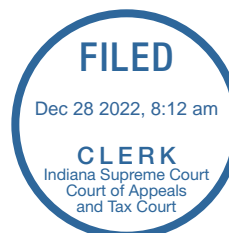


MEMORANDUM DECISION

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

Samuel J. Beasley
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Justin F. Roebel
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jessica Campbell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 28, 2022
Court of Appeals Case No.
22A-CR-1139
Appeal from the Delaware Circuit
Court
The Honorable Kimberly S.
Dowling, Judge
Trial Court Cause No.
18C02-1808-F1-4

Bailey, Judge.

Case Summary

[1] Jessica Campbell (“Campbell”) appeals her conviction for dealing in a controlled substance resulting in death, a Level 1 felony.¹ We affirm.

Issues

[2] Campbell raises the following two issues:

- I. Whether the trial court violated Campbell’s constitutional rights when it denied her pretrial motion to dismiss the amended charging information on the ground it was vague.
- II. Whether the trial court abused its discretion when it allowed the State to amend the charging information per state law.

Facts and Procedural History

[3] On the afternoon of July 30, 2019, Michael Wright (“Wright”) picked up Ashley Rudisill (“Rudisill”) from Anderson and drove her to Muncie. In Muncie, Wright drove Rudisill, who was eight months pregnant, to 12th Street where Rudisill paid Devyn Haffner (“Haffner”) for some heroin. Wright then drove Rudisill to Wright’s house, and Rudisill used the heroin in Wright’s bathroom. Rudisill “wasn’t happy” with the heroin and stated that it “wasn’t

¹ Ind. Code § 35-42-1-1.5(a); I.C. § 35-48-4-1(a).

worth it.” Tr. v. III at 175. Through texting, Rudisill subsequently attempted to obtain additional drugs from various sources, including Haffner and an individual identified as “Shell.” Ex. v. 5 at 89.

[4] Wright contacted Scott Brinker (“Brinker”), who was Campbell’s boyfriend, about buying some methamphetamine. Later that evening, Brinker and Campbell arrived at Wright’s house with methamphetamine and heroin. Campbell and Rudisill went into Wright’s bathroom for five to fifteen minutes. When she entered the bathroom, Campbell had some heroin in her possession. While Campbell and Rudisill were in the bathroom, Brinker sold Wright methamphetamine. After Campbell and Rudisill exited the bathroom, Campbell and Brinker left Wright’s house.

[5] Soon thereafter—at 11:52 p.m.—Rudisill texted Campbell to ask, “u got any boi,” which is a street name for heroin. Ex. v. 5 at 90. Campbell texted Rudisill in response, “Call me.” *Id.* Rudisill called Campbell at 11:54 and again at 12:09. Brinker and Campbell then returned to Wright’s house. Before exiting the vehicle, Campbell “weighed ... out” some heroin and took it inside Wright’s house. Tr. v. III at 249-50. Wright, who was in his bedroom, heard Rudisill and Campbell speaking, and the two women once again went into Wright’s bathroom for “[a] couple minutes.” *Id.* at 202. Campbell left Wright’s house about five to ten minutes after she had entered it. After Campbell left, Rudisill went into Wright’s bedroom and laid down on his bed.

- [6] Wright watched television in bed and did not go to sleep until approximately 3:00 a.m. on July 31, at which time Rudisill was still sleeping in the bed. Wright woke up that day at some time between 8:00 and 8:30 and discovered Rudisill lying face down on the floor in a hallway of his home. Wright called 9-1-1.
- [7] Emergency personnel arrived to find Rudisill lying next to a table on which there was a residue-covered spoon, two syringes, a black pouch, and Rudisill's cell phone. Another syringe was found on the floor next to Rudisill, and plastic baggies were found in the home. Subsequent testing showed that fentanyl was on the spoon and in the residue in two plastic baggies, and the presence of heroin was also indicated in one of those two plastic baggies. Swabs taken from the syringes indicated fentanyl on two of the three syringes.
- [8] A paramedic estimated based on Rudisill's body temperature that she had been unconscious for about thirty minutes. Rudisill was not breathing, did not have a pulse, and her pupils were "completely constricted, non-reactive." *Id.* at 121-22. The paramedic attempted CPR and administered oxygen and medication, including Narcan. Rudisill was transported to Ball Memorial Hospital where the baby was removed by cesarean section, and Rudisill was declared dead minutes later. The baby also had no heartbeat, and efforts to resuscitate the baby failed.

