

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Demareyon Robinson,

*Appellant-Defendant,*

v.

State of Indiana,

*Appellee-Plaintiff.*

June 8, 2023

Court of Appeals Case No.  
22A-CR-2593

Appeal from the Madison Circuit  
Court

The Honorable David A. Happe,  
Judge

Trial Court Cause No.  
48C04-2011-MR-2498

**Memorandum Decision by Judge Bradford**  
Judges Riley and Weissmann concur.

**Bradford, Judge.**

## Case Summary

- [1] Demareyon Robinson was charged with and has been found guilty of the 2020 murder of Quincy Malone. On appeal, Robinson contends that the trial court committed fundamental error by admitting certain statements that he had made to police into evidence at trial. Because we conclude otherwise, we affirm.

## Facts and Procedural History

- [2] During the early afternoon hours of October 29, 2020, Malone and his girlfriend, Sierra Thompson, were sitting in the living room of their home in Anderson watching television. At approximately 1:00 p.m., Robinson and Kyrell Cole arrived and joined Malone and Thompson. Malone's girlfriend recognized both Robinson and Cole.
- [3] At some point, another individual, who was wearing a mask, arrived and opened the front door. Robinson approached Malone, pointed a gun at his chest, and said "don't move." Tr. Vol. I p. 147. Soon thereafter, Thompson heard multiple gunshots. Thompson, however, did not see who had fired the gunshots because she had hidden under a blanket. After the gunshots had been fired, Robinson fled out the front door and Cole fled out the back door. Malone had suffered a close-range gunshot wound to the chest and "was bleeding everywhere" with blood "just squirting" from his body. Tr. Vol. I pp. 149, 156. Malone died as a result of his injuries. At various points, Thompson

identified Robinson as the individual who had shot Malone before recanting each statement and claiming that she was not sure who had shot Malone.<sup>1</sup>

[4] On November 2, 2020, the State charged Robinson with murder, a felony. After “several” failed attempts to arrest him, Robinson was arrested in March of 2021, by U.S. Marshals in Fishers. Tr. Vol. II p. 47. Robinson was transported to the Anderson Police Department where he was interrogated by Anderson Police Detective Norman Rayford. As Detective Rayford finished reading Robinson his rights, the following exchange occurred between the two:

[Det. Rayford]: I’m going to question you about the death of Quincy Malone.  
[Robinson]: Uh-huh.  
[Det. Rayford]: If you’re willing to talk to me, sign.  
[Robinson]: All right. I just know I didn’t kill nobody.  
[Det. Rayford]: Okay.  
[Robinson]: So I ain’t do nothing.  
[Det. Rayford]: Okay.  
[Robinson]: So nothing -- I didn’t have nothing to do with it. Nothing --  
[Det. Rayford]: You didn’t have nothing to do with it.  
[Robinson]: I ain’t kill nobody.  
[Det. Rayford]: Okay. All right. I’m going to sign my name here. And you know people are putting you there, right?  
[Robinson]: Yeah.  
[Det. Rayford]: Okay. You’re not saying that you weren’t there. You just said you didn’t have nothing to do with it. You didn’t shoot nobody.

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<sup>1</sup> Thompson admitted at trial that she had not initially identified the individuals involved because cooperating with the police is “frowned upon” in her neighborhood and she had been afraid that someone would “come back to the house.” Tr. Vol. I pp. 160, 159.

[Robinson]: Right. I ain't have nothing -- I was there, but I didn't have nothing to do with any of that.

Ex. Vol. pp. 128–29. As the interrogation continued, Robinson continued to assert that he and Malone had been “cool” and that he “didn’t kill nobody.”

Ex. Vol. p. 129. Robinson told Detective Rayford that he had been at Malone’s home with Malone, Malone’s girlfriend, and another male, and that he had left after about twenty minutes because somebody “with a mask on” kicked in the front door. Ex. Vol. p. 138. Robinson indicated that he had run from the home because the masked man had been armed with a gun and that as he was running out, he had heard four or five “shots go off.” Ex. Vol. p. 142. As the interrogation continued, the following exchange occurred:

[Robinson]: I went out the front door.

[Det. Rayford]: Okay. I’m not saying you didn’t, but I’m saying it was it was two guys that came up to that door. One goes in, as you described the door, the main door goes inside the house. Soon as he gets in, he came right back out running. And I never seen him with a gun. And the guy on the outside, he never went in. So -- and I’ll look at the video again, to see if you actually ran out. I don’t remember seeing you run out.

[Robinson]: Can you show me the video?

[Det. Rayford]: Yeah, I can. I’m not going to show it all to you, because I can’t do that. I can’t show it all. But at this point, I’m going to show you where these two guys -- if we can’t have a video in here, I’ll create what’s called still images, where I’ll take a screen shot where you can see the guys. You see what I’m saying?

[Robinson]: Yeah.

[Det. Rayford]: It’s important because you’ve got to tell the truth, or just don’t say nothing at all. Cause it ain’t going to help you to bullsh[\*\*]. You know what I’m saying?

