MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Anthony Carter, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 12, 2022

Court of Appeals Case No. 20A-CR-1954

Appeal from the LaPorte Circuit Court

The Honorable Thomas J. Alevizos, Judge

Trial Court Cause No. 46C01-1907-MR-3

Tavitas, Judge.

Case Summary

[1] Anthony Carter appeals his murder conviction. Carter contends that the trial court committed fundamental error when it admitted Carter's statements to police at trial. Carter contends that his *Miranda* right to have counsel present during a police interrogation was violated when, after Carter stated, "I need an attorney," police continued to engage Carter in conversation. We conclude that the trial court's admission of Carter's resulting inculpatory statements at trial does not constitute fundamental error. Carter further argues that the trial court committed fundamental error in its placement of a jury instruction pertaining to reasonable theories of innocence and that there is insufficient evidence to sustain Carter's conviction. On both counts we disagree, and, accordingly, we affirm.

Issues

[2] Carter raises three issues which we restate as:

I. Whether the trial court committed fundamental error at trial by admitting Carter's statements to the police.

II. Whether the trial court erred in its placement of a "reasonable theory of innocence" jury instruction at the end of another instruction.

III. Whether the evidence adduced at trial was sufficient to sustain Carter's murder conviction.

Facts

[3] On March 2, 2019, Cherlunda Carter ("Cherlunda") received a telephone call from her mother's neighbor, Shirlene Salary. At Cherlunda's request, Salary went to check on Cherlunda's mother, Beulah Biege. Salary peered through the window of Biege's LaPorte residence and saw Biege on the floor of the kitchen. Salary entered the home and discovered that Biege was unconscious, and a significant amount of blood was observed on the surfaces in the kitchen. Salary called 911. Biege's Jeep, wallet, keys, and some jewelry were missing from the home.

[4] Biege was transported to LaPorte Hospital and then to South Bend Memorial Hospital. She never regained consciousness as a result of inoperable brain damage caused by blunt force trauma. On March 10, Biege was removed from life support and died. The autopsy indicated that the manner of death was homicide.

[5] Carter, Biege's grandson, previously resided with Biege. On approximately February 19, 2019, Biege asked Carter to move out and dropped him off in Michigan City. Carter subsequently went to South Bend. On February 28, 2019, Biege's neighbor observed a black SUV arrive at Biege's house, whereafter two men got out. One went inside the house and remained inside for approximately an hour. Upon the man's return, he made eye contact with the neighbor for approximately thirty seconds as she watched through her window across the street. The man then got into Biege's Jeep and drove away. The Jeep was subsequently recovered in South Bend. Inside the Jeep, police

found a receipt for a bottle of vodka purchased from a Walgreens close to Biege's home, as well as blood that subsequently proved to belong to Biege. Police secured security camera footage from the Walgreens, which depicted Carter purchasing the vodka early in the morning on February 28, 2019.

[6] Carter volunteered to give a statement to LaPorte City Police on May 21, 2019.[1] The police advised Carter of his *Miranda* rights, and Carter agreed, in writing, to waive those rights for purposes of his statement. During that statement, however, Carter determined that he wished to have an attorney present and indicated as such ("I need a[n] attorney, obviously." Ex. 68 at 14:53). Police did not cease questioning for approximately forty-two more minutes. During the subsequent questioning, Carter became increasingly defensive and his statements became more confused. Carter admitted to being in contact with Biege on February 28, 2019, *id.* at 21:13, as well as collecting Biege's Jeep on or near the same date ("I was there . . . I forget which day it was, but I was there." *Id*. at 36:00). Police continued to press Carter on timeline details, as well as injuries sustained by Carter that Carter ascribed to attackers he would not name.

[7] On July 9, 2019, the State charged Carter with Count I, murder, a felony; Count II, aggravated battery when assault poses a substantial risk of death, a Level 3 felony; and Count III, theft, a Level 6 felony. On January 15, 2020, the

[1] It appears from the video footage that the original reason that Carter was present at the South Bend police station was to comply with a search warrant for a buccal swab of Carter's DNA.