[9] That same day, a forensic pathologist at the hospital conducted an autopsy of Rudisill and sent blood, urine, and vitreous fluid² samples from her body to Axis Forensic Toxicology’s laboratory for testing. The laboratory received the fluids on August 2 and conducted tests of Rudisill’s blood and urine. The blood test indicated the presence of amphetamines, methamphetamine, fentanyl, and gabapentin (an anticonvulsant) but was negative for opiates. The concentration of gabapentin was below the therapeutic range.³ The concentration of methamphetamine was 52.4 ng/mL, which is within the therapeutic range of 10-100 ng/mL. The concentration of fentanyl was 5 ng/mL, which was above the therapeutic range of 1-3 ng/mL. The urine test indicated the presence of amphetamines, methamphetamine, a cocaine metabolite, fentanyl, and opiates—specifically, morphine and 6-monoacetylmorphine, which are the metabolites of heroin.

[10] On August 16, George Behonick (“Behonick”), a forensic toxicologist at Axis Forensic Toxicology, prepared a toxicology report containing the results of the testing of Rudisill’s fluids and sent it to the forensic pathologist. The toxicology report stated in small print at the end of the second page: “Specimens will be kept for at least one year from the date of initial report.” *Id.* at 211. The toxicology report also stated that “[v]olatile [t]esting” was not performed on Rudisill’s vitreous fluid specimen “[d]ue to negative blood, tissue, and/or urine

² Vitreous fluid “is the fluid in the eyes.” Tr. v. III at 11.

³ The therapeutic range is the range of levels at which a drug would be prescribed for therapeutic use.

volatile (Acetone, Ethanol, Imopropanol, and Methanol) results[.]” *Id.* at 214. Based on the autopsy and toxicology results, the pathologist prepared an autopsy report in which she concluded that Rudisill’s cause of death was “[a]cute mixed drug intoxication.” *Ex. v. 5* at 202.

[11] On August 7, 2018, the State charged Campbell with dealing in a controlled substance resulting in death, a Level 1 felony. The charging information stated:

The undersigned says that between July 30, 2018[,] and July 31, 2018[,] in Delaware County, State of Indiana, Jessica M. Campbell did knowingly deliver heroin, a controlled substance, in violation of IC 35-48-4-1, and the heroin when it was used, injected, inhaled, absorbed or injected [sic] resulted in the death of Ashley Rudisill, a human being who used the heroin, contrary to the form of the statutes in such cases made and provided by LC. 35-42-1-1.5(a) and against the peace and dignity of the State of Indiana.

App. v. II at 45.

[12] Following multiple continuances of the proceedings in Campbell’s case, on February 3, 2021, the State moved to amend the charging information to state as follows:

The undersigned says that between July 30, 2018[,] and July 31, 2018[,] in Delaware County, State of Indiana, Jessica M. Campbell did knowingly deliver heroin and/or fentanyl, a controlled substance, in violation of IC 35-48-4-1, IC 35-48-4-1.1, and the heroin and/or fentanyl when it was used, injected, inhaled, absorbed or injected [sic] resulted in the death of Ashley Rudisill, a human being who used the heroin, contrary to the form of the statutes in such cases made and provided by I.C. 35-

42-1-1.5(a) and against the peace and dignity of the State of Indiana.

Id. at 92. Campbell objected to the amendment of the information, and the court set the matter for a hearing on February 25. On February 24, the State filed a request to amend the charging information a second time to read as follows:

The undersigned says that between July 30, 2018[,] and July 31, 2018[,] in Delaware County, State of Indiana, Jessica M. Campbell did knowingly deliver a controlled substance, in violation of IC 35-48-4-1, and the controlled substance when it was used, injected, inhaled, absorbed or injected [sic] resulted in the death of Ashley Rudisill, a human being who used the controlled substance, contrary to the form of the statutes in such cases made and provided by IC 35-42-1-1.5(a) and against the peace and dignity of the State of Indiana.

Id. at 102.