[Robinson]: Then I'm done talking.  
[Det. Rayford]: Okay. Because, what, you just going to  
bullsh[\*\*]. Okay. All right.  
[Robinson]: I didn't lie to you, though.  
[Det. Rayford]: Okay....

Ex. Vol. pp. 148–49. After Detective Rayford showed Robinson a copy of the warrant that had been prepared for his arrest, the exchange continued as follows:

[Robinson]: So they just go off what people saying?  
[Det. Rayford]: With murder, I mean, you got -- not only what people say, but you've got a dead body that was shot several times. So somebody shot and killed him. So -- and your name was mentioned, along with [Kyrell's]. And because you all left the scene -- and obviously you heard that he had been killed and you all didn't call the police, how do you think that make you look, man? Cause even if -- even if you didn't want to come up here and talk, you can get an attorney or find where the detective is and get even a phone sync, trying to clear your name. Why else run if you didn't kill him, or if you didn't know who killed him. Or if you weren't a part of who killed him. There's also rumors that you all went there to rob him of some weed or some dope.  
[Robinson]: That's not true.  
[Det. Rayford]: I'm telling you what's been said. Do you want to call your mom?  
[Robinson]: (No audible response.) Can you all show me the evidence?  
[Det. Rayford]: No. Especially because there is -- we can -- we can show you some, but we can't show you everything. And to (inaudible) it ain't even my case. But this ain't my first rodeo. Please believe me. It's not proper to show you evidence without the prosecutor and everyone being here. And because there is what they consider a co-conspirator with [Cole], it's his evidence,

also. So we don't want to hurt his case by showing you the evidence. Like say lab request reports, who all gave statements. You know what I'm saying. Cause we would have to respect your investigation the same. Ain't nobody going to show [Cole] evidence for or against you. It's just not proper. Now because there – you're saying you ran outside, I would be willing, and I know the detective would, he would be willing to show you that - the two people on the porch. And, again, I've never seen a third person run out that front door. Maybe the other detective did, though. Cause I didn't look at it the whole time. I just looked at it to the point where [Malone] basically lost his life. It was clear when them two guys got up to that door, something happened in that house. For the one to not even go in. I mean, as soon as they get there, the other one just runs straight out. Something's going on. So -- and, again, you possibly could have ran out.

[Robinson]: I ran out -- I definitely ran out the front door.

[Det. Rayford]: Okay. I'm going to have the other detective come in. Do you think you would have questions of him about the investigation?

[Robinson]: No, I don't have any.

[Det. Rayford]: And just know, too, here, if something does happen where you choose to talk to me, you can let somebody at that jail know, or they will permit you to write a letter. You don't have to. I'm just letting you know it's an option. And I'm going to see if I can get that video or images. I'm a man of my word, so, you know, I'm going to try to see if we've got that.

Ex. Vol. pp. 150–53. After Detective Rayford brought some images into the interrogation room, Robinson continued to talk, including telling Detective Rayford that he “got grazed” by a bullet as he “was running out the door.” Ex. Vol. p. 156. Robinson then showed Detective Rayford a scar which Robinson claimed had come from being grazed by a bullet.

[5] A jury trial was conducted between August 29, and September 2, 2022. During trial, a redacted recording and transcript of Detective Rayford’s interrogation with Robinson was admitted into evidence without objection.<sup>2</sup> Robinson did not object to admission of his statements to Detective Rayford and argued that his statements supported his claim that he was not the individual who had shot Malone. At the conclusion of trial, the jury found Robinson guilty. On October 4, 2022, Robinson was sentenced to fifty-eight years of incarceration.

## Discussion and Decision

[6] Robinson contends that the trial court erred by admitting his statements to Detective Rayford. Generally, “[a] trial court has broad discretion to admit or exclude evidence.” *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). Upon review, “we reverse only if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it.” *King v. State*, 985 N.E.2d 755, 757 (Ind. Ct. App. 2013), *trans. denied*. An abuse of discretion occurs only when the trial court’s “decision is clearly against the logic and effect of the facts and circumstances.” *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001).

[7] Robinson did not object to the admission of the evidence at trial. As such, he must prove that the admission of the evidence resulted in fundamental error.

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<sup>2</sup> The parties agreed that a redacted version of the interrogation would be introduced before the jury, but a full copy of the interrogation was also admitted into the record without objection.

Fundamental error is an extremely narrow exception to the waiver rule where the defendant faces the heavy burden of showing that the alleged errors are so prejudicial to the defendant's rights as to make a fair trial impossible. In other words, to establish fundamental error, the defendant must show that, under the circumstances, the trial judge erred in not *sua sponte* raising the issue because alleged errors (a) constitute clearly blatant violations of basic and elementary principles of due process and (b) present an undeniable and substantial potential for harm. The element of such harm is not established by the fact of ultimate conviction but rather depends upon whether the defendant's right to a fair trial was detrimentally affected by the denial of procedural opportunities for the ascertainment of truth to which he otherwise would have been entitled. In evaluating the issue of fundamental error, our task in this case is to look at the alleged misconduct in the context of all that happened and all relevant information given to the jury—including evidence admitted at trial, closing argument, and jury instructions—to determine whether the misconduct had such *an undeniable and substantial effect on the jury's decision* that a fair trial was impossible.