State moved to amend the charging information to add Count IV, felony murder, a felony, and Count V, robbery, a Level 2 felony.

[8] Carter was tried in August 2020. During the trial, the State presented evidence that Carter's DNA was found on the zipper of Biege's purse and that Carter was present in LaPorte on the morning of February 28, 2019, based on Carter's phone GPS data,[2] security camera footage from Walgreens, and testimony of the woman who gave Carter a ride to LaPorte. Witnesses testified that Carter visited several acquaintances on the afternoon of February 28, 2019, and was heavily intoxicated; Carter produced several bags of jewelry, which he gave to his acquaintances and warned against pawning. One of the rings provided by Carter was described as consistent with the wedding band of Biege's late husband. Additionally, evidence was presented that Carter was overheard telling his daughter that "he was gonna [sic] be gone for a long time [be]cause something bad had happened." Tr. Vol. III pp.107-08. During several phone calls with an ex-girlfriend, Carter indicated that he had been in an argument with Biege regarding money, that Carter had pushed Biege and caused her to fall, and that Carter "smacked [Biege] around a couple times because he was mad she wouldn't give him money." *Id*. at 169-70.

[9] Biege's neighbor testified that she had seen Carter at Biege's home on the morning of February 28, 2019, and she was able to identify him in a police

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[2] The evidence showed that—within a margin of error of "a couple of houses"—Carter was present at Beige's home between 9:22 A.M. and 11:42 A.M. on February 28, 2019. Tr. Vol. III p. 244.

photo array. Multiple witnesses testified to observing cuts and bruises on Carter's person after the morning of February 28, 2019.

[10] Toward the end of Carter's trial, the State sought to admit video of Carter's statements to police. The following colloquy ensued:

> Q. All right [sic]. Finally, Detective, there came a point in time, towards the conclusion of this investigation, that you had an opportunity to encounter Mr. Carter in South Bend on or about the 2lst of May, 2019; is that correct?
>
> A. Yes, that's correct.
>
> Q. And at that location in South Bend, where he was residing at that time, did he agree to participate in an interview with you?
>
> A. Yes, he did.
>
> Q. Was he advised of his rights?
>
> A. Yes, he was.
>
> Q. Both orally and in writing?
>
> A. Yes.
>
> Q. And did he freely waive those rights and sign a waiver of same?
>
> A. Yes, he did.

Q. And did he give a statement wherein basically you asked him certain questions and he answered them and gave information freely?

A. Yes, he did.

Q. He was not coursed [sic] in any way or promised anything in return?

A. No.

Q. I'm going to show you what has now been marked as State's Exhibit 68. Can you recognize that, sir?

A. Yes. It looks like a copy of my interview with him.

Q. All right [sic]. And you've had an opportunity to watch this and verify that it is, in fact, a true and correct copy of what you recall having taken place and memorialized on a DVD?

A. Yes.

[Prosecutor]: Move to admit, Your Honor, State's Exhibit No. 68.

[Defense counsel]: **No objection.**

Tr. Vol. IV pp. 139-40 (bold emphasis added). The jury returned a verdict of guilty as to all charges, and the trial court sentenced Carter to an aggregate sentence of sixty years. Carter now appeals.

