MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Larry Blackstock,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 31, 2023

Court of Appeals Case No. 22A-CR-2820

Appeal from the Wayne Superior Court

The Honorable Charles K. Todd, Jr., Judge

Trial Court Cause No. 89D01-1810-F2-19

Memorandum Decision by Judge Brown
Judge Crone and Senior Judge Robb concur.

Brown, Judge.

[1] Larry Blackstock appeals his conviction for conspiracy to commit murder as a level 2 felony and challenges the admission of certain evidence. We affirm.

Facts and Procedural History

[2] In September 2016, Blackstock sold drugs to a confidential informant (the "C.I."). The State charged Blackstock with two counts of dealing in a narcotic drug and one count of dealing in methamphetamine, all as level 5 felonies under cause number 89C01-1704-F5-52 ("Cause No. 52").[1] In 2018, the C.I. was in jail and was in the same cell as Bradi Louden for a period of time. Louden was released from jail on September 10, 2018, and later met Blackstock and went to his house. Blackstock told Louden that "he had a $30,000 hit on [the C.I.] because she wired up on him." Transcript Volume III at 79. Louden said she "could get it done," but no plan was made at that point. *Id*. at 80. On September 24, 2018, the State filed a Notice of Deposition in Cause No. 52 indicating the deposition of the C.I. was scheduled for 2:00 p.m. on October 4, 2018, at the prosecutor's office. On October 2, 2018, the C.I. was released from jail, and officers placed her in a safe house. On October 3, 2018, Blackstock called Louden, and they met and went to Blackstock's house. Blackstock told Louden to contact the C.I.'s mother. Louden called the C.I.'s mother, there

[1] Count I alleged Blackstock delivered fentanyl on or about September 29, 2016, Count II alleged he delivered fentanyl on or about September 30, 2016, and Count III alleged he delivered methamphetamine on or about September 30, 2016.

was no answer, and Louden "texted her and said have [the C.I.] get a hold of me." *Id*. at 83. Blackstock and Louden fell asleep.

[3] At about 11:00 a.m. on October 4, 2018, Blackstock woke up Louden and said "business needed to be taken care of." *Id*. at 88. Blackstock spoke with his attorney on the phone and then told Louden that the C.I. "didn't need to show up" at her deposition. *Id*. at 89. At some point, Ryan Carpenter, who was a "runner" for Blackstock, arrived at the house. *Id*. at 90. Louden and Carpenter left to obtain syringes, and when they returned to the house, Blackstock was mixing fentanyl in a blender. Blackstock gave Louden fentanyl, methamphetamine, and cocaine in separate baggies and told Louden to give the C.I. the fentanyl. He also gave a bag of fentanyl to Carpenter and said "if she didn't die on the first one, . . . give her another shot." *Id*. at 92. The plan, at Blackstock's direction, was to give the fentanyl to the C.I., to "[l]et her shoot it up," and for Carpenter "to shoot her up again . . . [s]o she would die." *Id*. at 93. Blackstock offered Louden money and a house "if [she] did this." *Id*. at 95.

[4] The police picked up the C.I. to transport her to her scheduled deposition, and the C.I. disclosed that her mother informed her that Louden had tried to contact her. The police had the C.I. call Louden and recorded the call. Louden asked the C.I. if she was trying to get high, the C.I. responded affirmatively, and they planned to meet at a liquor store at about 12:30. The police set up surveillance at the liquor store. Carpenter and Louden arrived in a vehicle, and Louden exited the vehicle and entered the store. Officers approached Louden in the store and placed her in custody. Louden told one of the officers "that she

did it for Dread." *Id*. at 149. Carpenter eventually exited his vehicle, and officers placed him in custody. Police recovered cocaine, fentanyl, and methamphetamine from Louden's person. Specifically, they recovered a substance containing cocaine with a net weight of 0.38 gram, a substance containing fentanyl with a net weight of 0.88 gram, and a substance containing methamphetamine with a net weight of 0.29 gram.[2] The C.I. attended the scheduled deposition that day.

[5] On October 5, 2018, the State charged Blackstock with conspiracy to commit murder as a level 2 felony under cause number 89D01-1810-F2-19 ("Cause No. 19"), the cause from which this appeal arises. Blackstock failed to appear for a scheduled hearing on October 8, 2018, in Cause No. 52, and the court issued a Failure to Appear Warrant. In April 2019, Blackstock was arrested in Dayton, Ohio. On October 31, 2019, the court issued an order in Cause No. 52 stating that Blackstock pled guilty to the level 5 felonies alleged in Counts I, II, and III of the information. Prior to trial in Cause No. 19, the court issued an order stating, "as to Defendant having charges pending at the time, and the theory of the State's case that Defendant's intent and/or motive in this cause was based in significant relevance to the same [it] would appear to be proper to support or

[2] The State presented testimony that "[a]bout 2,000 micrograms of fentanyl is the minimum level [of] what it would take to kill somebody for a lethal dose of fentanyl" and that "point eight eight grams converts to 880,000 micrograms." Transcript Volume III at 221.

show evidence of Defendant's intent and/or motive." Appellant's Appendix Volume II at 35.

