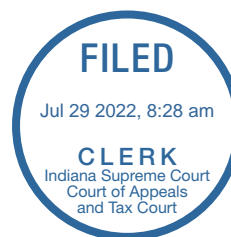


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Matthew J. McGovern
Fishers, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tyler Banks
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Willie Lee Carter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 29, 2022

Court of Appeals Case No.
21A-CR-2627

Appeal from the
Vanderburgh Superior Court

The Honorable
Robert J. Pigman, Judge

Trial Court Case No.
82D03-2007-F2-4067

Friedlander, Senior Judge.

[1] Willie Lee Carter appeals his convictions by jury of dealing in methamphetamine, a Level 2 felony;¹ operating a vehicle with a controlled substance in the blood, a Class C misdemeanor;² and operating a vehicle without ever having received a license, a Class C misdemeanor.³ He raises one issue, which we restate as: whether the trial court committed fundamental error in allowing the State to cross-examine Carter about his criminal record and other past misconduct. We affirm.

[2] On the afternoon of July 19, 2020, Officer Christopher Jones of the Evansville Police Department (“EPD”) was dispatched to investigate an accident. Upon arriving, he noticed a damaged vehicle stopped in an intersection, with a second damaged vehicle in a nearby ditch. Carter was behind the wheel of the vehicle in the ditch, and no one else was in the car. He later testified that the accident occurred because he was “tryin [sic] to beat a light.” Tr. Vol. II, p. 240.

[3] Officer Jones asked Carter if he was okay. Carter responded that he was okay, and he did not request medical treatment. The officer smelled an odor of burnt marijuana emanating from Carter’s car. Further, as Officer Jones interacted

¹ Ind. Code § 35-48-4-1.1 (2017).

² Ind. Code § 9-30-5-1 (2020).

³ Ind. Code § 9-24-18-1 (2016).

with Carter, he determined that Carter's speech was slow and his eyes were red, bloodshot, and glassy. The officer did not smell an odor of alcohol.

[4] Officer Jones had Carter get out of his vehicle, and he observed that Carter had balance issues. Meanwhile, Officer Garrett VanFleet of the EPD arrived at the scene. He also noted that Carter had slurred speech and was unsteady on his feet. The officers patted Carter down before having him sit on a curb. During the pat down, the officers found a pipe and a small plastic bag that contained what appeared to be marijuana. Next, Officer Jones determined that Carter did not have a valid driver's license. He arrested Carter for driving without a valid license and further suspected that he was operating a vehicle while intoxicated due to a controlled substance.

[5] Officer VanFleet read an implied consent advisement to Carter, informing him that if he did not consent to a blood draw for testing for controlled substances, his driving privileges would be suspended. Carter consented. Next, Officer VanFleet guided Carter to a transport van. As they approached the van, Carter briefly attempted to pull away from Officer VanFleet. Officer Jones, who was sitting in his car preparing a report, saw the struggle and went to assist.

[6] The two officers moved Carter to the van, where they searched him more thoroughly before placing him inside. Officer Jones spotted a small, empty plastic bag on Carter's leg.

- [7] After Carter was placed in the van, Officer Jones returned to his car. As he passed the spot where Carter and Officer VanFleet had struggled, he noticed a black pouch on the ground. The pouch contained several small plastic bags, which were similar to the one that Officer Jones had found on Carter's leg. Some were empty, some contained a crystal substance, and one contained a tan-colored powdery substance. A field test revealed the crystal substance was methamphetamine. Subsequent laboratory testing demonstrated that the pouch contained 30.29 grams of methamphetamine, and the tan powdery substance consisted of 4.39 grams of heroin mixed with fentanyl.
- [8] Carter was transported to a hospital, where personnel took a sample of his blood as Officer VanFleet observed. Subsequent testing of the blood sample demonstrated that Carter had consumed morphine, methamphetamine, and tetrahydrocannabinol, all controlled substances.
- [9] The State charged Carter with the offenses set forth above. Carter waived his right to counsel and chose to represent himself, with standby counsel. He requested a speedy trial, and the trial court presided over a jury trial on September 27 and 28, 2021. The State presented evidence including testimony from Officers Jones and VanFleet. Carter testified on his own behalf. At one point in his testimony, he admitted to having marijuana on his person but denied owning the pouch that the officers found on the ground, claiming that

the State was trying to slander him “for something I didn’t do.” Tr. Vol. II, p.

243. He then stated:

Yes, I’ve been to jail before. Yes, I have a long history of misdemeanors. A lot of them to do with simple possession of marijuana. Uh, yes six year [sic] ago I had a possession of meth and I did time for that and I came back as a good citizen of [sic] tryin [sic] to work.

Tr. Vol. II, p. 243. He also said, “Now, I do drugs. I do. A lot of people do drugs.” *Id.* at 247.