Analysis

A. Carter's Statements to Police

[11] We ordinarily review challenges to the admission of evidence for an abuse of the trial court's discretion. *Fansler v. State*, 100 N.E.3d 250, 253 (Ind. 2018) (citing *Williams v. State*, 43 N.E.3d 578, 581 (Ind. 2015)). In those instances, we will reverse only where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* Here, however, Carter failed to object to the admission of his statements to police. Thus, we will reverse only if the admission of those statements constituted fundamental error. "The fundamental error exception is extremely narrow . . . ." *McKinley v. State*, 45 N.E.3d 25, 28 (Ind. Ct. App. 2015) (citing *Isom v. State*, 31 N.E.3d 469, 490 (Ind. 2015), *cert. denied*), *trans. denied*. "The error must be 'so prejudicial to the rights of a defendant a fair trial is rendered impossible.'" *Id*. (quoting *White v. State*, 846 N.E.2d 1026, 1033 (Ind. Ct. App. 2006)*, trans. denied.*) This exception applies "'only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process.'" *Isom*, 31 N.E.3d at 490 (quoting *Halliburton v. State*, 1 N.E.3d 670, 678 (Ind. 2013), *trans. denied*). "The error claimed must either 'make a fair trial impossible' or 'constitute clearly blatant violations of basic and elementary principles of due process."' *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010) (quoting *Clark v. State*, 915 N.E.2d 126, 131 (Ind. 2009)).

[12] Carter failed to file a motion to suppress his statements to police and did not object to admission thereof at trial. He has, therefore, waived the issue for appeal unless he can carry his burden to demonstrate that the admission of his statements constitutes fundamental error. "'The mere fact that error occurred and that it was prejudicial will not satisfy the fundamental error rule.'" *Hollingsworth v. State*, 987 N.E.2d 1096, 1098 (Ind. Ct. App. 2013) (quoting *Absher v. State*, 866 N.E.2d 350, 355 (Ind. Ct. App. 2007)), *trans. denied*.

[13] We need not reach the question—raised for the first time on appeal—of whether the actions of the questioning officers constituted *Miranda* violations. The relevant inquiry here is whether the trial court had a duty to, *sua sponte*, police the admission of evidence, specifically Carter's statements to police. Only if such a duty existed, in this particular context, could it possibly be fundamental error to admit evidence of the defendant's statements when the defendant expressly asserts that he has no objection to the evidence. Even if we were to assume, for the sake of argument, that the police violated Carter's constitutional rights, we cannot conclude that due process requires the trial court to *sua sponte* preclude evidence to which the parties expressly disavow having any objection. The trial court had no knowledge of the now-alleged *Miranda* violation at the time the video of Carter's statements was submitted for evidence; accordingly, the trial court had no reason to take *sua sponte* action.

[14] The doctrine of fundamental error, moreover, is simply not available to Carter in this context, because his counsel affirmatively stated "[n]o objection" when the video of Carter's statements to police was submitted. Tr. Vol. IV. p. 140.

"'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.'" *Halliburton,* 1 N.E.3d at 679 (quoting *Harrison v. State*, 258 Ind. 359, 281 N.E.2d 98, 100 (1972)).

> Further, the doctrine of fundamental error is inapplicable to the circumstances presented here. The doctrine presupposes the trial judge erred in performing some duty that the law had charged the judge with performing *sua sponte*. Presumably a trial judge is aware of her own *sua sponte* duties. But upon an express declaration of "no objection" a trial judge has no duty to determine which exhibits a party decides, for whatever strategic reasons, to allow into evidence. "[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." *Winston v. State*, 165 Ind. App. 369, 332 N.E.2d 229, 233 (1975).

Id.; *see also Rolston v. State*, 81 N.E.3d 1097, 1103 (Ind. Ct. App. 2017) (". . . Rolston's claim of fundamental error is not available to her. She did not merely fail to object to the admission of the now-challenged autopsy photographs; rather, she affirmatively declared that she had 'no objection' to them."), *trans. denied*.

[15] Waiver notwithstanding, Carter has not carried his burden to establish fundamental error. Carter conflates potential *Miranda* violations with the admission of the resulting evidence. The relevant question with respect to fundamental error is whether the *admission* of the statements: (1) made a fair trial impossible; (2) resulted in a potential for substantial harm; and (3) constituted a blatant violation of the principles of due process, thereby

depriving Carter of his constitutional rights thereto. *See, e.g.*, *Isom*, 31 N.E.3d at 490.