[6] At Blackstock's jury trial in Cause No. 19, Richmond Police Detective Mark Ward testified that Blackstock was arrested "toward the end of April . . . [m]aybe April . . . 29th, 30th" of 2019 in Dayton, Ohio. Transcript Volume III at 36. The prosecutor asked Detective Ward to look at the photograph of Blackstock marked as State's Exhibit 1 and asked "[i]s that accurate as to his appearance when he was arrested," and Detective Ward replied: "Very similar, yes." *Id*. at 37. The State moved to admit State's Exhibit 1, and Blackstock's defense counsel objected based on "foundation and relevancy." *Id*. The prosecutor stated "the relevancy is certainly identity of the person," "I anticipate other witnesses testifying where identity could be an issue," "Detective Ward laid the foundation that this picture of Mr. Blackstock is either the same or very similar to Mr. Blackstock's appearance . . . at the time of his arrest in this case," and "I would also note that I anticipate testimony regarding a nickname or street name of Mr. Blackstock that he's referred to coming in as testimony through other witnesses, which I believe also goes to the relevance of using this photograph." *Id*. The court stated "the State has indicated ways in which it's relevant in terms of identifying the Defendant and also . . . the State anticipates subsequent witness testimony regarding a nickname that may indeed relate to that appearance" and "[a]s far as the foundation, Detective Ward has testified that although he didn't take the photograph, the photograph looks the

same or substantially the same as the Defendant at the time of arrest." *Id*. at 38. The court admitted State's Exhibit 1.

[7] Detective Ward testified that Blackstock had a nickname or a street name of "Dread." *Id*. at 39. When asked "[i]s there any correlation between that nickname and his appearance in the photograph," Detective Ward answered: "Yes. It - I correlated it with he wore his hair in dreadlocks every time I ever saw him." *Id*. On cross-examination, Blackstock's defense counsel asked "[y]ou testified that Mr. Blackstock had a pending case," Detective Ward answered affirmatively, defense counsel asked "[y]ou are aware that that pending case was a level 5 felony," and Detective Ward replied "I don't recall what level it was, I just knew there was a pending case." *Id*. at 47. Defense counsel asked "[a]re you aware that a level 5 felony only carries one to six years," Detective Ward replied "[p]ossibly," defense counsel stated "[w]ith an average sentence of three years," Detective Ward said "[o]kay," defense counsel asked "[o]kay, yes or no," and Detective Ward answered "[y]es, I guess." *Id*. Defense counsel asked "you can't dispute that it only carried one to six years, is that correct," Detective Ward replied "[i]t was a level 5 probably, yes," defense counsel stated "and the normal sentence for that starts at about three years. Can you dispute that," Detective Ward said "I don't know what the normal sentence would be," defense counsel asked "one, three or six years is about average, is that right," and Detective Ward responded "[t]hat sounds reasonable." *Id*. at 48.

[8] Officer David Glover identified Blackstock in the courtroom and testified that Blackstock went by the name "Dread," his appearance in the courtroom was different than his appearance when he was arrested in 2019, "[h]is hairstyle has changed," and "[t]hen he had dreadlocks." *Id.* at 153. Officer Glover indicated that Blackstock pled guilty to the dealing charges and that he recognized the documents marked as State's Exhibit 25 related to the dealing charges. The State introduced, as State's Exhibit 25, certain records from Cause No. 52, including the charging information and probable cause affidavit file-stamped April 3, 2017, the Notice of Deposition file-stamped September 24, 2018 stating the deposition of the C.I. was scheduled for October 4, 2018, the Failure to Appear Warrant indicating Blackstock failed to appear in court on October 8, 2018, the court's October 31, 2019 order entering judgment of conviction, and a sentencing order dated November 25, 2019.[3] Blackstock's defense counsel objected and argued "[i]t's not relevant to this case and also the . . . officer has already testified that he . . . realizes that Mr. Blackstock had a pending case, he realized that he pled guilty and anything else would be cumulative and unnecessary." *Id.* at 154. The court stated "there was testimony in cross examination that at least in part dealt with the sentencing a person may or may not receive, and so the sentence order arguably is relevant to the material or the testimony that was brought out in cross examination . . . of Detective Ward."

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[3] The sentencing order indicates the court in Cause No. 52 sentenced Blackstock to concurrent terms of three years for each of his level 5 felony convictions. The exhibit also included an order dated November 25, 2019, stating Blackstock had been found guilty of criminal contempt and ordering him to serve ninety days.

Id. at 156. The court admitted State's Exhibit 25. The jury found Blackstock guilty of conspiracy to commit murder as a level 2 felony. The court sentenced Blackstock to twenty-four years.

Discussion

[9] Blackstock argues the trial court abused its discretion in admitting State's Exhibits 1 and 25. With respect to State's Exhibit 1, he argues "[s]urely a less prejudicial picture of Blackstock could have been provided and used at trial in order to identify him with a dreadlock hairstyle other than a mug shot." Appellant's Brief at 12. With respect to State's Exhibit 25, he states that the court's "rationale for admitting into evidence the fact that [he] had charges pending at the time of the present case was that it related to [his] intent and or motive toward [the C.I.]" and argues that "[t]he motive or intent is . . . extinguished when the controlled buy case was concluded and [he] was sentenced, making the conviction of the controlled buy case not relevant." *Id*. at 15.

