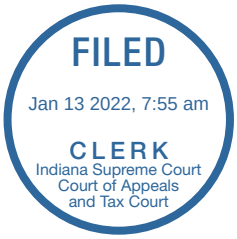
MEMORANDUM DECISION



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IN THE COURT OF APPEALS OF INDIANA

Joshua Sprinkle,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 13, 2022

Court of Appeals Case No. 21A-CR-1604

Appeal from the Marion Superior Court

The Honorable Amy Jones, Judge

Trial Court Cause No. 49D34-2003-CM-12487

Weissmann, Judge.

[1] Joshua Sprinkle asks for a new trial, arguing that his conviction relied on inadmissible hearsay that violated the Confrontation Clause of the Sixth Amendment of the United States Constitution. Finding the hearsay admission was harmless error and the claim under the Confrontation Clause waived, we affirm.

Facts

[2] Officer Joseph Charles was looking for a black SUV covered in dirt, which was reported to be driving recklessly around an Indianapolis neighborhood. He located the truck when it sped behind him. In his rearview mirror, Officer Charles observed that a white man wearing a white sweatshirt was driving, but he could not make out the man's facial features. Officer Charles attempted to follow the SUV but quickly lost sight of it.

[3] About 5 minutes later, Officer Charles found the SUV, parked and empty. Officer Charles ran the plate and discovered the SUV was registered to Joshua Sprinkle. As Officer Charles was running the plate, a bystander approached and advised that he had seen a white man exit the SUV and run down the street. Officer Charles went in the direction the bystander indicated and found Sprinkle—a white man wearing a white sweatshirt—peeing on a car in his driveway. After some evasive maneuvers on Sprinkle's part, Officer Charles detained Sprinkle and noticed that his breath smelled like alcohol. Sprinkle subsequently failed two sobriety tests, and a blood draw indicated his blood alcohol concentration was 0.231%.

[4] The State charged Sprinkle with 6 counts: (1) operating a vehicle while intoxicated endangering a person, a Class A misdemeanor; (2) operating a vehicle with an ACE of 0.15 or more, a Class A misdemeanor; (3) operating a vehicle while intoxicated, a Class C misdemeanor; (4) resisting law enforcement by resisting, obstructing or interfering, a Class A misdemeanor; (5) resisting law enforcement by fleeing, a Class A misdemeanor; and (6) driving while suspended, a Class A infraction.

[5] At Sprinkle's bench trial, Officer Charles gave the following testimony:

> There was a gentleman working on a car on the street, walked up and said to me hey, I'm not going to give you my name, I want to remain anonymous but I saw a white male get out of that vehicle and . . . he said that he had witness[ed] a white male get out and run down [the street].

Tr. Vol. II, pp. 20-23. Sprinkle objected to the testimony as inadmissible hearsay. The State argued that the testimony fell under the hearsay exception for present sense impressions, and the trial court overruled the objection. *Id.* at 21.

[6] The trial court found Sprinkle guilty on all counts except the Class A infraction. In rendering its verdict, the court stated that the bystander's statement was "an important factor in this case." *Id.* at 36. The court then sentenced Sprinkle to a year in prison. Sprinkle now appeals.

Discussion and Decision

[7] Sprinkle argues that the trial court admitted Officer Charles' testimony about the bystander's statement in violation of the Indiana evidentiary rule against hearsay. He further argues that this erroneous admission was so prejudicial that he is owed a new trial. We hold that the admission of hearsay, though in error, was harmless.[1]

I. Hearsay

[8] A trial court has broad discretion to admit evidence, including testimony. *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). "We therefore disturb its ruling only if it amounts to an abuse of discretion, meaning the court's decision is clearly against the logic and effect of the facts and circumstances or it is a misinterpretation of the law." *Id.* Sprinkle argues that the trial court abused its discretion when it permitted the testimony of Officer Charles as to what the unidentified bystander said because it was inadmissible hearsay.