[16] Carter was entitled to a fair trial, not one in which the trial court carefully policed, *sua sponte*, the admission of evidence and stepped in where Carter's counsel failed to do so. Due process does not require such an active trial court; rather, due process requires merely that a defendant have the opportunity to object to potentially inadmissible evidence. Here, Carter had that opportunity and explicitly asserted that he had no objections to the video. At the time the video was admitted, the trial court was aware that the statement was given voluntarily, that Carter had waived his *Miranda* rights, and that Carter had no objection to the video's admission. We further note that, during Carter's opening statement, Carter's counsel stated that ". . . at some point during this investigation, Mr. Carter did voluntarily give a statement to the detectives[,]" Tr. Vol. II p. 199, thereby signaling that Carter was aware that the statements were going to be elicited and that he was not planning on objecting to those statements. There was no reason for the trial court to do anything other than admit the statements under those circumstances.

[17] We are similarly unpersuaded that the admission of Carter's statements to police made a fair trial impossible. More significant than Carter's statements to the police were: (1) the presence of his DNA on the victim's purse; (2) the eyewitness identification of Carter at the scene during the approximate time of the crime; (3) testimony from multiple witnesses that Carter had indicated that he had done something bad and harmed his grandmother; (4) the GPS data and

security footage placing Carter in proximity to his grandmother's house during the appropriate timeframe; (5) the jewelry evidence; and (6) the recovery of the Jeep—containing Carter's Walgreens receipt as well as the victim's blood—in South Bend. The fact that Carter's statements to police may have partially contextualized or contradicted this evidence does not mean that Carter was denied a fair trial. The trial court did not commit fundamental error by admitting Carter's statements to police.[3]

B. Jury Instruction Placement

[18] Carter next argues that the trial court erred in its placement of the "reasonable theory of innocence" jury instruction. Carter received the instruction at issue, which provided:

> FINAL INSTRUCTION NO. 4
>
> The crime of murder is defined by law as follows:
>
> A person who knowingly or intentionally kills another human being, commits murder, a felony.
>
> Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:
>
> 1. The Defendant

[3] Because the admission of Carter's statements was not fundamental error, we need not consider his arguments with respect to harmless error.

2. knowingly or intentionally

3. killed

4. Beulah C. Biege

If the State failed to prove each of elements l through 4 beyond a reasonable doubt, you must find the Defendant not guilty of murder, a felony, as charged in Count 1.

"If determining whether the guilt of the accused is proven beyond a reasonable doubt you should require the proof to be so conclusive and sure as to include every reasonable theory of innocence."

Appellant's App. Vol. II p. 138 (emphasis added).

[19] Carter does not question the instruction itself, but rather the placement of the instruction. Once again, however, Carter failed to object below. We will not reiterate once more our standard of review with respect to the doctrine of fundamental error, as we have already done so.[4] We add, however, that we will find fundamental error in the giving of jury instructions "only if the instructions read together as a whole fail to alleviate any harm that might have occurred from one erroneous instruction." *Emerson v. State*, 695 N.E.2d 912,

[4] This Court typically reviews the alleged improper instructions of a trial court for an abuse of discretion. *Hubbard v. State*, 742 N.E.2d 919, 920-21 (Ind. 2001). A defendant who fails to object to a jury instruction at trial waives any challenge to that instruction on appeal, unless giving the instruction was fundamental error. *Wright v. State*, 730 N.E.2d 713, 716 (Ind. 2000).

916 (Ind. 1998) (citing *Dixon v. State*, 425 N.E.2d 673, 678 (Ind. Ct. App. 1981)).