[13] On February 25, the court had a hearing on the motions to amend the information at which Campbell stated that her objection to the second amendment was the same as her objection to the first amendment. On February 26, the court granted the State's February 24 motion to amend the information. At an April 12, 2021, initial hearing, Campbell made a continuing objection to the amended information. On April 25, Campbell filed a motion to dismiss the second amended information on the grounds that it was unconstitutionally vague, and "material, exculpatory evidence" had been

“destroyed” by the State. *Id.* at 165. Following a hearing, the trial court denied the motion to dismiss in an order dated May 13.

[14] Campbell’s five-day jury trial began on December 21, 2021. Both the autopsy and toxicology reports for Rudisill were admitted into evidence as the State’s exhibits. Behonick and Dr. Julian Clouse (“Dr. Clouse”), the forensic pathologist who completed the autopsy report, testified as expert witnesses for the State. Dr. Clouse testified that Rudisill’s cause of death was “acute mixed drug intoxication” including “toxic levels” of fentanyl and methamphetamine. *Tr. v. III* at 15. Both experts testified that:

- drugs appear first in a person’s blood, and only after the drug has been processed by the body does it appear in the person’s urine;
- if a drug is not in a person’s blood, it is very unlikely to have contributed to the person’s death;
- if a drug is found only in a person’s urine, it is very unlikely that that drug contributed to the person’s death;
- a drug test of vitreous fluid is not as accurate as a drug test of blood;
- drug tests of blood are the most accurate tests to detect drugs;
- fentanyl—an opioid—and methamphetamine were found in Rudisill’s blood and urine;

- heroin was found in Rudisill's urine but not her blood; therefore, ingestion of heroin did not play a significant role in Rudisill's death;
- Rudisill's blood contained an acute mixture of "toxic levels" of fentanyl and methamphetamine, tr. v. III at 15, and use of "either one alone or in combination could result in death," *id.* at 101.

[15] Behonick testified that:

- fentanyl is sometimes "illicitly" manufactured as a "substitute" for heroin, and buyers and users sometimes do not know they are buying or using fentanyl instead of heroin, tr. v. III at 66;
- "to the naked eye," fentanyl and heroin in powder form may look the same, and the only way to distinguish them would be with a "chemical analysis," *id.* at 67;
- tests of vitreous fluid are most useful as "supplemental" tests for detecting the existence of blood alcohol and metabolites of heroin, *id.* at 55;
- drugs are detectable in vitreous fluid at "about the same time" as they are detectable in urine, *id.*;
- per Axis Forensic Toxicology procedures, the laboratory only tests vitreous fluid if alcohol is present in the blood, and, since there was no alcohol detected in Rudisill's blood, the laboratory did not test her vitreous fluid.

[16] The jury found Campbell guilty as charged, and the court sentenced her to forty years executed in the Department of Correction. This appeal ensued.

Discussion and Decision

Constitutionality of Amended Information

- [17] Campbell asserts that the trial court erred in denying her motion to dismiss the amended information on the grounds that it was unconstitutionally vague. Denial of a motion to dismiss is reviewed for an abuse of discretion. *Study v. State*, 24 N.E.3d 947, 950 (Ind. 2015). However, we review matters of law, including questions of constitutionality, de novo. *E.g.*, *Tiplick v. State*, 43 N.E.3d 1259, 1262 (Ind. 2015).
- [18] Both the federal and State constitutions require that an accused be informed of the nature and cause of the accusation against him or her. *E.g.*, *Williams v. State*, 677 N.E.2d 1077, 1080 (Ind. Ct. App. 1997) (referencing U.S. Const. amend. VI and Ind. Const. art. I, § 13); *see also* Ind. Code § 35-34-1-2 (requiring that the charging information “shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged”). The accused must be informed of the crime of which she is charged in writing so that she is able to prepare a defense. *Moore v. State*, 143 N.E.3d 334, 340 (Ind. Ct. App. 2020), *trans. denied*. The charging information must also be sufficient to protect the accused from being twice placed in jeopardy for the same offense. *Grimes v. State*, 84 N.E.3d 635, 639 (Ind. Ct. App. 2017), *trans. denied*. However, “[t]he