[9] Hearsay is an out-of-court statement offered for the truth of the matter it asserts. Ind. Evidence Rule 801(c). Officer Charles' testimony as to what the bystander "said" fits this definition. Tr. Vol. II, p. 23. The bystander was not testifying at a trial or hearing when he told Officer Charles where the driver went, and the

[1] Sprinkle also claims that the admission violated the Confrontation Clause of the United States Constitution. Because Sprinkle failed to object on these grounds at trial, however, the issue is waived. *See, e.g.*, *Nix v. State*, 158 N.E.3d 795, 800 (Ind. Ct. App. 2020); *Small v. State*, 736 N.E.2d 742, 747 (Ind. 2000) ("A defendant may not raise one ground for objection at trial and argue a different ground on appeal.").

State presented the bystander's statement to show that whoever was driving the SUV ran off in the same direction Officer Charles found Sprinkle. *See, e.g.*, *Blount*, 22 N.E.3d at 565 (holding detective's testimony that witnesses told him they believed defendant fired a gun to be inadmissible hearsay).

[10] Hearsay is generally inadmissible, though there are some exceptions. *See* Ind. Evidence Rules 802, 803, 804. The State argues that the present sense impression exception applies here. A present sense impression is a "statement describing or explaining an event, condition, or transaction, made while or immediately after the declarant perceived it." Evid. R. 803(1). This exception is justified by "the assumption that the lack of time for deliberation provides reliability." *Mack v. State*, 23 N.E.3d 742, 755 (Ind. Ct. App. 2014) (quoting 13 *Robert Lowell Miller, Jr., Ind. Prac. Ser.* § 803.101 at 802 (3d ed. 2007)); *see also Chambers v. Mississippi*, 410 U.S. 284, 299 (1973) ("A number of exceptions have developed over the years to allow admission of hearsay statements made under circumstances that tend to assure reliability and thereby compensate for the absence of the oath and opportunity for cross-examination."). To satisfy the present sense impression exception, a statement must: (1) describe or explain an event or condition; (2) during or immediately after its occurrence; and (3) is based upon the declarant's perception of the event or condition. *Hurt v. State*, 151 N.E.3d 809, 814 (Ind. Ct. App. 2020).

[11] Only the second requirement is at issue here. We agree with Sprinkle that the bystander's statement was not during or immediately after the occurrence he described. The State speculates that the bystander approached Officer Charles

"within a minute or two" of the event. Appellee's Br., p. 11. But at trial, the prosecutor postulated, "I believe it was at the very most five minutes, probably closer to two or three minutes. . . ." Tr. Vol. II, p. 21. Even "a few minutes" can be "ample time for a declarant to deliberate and possibly fabricate a statement." *Mack v. State*, 23 N.E.3d 742, 755 (Ind. Ct. App. 2014). And based on the plain meaning of the phrase, a statement made several minutes after an incident was not made "immediately after." *See Immediate*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/immediate (last visited December 6, 2021) (defining "immediate" as "occurring, acting, or accomplished without loss or interval of time."); *see also Amos v. State*, 896 N.E.2d 1163 (Ind. Ct. App. 2008) (finding victim relayed details of her conversation with defendant "immediately after" it occurred when she put her sister on hold to answer defendant's call and resumed call with sister as soon as defendant hung up).

[12] Erroneously admitted hearsay only requires reversal if it prejudices the defendant's substantial rights. *Blount*, 22 N.E.3d at 564. Generally, we presume that the court in a bench trial renders its decision solely on the basis of relevant and probative evidence. *Konapsek v. State*, 946 N.E.2d 23, 28 (Ind. 2011). A defendant may overcome this presumption by showing that the trial court admitted the evidence over a specific objection. *Id.* at 30. If a defendant does overcome this presumption, we engage in harmless error analysis. *Id.* "The error is harmless if the reviewing court is satisfied that the conviction is supported by substantial independent evidence of guilt so that there is no

substantial likelihood that the challenged evidence contributed to the conviction." *Id.* (cleaned up).

[13] Though the trial court said that the bystander's statement was "an important factor in its guilty verdict," this evidence was cumulative of ample other evidence cited by the trial court in support of the guilty verdict. Officer Charles testified that Sprinkle's car was the same car he had observed being driven recklessly and that Sprinkle's clothing matched the driver's clothing. This was substantial, independent evidence of Sprinkle's guilt beyond the bystander's statement. Accordingly, we are not compelled to reverse Sprinkle's conviction.

[14] The trial court is affirmed.

Najam, J., and Vaidik, J., concur.