We stress that a finding of fundamental error essentially means that the trial judge erred by not acting when he or she should have. Fundamental error is meant to permit appellate courts a means to correct the most egregious and blatant trial errors that otherwise would have been procedurally barred, not to provide a second bite at the apple for defense counsel who ignorantly, carelessly, or strategically fail to preserve an error.

*Ryan v. State*, 9 N.E.3d 663, 668 (Ind. 2014) (cleaned up, footnote omitted, emphases in original).

- [8] Robinson acknowledges that he did not object to the admission of the challenged evidence at trial but argues that the admission of the evidence



constituted fundamental error because the admission constituted a violation of his right to remain silent as established in *Miranda v. Arizona*, 384 U.S. 436 (1966). The Indiana Supreme Court has held that

[a]n assertion of the *Miranda* right to remain silent must be clear and unequivocal. In determining whether a defendant has asserted this right, the statements are considered as a whole. Mere expressions of reluctance to talk do not invoke the right to remain silent. This Court has held several times that raising doubts or expressing concern about continuing followed by continued dialogue do not unambiguously assert the right to remain silent.

*Wilkes v. State*, 917 N.E.2d 675, 682 (Ind. 2009) (internal citations omitted).

[9] In support, Robinson points to our opinion in *Risinger v. State*, 137 N.E.3d 292 (Ind. Ct. App. 2019), *trans. denied*. In that case, Risinger stated that he was “done talking” because he felt “like [he was] getting pestered.” *Id.* at 299. Considering the circumstances surrounding Risinger’s statement that he was “done talking,” we concluded that Risinger had unequivocally invoked his *Miranda* rights. *Id.* Robinson claims that similar to the statement in *Risinger*, his statement that he was “done talking” amounted to an unequivocal invocation of his *Miranda* rights. Appellant’s Br. p. 10. However, upon review, we conclude that the circumstances surrounding Robinson’s statement are distinguishable from those presented in *Risinger*.

[10] The statement at issue in *Risinger* was an unequivocal invocation of Risinger’s right to remain silent. While the statement at issue in this case is similar to the

statement made in *Risinger*, based on the circumstances of this case, we cannot say that Detective Rayford violated Robinson’s right to remain silent by continuing on with his conversation with Robinson. Again, in this case, the following exchange occurred between Detective Rayford and Robinson:

[Det. Rayford]: It’s important because you’ve got to tell the truth, or just don’t say nothing at all. Cause it ain’t going to help you to bullsh[\*\*]. You know what I’m saying?  
[Robinson]: Then I’m done talking.  
[Det. Rayford]: Okay. Because, what, you just going to bullsh[\*\*]. Okay. All right.  
[Robinson]: I didn’t lie to you, though.  
[Det. Rayford]: Okay....

Ex. Vol. p. 149. However, unlike in *Risinger*, Robinson then engaged Detective Rayford further by continuing the conversation and renewing his prior request to review the evidence against him. Thus, Detective Rayford cannot be said to have violated Robinson’s right to remain silent because it was Robinson, not Detective Rayford, who initiated the continued conversation after Robinson had initially indicated that he was “done talking.” See *Wilkes*, 917 N.E.2d at 682–83 (finding no violation of the defendant’s right to remain silent when, immediately after saying “I don’t want to talk about it no more,” the defendant continued conversing with the detective); *Haviland v. State*, 677 N.E.2d 509, 514 (Ind. 1997) (finding no violation of the defendant’s right to remain silent when, after saying that he was “through with this,” defendant continued to answer questions without pausing or indicating in any manner that he would no longer respond); and *Keller v. State*, 987 N.E.2d 1099, 1112–13 (Ind. Ct. App. 2013)

(finding no violation of the defendant's right to remain silent when, after saying that "I don't want to talk to you no more then," defendant immediately continued conversing with police), *trans. denied*.

[11] Furthermore, even if the trial court could be said to have erred in admitting Robinson's statements to Detective Rayford, Robinson invited said error. "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, 874–75 (Ind. 2022). "Under this doctrine, a party may not take advantage of an error that she commits, invites, or which is the natural consequence of her own neglect or misconduct." *Wright v. State*, 828 N.E.2d 904, 907 (Ind. 2005) (internal quotation omitted).

[12] The record reveals that Robinson's statements to Detective Rayford were central to the argument he advanced at trial, *i.e.*, that he was an innocent bystander. During closing argument, Robinson's counsel repeatedly referred to Robinson's statements to Detective Rayford, claiming that Robinson's version of the events "completely matches the physical evidence in this case, and also completely matches [the] surveillance cameras." Tr. Vol. III p. 54. By highlighting and relying on Robinson's statements to Detective Rayford, Robinson engaged in a rational, albeit unsuccessful, trial strategy. Robinson, therefore, has invited any error that may have occurred in the admission of the challenged evidence and cannot now change strategy to challenge the admission of the evidence on appeal.

[13] The judgment of the trial court is affirmed.

Riley, J., and Weissmann, J., concur.