[10] We generally review the trial court's ruling on the admission of evidence for an abuse of discretion. *Noojin v. State*, 730 N.E.2d 672, 676 (Ind. 2000). Ind. Evidence Rule 401 provides that evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action. Ind. Evidence Rule 403 provides "[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." Ind. Evidence Rule 404(b) provides 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."

[11] Under Rule 404(b), the court must (1) 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) balance the probative value of the evidence against its prejudicial effect pursuant to 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). 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 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).

[12] In addition, Ind. Appellate Rule 66(A) provides:

> No error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting relief or reversal on appeal where its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.

[13] The Indiana Supreme Court recently held:

> When an appellate court must determine whether a non-constitutional error is harmless, Rule 66(A)'s "probable impact test" controls. Under this test, the party seeking relief bears the burden of demonstrating how, in light of all the evidence in the case, the error's probable impact undermines confidence in the outcome of the proceeding below. *See Mason v. State*, 689 N.E.2d 1233, 1236-1237 (Ind. 1997); [Edward W. Najam, Jr. & Jonathan B. Warner, *Indiana's Probable-Impact Test for Reversible Error*, 55 Ind. L. Rev. 27,] 50-51 [(2022)]. Importantly, this is not a review for the sufficiency of the remaining evidence; it is a review of what was presented to the trier of fact compared to what should have been presented. And when conducting that review, we consider the likely impact of the improperly admitted or excluded evidence on a reasonable, average jury in light of all the evidence in the case. *See Tunstall v. Manning*, 124 N.E.3d 1193, 1200 (Ind. 2019). Ultimately, the error's probable impact is sufficiently minor when—considering the entire record—our confidence in the outcome is not undermined.

Hayko v. State, 211 N.E.3d 483, 492 (Ind. 2023).

[14] The record reveals that the State introduced State's Exhibit 1 to show Blackstock's appearance at the time of his arrest. To the extent the jury could infer the photograph was a mugshot or taken in connection with Blackstock's arrest, the jury heard evidence that Blackstock had a nickname or a street name of "Dread," Transcript Volume III at 39, 80, 153, 195. The jury also heard

Detective Ward's testimony that there was a correlation between Blackstock's appearance in State's Exhibit 1 and his nickname as "he wore his hair in dreadlocks," *id*. at 39, and Office Glover's testimony that Blackstock's appearance in the courtroom was different than his appearance when he was arrested in 2019 because "[h]is hairstyle has changed" and "[t]hen he had dreadlocks." *Id*. at 153. The jury also heard evidence regarding Blackstock's sale of drugs to the C.I. and the resulting charges, the scheduled deposition of the C.I., Louden's testimony regarding Blackstock's participation in the conspiracy to murder the C.I., and Blackstock's arrest in April 2019. We cannot say that State's Exhibit 1 was not relevant or that the probative value of the exhibit was substantially outweighed by the danger of unfair prejudice. Further, the probable impact of any error in admitting the photograph, in light of all the evidence in the case, is sufficiently minor so as not to affect Blackstock's substantial rights. Reversal is not required on this basis.

[15] As for the documents related to Cause No. 52 admitted as State's Exhibit 25, Blackstock acknowledges that "[t]he fact that the controlled buy case was pending is relevant and possibly goes toward intent," but challenges the admission of the judgment of conviction and sentencing order as unduly prejudicial. Appellant's Brief at 15. The Cause No. 52 documents revealed the three charges against Blackstock for dealing in narcotics and methamphetamine, the date the charges were filed, the severity of the charges, and the fact a deposition of the C.I. was scheduled for October 4, 2018, at the prosecutor's office. Further, defense counsel asked Detective Ward about the

possible range of sentences which Blackstock faced in connection with the level 5 felonies charged under Cause No. 52. We find the Cause No. 52 documents, including the judgment of conviction and sentencing order, were not introduced to show Blackstock's propensity to engage in crime or that his behavior was in conformity with a character trait. Rather, the evidence was introduced to establish Blackstock's motive for participating in the conspiracy to murder the C.I. We also find the probative value of State's Exhibit 25 was not substantially outweighed by the danger of unfair prejudice. Further, even assuming the trial court erred in admitting the judgment of conviction and sentencing order, we must consider the likely impact of the evidence on a reasonable, average jury in light of all the evidence in the case. The court instructed the jury regarding the presumption of innocence, not to convict Blackstock on suspicion or speculation, and that the State must prove each element of the crime charged beyond a reasonable doubt. The probable impact of any error in admitting the challenged Cause No. 52 documents, in light of all the evidence in the case, is sufficiently minor so as not to affect Blackstock's substantial rights. Reversal on this basis is not warranted.

[16] For the foregoing reasons, we affirm Blackstock's conviction for conspiracy to commit murder.

[17] Affirmed.

Crone, J., and Robb, Sr.J., concur.