

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeffery Wayne Moore,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 12, 2021

Court of Appeals Case No.
20A-CR-1941

Appeal from the Boone Circuit
Court

The Honorable Lori N. Schein,
Judge

Trial Court Cause No.
06C01-1812-CM-2384

Weissmann, Judge.

- [1] During a routine traffic stop, police detected the odor of marijuana coming from inside a vehicle in which Jeffrey Moore was a passenger. A subsequent search of the vehicle revealed a gun, found inside a jacket behind Moore's seat, but no magazine or ammunition. Moore voluntarily told police that he had placed the gun inside the vehicle and was taking it to Indianapolis. But Moore did not have a license to carry a handgun.
- [2] Moore appeals his conviction for carrying a handgun in a vehicle without a license, a Class A misdemeanor. He argues that police did not have probable cause to search the vehicle and, therefore, the trial court committed fundamental error in admitting evidence of the gun at trial. Moore also argues that the State presented insufficient evidence that the gun was designed to fire without a magazine and, therefore, the State failed to prove the gun was a "handgun" under Indiana law.
- [3] Concluding the fundamental error doctrine is inapplicable and finding sufficient evidence that the gun was designed to expel a projectile by means of an explosion, we affirm.

Facts

- [4] On December 16, 2018, at approximately 4:30 a.m., Boone County Sheriff's Officer Christopher Helmer initiated a traffic stop of a vehicle he observed traveling well under the posted speed limit and making unsafe lane movements.

Moore was in the front passenger seat. The driver was the vehicle's only other occupant.

[5] While speaking with the driver and Moore, Officer Helmer detected the odor of marijuana coming from inside the vehicle. His subsequent search of the vehicle revealed a gun inside the pocket of a jacket located behind the front passenger seat. The gun did not have a magazine or any ammunition in its chamber, and none were found in the vehicle.

[6] Officer Helmer detained Moore upon finding the gun, and Moore asked to speak with the officer "[a]lmost immediately." Tr. Vol. II, p. 12. After being read his Miranda rights, Moore admitted to Officer Helmer that he did not have a license to carry a handgun but had placed the gun in the vehicle. Moore further advised that "he had taken the gun from his sister in Gary and was bringing it back to Indianapolis." *Id.*

[7] Moore was charged with Class A misdemeanor carrying a handgun in a vehicle without a license. At a bench trial, Moore's defense counsel stated, "No objection," when the State offered the gun into evidence. Tr. Vol. II, p. 14. Defense counsel also lodged no objections to Officer Helmer's testimony concerning the traffic stop, the vehicle search, or Moore's statements about the gun. Moore was found guilty and sentenced to two days in jail, already served. He now appeals his conviction.

Discussion and Decision

I. Fundamental Error

[8] Moore argues that the trial court erred in admitting the gun into evidence because Officer Helmer lacked probable cause to search the vehicle in which the gun was found. We normally review the trial court's admission of evidence for abuse of discretion. *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013). But "[a] contemporaneous objection at the time the evidence is introduced at trial is required to preserve the issue for appeal[.]" *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). Moore concedes that he waived his challenge to the gun's admissibility by not objecting to its admission at trial. Appellant's Br. p. 24. However, he seeks to avoid this waiver by establishing the existence of fundamental error.

[9] The fundamental error doctrine is an exception to the general rule that failure to object at trial precludes consideration of the issue on appeal. *Benson v. State*, 762 N.E.2d 748, 755 (Ind. 2002). The exception, however, is "inapplicable" where a defendant affirmatively states that he has no objection to the admission of evidence. *Halliburton v. State*, 1 N.E.3d 670, 679 (Ind. 2013); *see also Harrison v. State*, 258 Ind. 359, 363, 281 N.E.2d 98, 100 (1972) ("The appellant cannot on the one hand state at trial that he has no objection to the admission of evidence and thereafter in this Court claim such admission to be erroneous."); *Winston v. State*, 165 Ind. App. 369, 376, 332 N.E.2d 229, 233 (1975) ("[O]nly the

interested party himself can really know whether the introduction or exclusion of a particular piece of evidence is in his own best interests.”).

[10] Here, the fundamental error doctrine is inapplicable because Moore explicitly stated, “No objection,” when the gun was admitted into evidence. Tr. Vol. II, p. 14; *see Halliburton*, 1 N.E.3d at 679. Moore acknowledges as much. Appellant’s Brief p. 25. But he claims the fundamental error doctrine should transcend his express acquiescence to the admission of the gun because it was seized during an unlawful search of the vehicle. Our Supreme Court, however, has long held that the admission of evidence obtained from an unlawful search and seizure “does not elevate that issue to the status of fundamental error that may be raised for the first time on appeal.” *Swinehart v. State* (1978), 268 Ind. 460, 376 N.E.2d 486, 491; *see also Brown v. State*, 929 N.E.2d at 207; *accord Covelli v. State*, 579 N.E.2d 466, 471 (Ind. Ct. App. 1991), *trans. denied*.