State is under no obligation to include detailed factual allegations; rather, a charging information satisfies due process if it enables an accused, the court, and the jury to determine the crime for which conviction is sought.” *Eivers v. State*, 22 N.E.3d 824, 832 (Ind. Ct. App. 2014) (internal quotation and citation omitted). The charging information “should state the accusations against the defendant in the language of the statute or in words that convey a similar meaning.” *B.S. v. State*, 966 N.E.2d 619, 626 (Ind. Ct. App. 2012) (citing *Smith v. State*, 465 N.E.2d 702, 704 (Ind.1984)), *trans. denied, overruled on other grounds by Fry v. State*, 990 N.E.2d 429, 451 (Ind. 2013). Errors in a charging information “are fatal only if they mislead the defendant or fail to give him notice of the charge filed against him.” *Grimes*, 84 N.E.3d at 640 (internal quotation and citation omitted).

[19] Campbell maintains that the amended information is unconstitutionally vague because it changed the charge from delivering “heroin, a controlled substance, in violation of IC 35-48-4-1,” App. v. II at 45, to delivering “a controlled substance, in violation of IC 35-48-4-1,” *id.* at 102. We disagree. Campbell was charged with the same crime in both the initial information and the amended information: delivering a controlled substance, *in violation of Indiana Code Section 35-48-4-1*, the ingestion of which resulted in Rudisill’s death. Indiana Code Section 35-48-4-1 makes it a crime to deal “cocaine or a narcotic drug, pure or adulterated, classified in schedule I or II.” Indiana Code Section 35-48-1-20 defines “narcotic drug” as opium, opiates and their derivatives, opium poppy and poppy straw, and any compound or mixture of the same. Schedule I

includes lists of opiates and opium derivatives. I.C. § 35-48-2-4. Schedule II includes opium and opiates such as fentanyl. I.C. § 35-48-2-6. Thus, each charging information made Campbell aware that she was charged with delivering to Rudisill a narcotic drug that included opiates such as fentanyl. The State was not constitutionally required to specify the “detailed factual allegation” of exactly what type of controlled substance Campbell delivered. *Elvers v. State*, 22 N.E.3d at 832. Rather, the amended information enabled Rudisill, the court, and the jury “to determine the crime for which conviction is sought,” and that satisfied due process requirements.⁴ *Id.* Nor was Rudisill’s ability to defend against the charges affected by the amended information, as we discuss below.

[20] Because the amended information was not unconstitutionally vague, the trial court did not err in denying Rudisill’s motion to dismiss it on those grounds.

Legality of Amended Information Under State Law

[21] Campbell also asserts that the trial court abused its discretion when it allowed the State to file the amended information because the amendment prejudiced her substantial rights in violation of state law. We review a ruling on a motion to amend for an abuse of discretion. *Howard v. State*, 122 N.E.3d 1007, 1013 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs when the trial

⁴ We note that Campbell does not contend that the applicable criminal statutes themselves are unconstitutionally vague.

court's judgment is clearly against the logic and effect of the facts and circumstances before it or is contrary to law. *Id.*

- [22] Indiana Code Section 35-34-1-5 governs the amendment of a criminal charging information and distinguishes between amendments of “immaterial defect” or “form” and those of “substance.” However, an amendment of either type is impermissible if it prejudices the substantial rights of the defendant. I.C. § 35-34-1-5(b), (c).

A defendant's substantial rights include a right to sufficient notice and an opportunity to be heard regarding the charge; and, if the amendment does not affect any particular defense or change the positions of either of the parties, it does not violate these rights.... Ultimately, the question is whether the defendant had a reasonable opportunity to prepare for and defend against the charges.

Erkins v. State, 13 N.E.3d 400, 405-06 (Ind. 14) (quotations and citations omitted); *cf.*, *Hobbs v. State*, 160 N.E.3d 543, 551 (Ind. Ct. App. 2020) (holding information amendment affected defendant's substantial rights because it “added entirely new charges”), *trans. denied*.

- [23] Here, the amendment of the information did not affect Campbell's defense or change her position. Campbell's defense to both the original information and the amended information was that, while she delivered heroin to Rudisill on the date in question, Rudisill did not die as a result of ingesting heroin. The evidence to which Campbell could point for her defense both before and after

the amended information was: (1) the toxicology report⁵ showing that heroin was only in Rudisill's urine, not in her blood, and therefore could not have caused Rudisill's death; and (2) the testimony and telephone records indicating that Campbell delivered heroin to Rudisill. And, despite Campbell's claim that the amended information required that she "guess from a list of hundreds of possible offending substances as to what the State's proof would be," Appellant's Br. at 21, the evidence against her remained the toxicology report showing only toxic levels of fentanyl and methamphetamine in Rudisill's blood.⁶ Her defense to that evidence remained the same: ingestion of heroin did not result in Rudisill's death, and Campbell only delivered heroin to Rudisill.

