at his right hip.
>
> Gunshot wound number two struck high on the back of [Cameron's] left shoulder. This shot traveled in a head-to-toe, left-to-right direction, penetrating [Cameron's] left lung and liver, coming to rest in his right abdomen.
>
> Yet another gunshot entered [Cameron's] left chest and inflicted wound number three, moving in a head-to-toe, left-to-right direction through his right lung and liver, coming to rest "very close" to the same area where the bullet inflicting gunshot wound number one had stopped inside [Cameron's] body.
>
> Gunshot wound number four entered at a point on the top of [Cameron's] right shoulder slightly toward his back. This gunshot traveled down [Cameron's] rear upper arm, exiting his arm.
>
> Gunshot wound number five entered [Cameron's] left shoulder and exited from his left armpit.

> Gunshot wound number six entered the inside front left thigh in the area of his femoral artery, exiting from the back of his left thigh.
>
> The last gunshot wound entered [Cameron's] front right thigh moving very slightly in a head-to-toe, front-to-back direction, exiting his thigh near the right knee.

Id. at 10-12 (cleaned up).

[10] In addition to the evidence about Cameron's wounds, the State presented evidence that Tedford lied about the shooting shortly after it occurred. Specifically, in speaking with a forensic nurse examiner, Tedford said he was a mere bystander at the gas station and remembered "gunshots ringing out and then he fell to the ground, realized he had been shot." Tr. Vol. III p. 112. A defendant's attempt to hide the truth may be considered by the jury as evidence of guilt. *See Davis v. State*, 635 N.E.2d 1117, 1120 (Ind. Ct. App. 1994).

[11] Because Quiroz's trial testimony was not so inherently improbable that no reasonable person could believe it, and was corroborated by other evidence, Tedford's incredible-dubiosity argument fails.

II. Admission of Evidence

[12] Tedford next argues that the trial court erred by admitting two photographs of him holding handguns. *See* Exs. 184-85. One photo was posted to Tedford's Twitter account ten days before the shooting, and the other was posted to Tedford's Snapchat account two days before the shooting. Tedford contends

"[t]here is no evidence that any of the handguns, shown in those photographs, was used to kill Cameron" and that therefore the photos "served no purpose other than to make Tedford seem like a scary and dangerous person." Appellant's Br. p. 26. The State offers three responses: (1) Tedford failed to properly preserve this issue for appeal; (2) the photos were admissible because Cameron was killed with a handgun and it is "possible" one of the handguns in the photos was used, Appellee's Br. pp. 28-30; and (3) even if the trial court erred by admitting the photos, the error was harmless. Because we agree with the State on the last point, we need not address the first two.

[13] An error in the admission of evidence is harmless if there is "independent evidence of guilt such that there is little likelihood the challenged evidence contributed to the verdict[.]" *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). As detailed in the previous section, the State presented substantial independent evidence of guilt: Quiroz testified that Tedford attempted an armed robbery and that Cameron turned around and struggled with Tedford; Cameron's injuries were consistent with him having been shot by Tedford from the backseat; and Tedford lied to the forensic nurse examiner about his involvement in the shooting.

[14] The prejudicial effect of an evidentiary error can also be reduced by the giving of a limiting instruction. *See Inman v. State*, 4 N.E.3d 190, 197 (Ind. 2014). Here, when the trial court admitted the photos, it gave the jury the following instruction:

> Ladies and gentlemen, evidence has been introduced and you're going to see it, that the Defendant has been seen with a firearm on a prior occasion. This evidence has been received solely on the issue of the Defendant's opportunity and access to a firearm. This should be considered by you only for that limited purpose, that at a prior occasion, he had access to a firearm.

Tr. Vol. IV p. 151. We assume the jury heeded this instruction and did not consider the photos as evidence that Tedford is "a scary and dangerous person." *See Maffett v. State*, 113 N.E.3d 278, 284 n.3 (Ind. Ct. App. 2018) ("We assume a jury follows the instructions it is given.").

[15] In light of the limiting instruction and the independent evidence of Tedford's guilt, we are confident that any error in the admission of the photos was harmless.

III. Jury Question

[16] Finally, Tedford argues the trial court erred by failing to give the jury a self-defense instruction after the jury asked, "[I]f the Defendant was acting in self-defense, would that avoid a murder charge[?]" He acknowledges he did not ask the court to give such an instruction but asserts the court's failure to do so on its own constituted fundamental error. Fundamental error is an error so blatant and substantial that the trial court should take action even without a request or objection from a party. *Ryan v. State*, 9 N.E.3d 663, 668 (Ind. 2014), *reh'g denied*.

[17] For two reasons, we need not address this claim. First, after invoking the concept of fundamental error, Tedford doesn't actually apply, or even cite, the

legal standard. *See* Appellant's Br. pp. 29-35. Second, and more importantly, our Supreme Court has made clear that appellate courts "will not review claims, **even for fundamental error**, when appellants expressly declare at trial that they have no objection." *Taylor v. State*, 86 N.E.3d 157, 161 (Ind. 2017) (emphasis added), *reh'g denied*. And that is exactly what happened here. After the jury sent the question, the trial court asked counsel how they wanted to respond. Tedford's attorney said, "I don't know how you answer that." *Id.* When the court said, "The answer is re-read the instructions," Tedford's attorney responded, "Yeah." When the court added, "I will tell them that they need to re-read their instructions," Tedford's attorney responded, "Okay." Having affirmatively accepted the trial court's proposed response, Tedford cannot now be heard to argue that the court committed fundamental error by failing to give a self-defense instruction.

[18] In any event, we see no error in the trial court's handling of the jury question. Tedford never claimed self-defense; his defense was that he didn't even have a gun in the car and that Quiroz, either accidentally or intentionally, shot Cameron. *See* Tr. Vol. V pp. 218-38. Therefore, we agree with the State that for the court to have given the jury a self-defense instruction, with no such request from Tedford, would have been to "hijack" Tedford's defense. Appellee's Br. p. 36. We cannot fault the trial court for declining to do so.

[19] Affirmed.

Crone, J., and Altice, J., concur.