[10] Before cross-examining Carter, the prosecutor approached the bench and, based on Carter’s statements during his direct testimony, asked the trial court for permission to raise “prior character negative things.” Tr. Vol. III, p. 3. The trial court granted permission. The prosecutor asked Carter the following questions:

Q. Okay. So you were saying what happened in South Carolina [sic] just a few little things? What did you do in South Carolina?

A. Um, well, the – I had misdemeanors in South Carolina.

Q. What kind of misdemeanors?

A. Ah, misdemeanors of marijuana, um, driving offense ticket, a misdemeanor of Never Receiving a License of – of a gun. Um –

Q. So you carry a gun?

A. Yes sir from time to time I do.

Q. Okay. What else?

A. Well that’s really it other than marijuana and that cuz at the same time, I mean I have the right . . . at first before I became a felon I have [sic] right to have a gun.

Q. So you never had any meth charges in South Carolina? You waited until you got here?

A. Um, yes sir.

Q. So –

A. It's a long story 'bout that but we don't have – unless you want me to explain what happened – I mean I wish you could bring up the 2016 or 2017 when I got arrested when it was two other people in the car and I told the officer anything that you find in the car is mines [sic].

Q. So you admitted to possessing Methamphetamine [sic]?

A. At the time and moment ---

Q. Here in Evansville in 2017?

A. In 2017 I didn't even know what – what was in the car but I didn't want nobody else to go to jail, but me.

Q. So you were a big hero then?

A. I wasn't hero, I was jus' makin' sure that my girl – my ex at the time – well my girl at the time and my brother at the time didn't have to go to jail.

Q. So you hang around with people that use meth?

A. Yes sir.

Q. What about you do you use meth?

A. From time to time, yes sir.

Q. Okay. But that's not all you plead to in that case in 2017. Didn't you also admit you that you had a gun?

A. Yes sir there was a gun in the car. Nothin' was found on me, but it was in the car at the same time.

Tr. Vol. III, pp. 6-8.

[11] Next, Carter admitted under questioning by the prosecutor that he had failed to appear for a prior court hearing in this case and had been arrested pursuant to a warrant issued by the trial court.

[12] The prosecutor also questioned Carter about the controlled substances in his blood on the day of the collision:

Q. So you had the money to buy the marijuana and you had the money to buy the meth because there was meth in your system. You used meth. You got all kinds of money.

A. Ah, if you looked at my system I – last time I did meth was about two to three days ago.

Q. There's morphine in your system?

A. That's also levels also going down.

Q. So you were using morphine too?

A. Still two to three days ago.

Q. So you admit you had those substances in your blood?

A. I – I feel like I did com [sic] – say that I – I'mma – I'mma drug user and I did say I'mma function – functioning addict.

Q. So a functioning addict, so you got a pretty high tolerance than [sic] don't you?

A. No sir. I do what I need to do to go ahead and get myself through the day.

Id. at 9.

[13] The prosecutor again asked Carter about his criminal record, as follows:

Q. So Willie you admit you do meth?

A. I admit that I do drugs all together, yes sir.

Q. And you admit you carry guns?

A. I did beforehand, yes sir.

Q. And you don't have a license for a gun?

A. No sir, ever since I came up here I don't even mess with guns no more after my first offense.

Q. So rules don't matter to you?

A. Um, well down south you didn't have to have a permit.

Q. So Indiana rules don't matter to you? Let's talk about Indiana.

A. Rule (sic) does. I didn't know that I hadda have a permit. Down south I didn't have to have a permit.

Q. So you plead guilty to a case in 2017 for not having a handgun license and you don't know that you need a license?

A. Like I said, sir –

Q. Okay.

A. -no I didn't not when I came to Indiana. I didn't look up the laws or registrations of how can I have a gun.

Id. at 13-14.

[14] The jury determined Carter was guilty as charged, and the trial court imposed a sentence. This appeal followed.

[15] Carter argues that the trial court should not have allowed the prosecutor to question him about his criminal record and other misconduct, asserting the State was “smearing his character with prejudicial details of his criminal history.” Reply Br. p. 5. He concedes that he did not timely object to the evidence he now seeks to challenge, but he claims that the trial court's error was fundamental. The doctrine of fundamental error is an exception to the general

rule that a party's failure to object at trial results in a waiver of the issue on appeal. *Kelly v. State*, 122 N.E.3d 803 (Ind. 2019). This exception is very narrow and includes only errors so blatant that the trial court should have acted independently to correct the situation. *Id.* "Fundamental error is an error that makes a fair trial impossible or constitutes clearly blatant violations of basic and elementary principles of due process presenting an undeniable and substantial potential for harm." *Clark v. State*, 915 N.E.2d 126, 131 (Ind. 2009).

[16] Carter claims the trial court admitted evidence of his criminal record and other misconduct contrary to the Indiana Rules of Evidence. He cites Evidence Rule 404, which provides, in relevant part:

(a) Character Evidence.