[24] This case is similar to *Jones v. State* where a panel of this Court found no prejudice to the defendant's substantial rights where the charging information was amended from "cocaine" to "narcotic drug" after the State learned from drug testing that the substance at issue was actually heroin. 863 N.E.2d 333, 33 (Ind. Ct. App. 2007). Here, as in *Jones*, the evidence the defendant would have anticipated from the drug charge in the original information "would necessarily have included the evidence relevant to dispute" the drug charge in the amended information, the only difference being the type of controlled substance at issue.

⁵ Campbell does not dispute that she was given a copy of the toxicology report before the laboratory destroyed Rudisill's fluids, and, indeed, Campbell's defense to the original charging information would not have made sense if there was not some evidence that heroin did not cause Rudisill's death.

⁶ We note that it is not a defense to a charge of delivering a narcotic drug resulting in death that the narcotic was used in combination with other controlled substances. I.C. § 35-41-1-1.5(d). And Campbell has never contended otherwise.

And, like in *Jones*, by the time the information was amended, Campbell had already learned the true nature of the substances that were in Rudisill's body through discovery, i.e., being provided with the toxicology report. *See also Sharp v. State*, 534 N.E.2d 708, 714 (Ind. 1989) (holding an amendment to a charge during trial did not cause prejudice to the defendant's substantial rights where the amendment changed the allegation of the drug sold from Codeine to Butalbital).

[25] Campbell asserts that she did not attempt to test Rudisill's bodily fluids before the amendment to the information because it was clear from the toxicology report that Rudisill did not die from ingesting heroin, and Campbell was only accused of delivering heroin to Rudisill. And she contends that the destruction of Rudisill's bodily fluids prior to the amendment of the information⁷ caused prejudice to her substantial rights because, at that point, she could not test the fluids herself to obtain evidence that fentanyl did not cause Rudisill's death.

[26] Campbell does not claim that the results of the blood or urine tests would have been different if she had had her own expert conduct them. Rather, she asserts that, if she had been allowed to test Rudisill's vitreous fluids, the results could have "contradict[ed]" the conclusion that fentanyl was "a necessary contributor to [Rudisill's] death." Appellant's Br. at 28. However, the unrefuted evidence showed that a blood test is the most relevant test to show what drugs

⁷ The State admitted the fluid samples were "destroyed" in August of 2019. Tr. v. II at 32.

contributed to death, and the test of Rudisill's blood showed toxic levels of fentanyl and methamphetamine. In addition, the evidence showed that drugs are detectable in vitreous fluid at "about the same time" as they are detectable in urine, and drugs in the urine have already passed through the body's system and are very unlikely to contribute to death. *Tr. v. III* at 55. The evidence also showed that tests of vitreous fluid are mostly useful as "supplemental" tests for detecting the existence of blood alcohol and metabolites of heroin, so much so that Axis Forensic Toxicology does not even test vitreous fluid at all unless there is alcohol in the blood. *Id.*

[27] In sum, the blood test evidence and expert testimony show that ingestion of fentanyl resulted in Rudisill's death regardless of what the urine or vitreous fluid tests showed or could have shown. Given that evidence, there is no reason to believe that testing of the vitreous fluid would have assisted Campbell's defense in any way. The amendment of the information did not prejudice Campbell's substantial rights; it did not deny Campbell a reasonable opportunity to prepare for and defend against the charges. *Erkins*, 13 N.E.3d 405-06. The trial court did not err in allowing the amendment of the information.

Conclusion

[28] The amended information was not unconstitutionally vague, and the trial court did not err in denying the motion to dismiss it on those grounds. In addition, the trial court did not abuse its discretion when it granted the motion to amend

the information, as the amendment did not prejudice Campbell's substantial rights in violation of state law.

[29] Affirmed.

Riley, J., and Vaidik, J., concur.