[11] Fundamental error is an “extremely narrow” exception, “available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for harm cannot be denied, and which violation is so prejudicial to the rights of the defendant as to make a fair trial impossible.” *Jewell v. State*, 887 N.E.2d 939, 942 (Ind. 2008). In contrast, “the exclusionary rule that prohibits introduction into evidence of unlawfully seized materials is an example of a rule that does not go to the fairness of the trial.” *Membres v. State*, 889 N.E.2d 265, 272 (Ind. 2008).

Otherwise stated, we do not exclude the products of unlawful searches and seizures because they are unreliable or immaterial

or unduly prejudicial evidence.” *Id.* (citing *Stone v. Powell*, 428 U.S. 465, 489-90, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976) (explaining that evidence inadmissible under the Fourth Amendment's exclusionary rule “is typically reliable and often the most probative information bearing on the guilt or innocence of the defendant”). Indeed, exclusion of this evidence is an obstacle to the truth-finding objective of trials. We nonetheless exclude it because that is the only effective means of deterring improper intrusions into the privacy of all citizens.

Membres, 889 N.E.2d 265 at 272. For the foregoing reasons, we reject Moore’s fundamental error claim.

II. Sufficiency of the Evidence

[12] Moore also argues that the State presented insufficient evidence to support his conviction for carrying a handgun in a vehicle without a license. When reviewing the sufficiency of the evidence to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence. *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

[13] To convict Moore, the State was required to prove that he “carr[ied] a handgun in any vehicle” without a license to carry a handgun. Ind. Code § 35-47-2-1(a). Moore does not dispute that he did not have a license to carry the gun found in

the vehicle, but he challenges the sufficiency of the State's evidence on several other grounds.

[14] First, Moore curiously claims that the State failed to prove he owned the vehicle in which the gun was found. Appellant's Br. p. 29. Moore goes no further with this claim, and neither shall we—except to note that vehicle ownership is not an element of the crime. *See* Ind. Code § 35-47-2-1(a) (prohibiting unlicensed carrying of handgun in “any vehicle”); *see* Ind. Code § 35-47-2-1(b)(4) (allowing unlicensed carrying of handgun in vehicle “owned . . . by another person” under circumstances not present here).

[15] Next, Moore fleetingly claims that the State failed to prove he carried the gun because it was found in the pocket of a jacket located behind the front passenger seat. Again, Moore goes no further. But the undisputed evidence establishes that Moore voluntarily admitted to placing the gun inside the vehicle for the purpose of transporting it Indianapolis. This admission, together with the gun found in the vehicle, sufficiently supports a finding that Moore carried the gun. *Cf. Youngblood v. State*, 515 N.E.2d 522, 526-27 (Ind. 1987) (“Even when a gun is not introduced as evidence the testimony of an eyewitness that the defendant was carrying a pistol . . . is sufficient to sustain a conviction for carrying a handgun without a license.”).

[16] Finally, Moore claims the State failed to prove that the gun was a “handgun,” as that term is used in the charging statute. Indiana Code § 35-47-1-6 generally defines a “handgun” as “any firearm capable of being fired with one hand or

having certain measurements.” *Staten v. State*, 844 N.E.2d 186, 187 (Ind. Ct. App. 2006), *trans. denied*. Indiana Code § 35-47-1-5 further defines a “firearm” as “any weapon that is capable of or designed to or that may readily be converted to expel a projectile by means of an explosion.” *Id.*

[17] Moore contends the State presented no evidence that the gun was designed to fire without a magazine, highlighting that Officer Helmer did not find a magazine in the vehicle. We conclude that the absence of a magazine relates to whether the gun is capable of expelling a projectile, not whether the gun was designed to do so. According to the plain language of the statutes, the State is not required to prove that a gun is operable to obtain a conviction for carrying a handgun without a license. *Manley v. State*, 656 N.E.2d 277, 279 (Ind. Ct. App. 1995). “That the handgun was *designed* to expel a projectile by means of an explosion is sufficient.” *Id.* (emphasis added). *See, e.g., State v. Gibbs*, 769 N.E.2d 594, 597 (Ind. Ct. App. 2002) (holding inoperable antique gun was a firearm because it was designed to expel projectiles by means of an explosion), *trans. denied*.

[18] Here, the gun itself was admitted into evidence along with an evidence box that identified it by make (SCCY), model (CPX-2), and caliber (9mm). Tr. Vol. III, p. 4. Officer Helmer specifically testified that he found the “firearm” inside the vehicle. Tr. Vol. II, p. 10. And he ensured that the gun was “secure and safe” before its admission. Tr. Vol. II, p. 13. From this evidence, the finder of fact could reasonably infer that the gun was designed to expel a projectile—namely 9-millimeter bullets—by means of an explosion.

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

Kirsch, J., and Altice, J., concur.