(1) *Prohibited Uses.* Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

* * * *

(b) Crimes, Wrongs, or Other Acts.

(1) *Prohibited Uses.* 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.

[17] Admission of evidence under Rule 404 is contingent upon the following requirements: first, 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 second, the court must balance

whether the probative value of the evidence is outweighed by prejudicial effect under Evidence Rule 403. *Schnitzmeyer v. State*, 168 N.E.3d 1041 (Ind. Ct. App. 2021).

[18] Carter cites *Oldham v. State*, 779 N.E.2d 1162 (Ind. Ct. App. 2002), *trans. denied*, in which a panel of this court determined that a trial court committed fundamental error in allowing into evidence a business card upon which Oldham had listed his aliases and a novelty photograph of Oldham which included statements that he was armed and dangerous and wanted for several violent offenses. The panel determined that the State's introduction of evidence of the defendant's character and prior bad acts, which were intended to prove that the defendant committed the crimes for which he was being tried, violated Rule 404 and infringed upon Oldham's fundamental rights despite Oldham's lack of objection.

[19] The *Oldham* court also noted that not every violation of Rule 404 amounts to fundamental error, stating:

Of course, the erroneous admission of character and uncharged bad act evidence to prove guilt does not always require reversal. Such errors are harmless and not fundamental when, for example, the defendant pursues the improperly opened issue of his character by testifying about the matter, and when there is overwhelming evidence of the defendant's guilt.

Id. at 1173. The court concluded neither of those circumstances were present in Oldham's case.

[20] Contrary to the circumstances in *Oldham*, the State argues that in the current case Carter opened the door to the State's questions about his criminal record and other prior misconduct through his own testimony. We agree. Evidence that is otherwise inadmissible may become admissible when the defendant opens the door to questioning on that evidence. *Bryant v. State*, 802 N.E.2d 486 (Ind. Ct. App. 2004), *trans. denied*. In order to open the door, the evidence relied upon must leave the trier of fact with a false or misleading impression of the facts related. *Id.* In particular, a defendant who, through direct testimony, leaves the trier of fact with a false or incomplete impression of his criminal record may open the door to inquiries into his complete criminal record. *Wales v. State*, 768 N.E.2d 513 (Ind. Ct. App. 2002), *clarified on reh'g*, 774 N.E.2d 116 (2002), *trans. denied*.

[21] Carter states that he explained his criminal history during his own testimony and claims he did not open the door to extensive cross-examination by the State, but the record shows otherwise. Carter told the jury that, although he was a user of controlled substances and had prior misdemeanor convictions, he had become a "good citizen" who was simply trying to work after he had a methamphetamine-related conviction six years prior. Tr. Vol. II, p. 243. He presented an incomplete impression of his criminal history, and the State was allowed to cross-examine him on convictions and other criminal misconduct within the last six years to correct the record, even if the evidence may have

otherwise been inadmissible under Rules 404 or 403. *See Garcia-Berrios v. State*, 147 N.E.3d 339 (Ind. Ct. App. 2020) (no fundamental error in admitting detective’s testimony about what witnesses had told him, even though evidence violated Garcia-Berrios’s right to confront witnesses; Garcia-Berrios opened door to testimony in his prior questioning of detective), *trans. denied*.

[22] Carter argues that even if he had opened the door to a discussion of his criminal history, the State’s lengthy cross-examination improperly presented unnecessary and highly prejudicial details about his prior misconduct. He cites *Thompson v. State*, 690 N.E.2d 224 (Ind. 1997), in support of his argument, but the circumstances of that case are different from the current case. In the *Thompson* case, Thompson was on trial for two counts of murder, and the prosecutor sought to admit evidence explaining how Thompson obtained the murder weapon, specifically during a prior incident of murder and robbery. The Indiana Supreme Court determined that the evidence of the prior murder was relevant because it tended to show Thompson had access to the murder weapon, but the prosecutor presented such detailed evidence of the prior murder, including gruesome details, that any probative value to the current case was outweighed by unfair prejudice.

[23] In Carter’s case, the evidence of his prior criminal convictions and other misconduct was relevant because he opened the door to that evidence in his testimony. By contrast, in *Thompson* the defendant did not open the door to

any evidence. Further, although the prosecutor in the current case questioned Carter at length about prior misconduct, he did not seek out details about Carter's prior offenses. To the contrary, Carter volunteered details about his prior offenses, including being a convicted felon and discussing one instance when he was found in a car with two other individuals, along with a handgun and controlled substances. *Thompson* does not control the outcome in this case. Carter has failed to demonstrate that admission of evidence of his prior criminal convictions and other misconduct was a blatant violation of basic and elementary principles of due process to the extent that the trial court should have stepped in despite Carter's lack of objection.

[24] For the reasons stated above, we affirm the judgment of the trial court.

[25] Judgment affirmed.

Najam, J., and Weissmann, J., concur.