[20] "Carter acknowledges that the language used by the trial court complied with the instructions of the Indiana Supreme Court." Appellant's Br. p. 33. Carter refers to our Supreme Court's decision in *Hampton v. State*, 961 N.E.2d 480, 490-91 (Ind. 2012), which held, in relevant part:

> we . . . direct that the "reasonable theory of innocence" instruction is appropriate only where the trial court finds that the evidence showing that the conduct of the defendant constituting the commission of a charged offense, the *actus reus*, is proven exclusively by circumstantial evidence.[5] . . . We thus hold that, when the trial court determines that the defendant's conduct required for the commission of a charged offense, the *actus reus*, is established exclusively by circumstantial evidence, the jury should be instructed as follows: *In determining whether the guilt of the accused is proven beyond a reasonable doubt, you should require that the proof be so conclusive and sure as to exclude every reasonable theory of innocence.*

(emphasis in the original). Carter did receive the requested jury instruction, appended to the end of final instruction number four, which set forth the elements of murder. Carter argues that "placement of the language, away from the instruction discussing circumstantial evidence, or reasonable doubt, caused the language to lose its effectiveness. Juries are not sophisticated or trained to

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[5] The State does not appear to contend that the "reasonable theory of innocence" instruction was improvidently given to the jury, though the State does contend that there was direct evidence in addition to circumstantial evidence. Appellee's Br. p. 25.

recognize the significance of that language if it is not properly highlighted." Appellant's Br. p. 33.

[21] Carter offers no authority for this conclusory proposition. Neither does he develop an argument in support thereof. We are not required to accept such an announcement and find that the argument is waived for failure to support his arguments with cogent reasoning and supporting authority. *See* Ind. App. R. 46(A)(8)(a). "'We will not become an advocate for a party or address arguments that are inappropriate or too poorly developed or expressed to be understood.'" *Picket Fence Prop. Co v. Davis*, 109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018) (quoting *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016)), *trans. denied*. Carter adds that "[t]he purpose of the instruction is to highlight the need for juries to use caution when the evidence is circumstantial." Appellant's Reply Br. pp. 5-6. We do not agree. The purpose of the instruction is to *instruct* as to no more and no less than what is explicitly set forth therein. Emphasis and encouragement of the jury to aspire to caution are the province of Carter's counsel during closing argument.

[22] Waiver notwithstanding, the placement of the "reasonable theory of innocence" instruction does not rise to the substantial height of our fundamental error standard. To begin with, we have not considered it fundamental error for a trial court to omit the instruction entirely when a defendant fails to request it, even if the defendant is entitled to the instruction as a matter of Indiana Supreme Court precedent. *See Abd v. State*, 121 N.E.3d 624, 632 (Ind. Ct. App. 2019), *trans. denied.* More importantly, however, we do not share Carter's view of a

jury's ability to understand plain, patterned jury instructions. Our reading of the instructions here—as a whole—does not lead us to the conclusion that there was harm stemming from the placement of a single instruction. Furthermore, Carter did not object to the placement of the jury instruction at his jury trial. Accordingly, we find that the trial court did not commit fundamental error with respect to the order in which the jury instructions were placed.

C. Sufficiency of the Evidence

[23] Finally, Carter argues that there is insufficient evidence to sustain his conviction for murder.[6] Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of

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[6] Carter was convicted of murder, aggravated battery, felony murder, and robbery, but those counts were all merged for purposes of sentencing. Carter was also convicted of theft; however, Carter only challenges the sufficiency of the evidence with respect to his murder conviction.

innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)), *trans. denied*.

[24] Indiana Code Section 35-42-1-1 provides in relevant part:

> A person who:
>
> (1) knowingly or intentionally kills another human being;
>
> (2) kills another human being while committing or attempting to commit . . . robbery . . . .;
>
> * * * * *
>
> commits murder, a felony.

[25] The State presented evidence of: (1) the presence of Carter's DNA on the victim's purse; (2) the eyewitness identification of Carter at the scene during the approximate time of the crime; (3) incriminating statements made by Carter to both his daughter and former girlfriend that Carter had harmed his grandmother; (4) GPS data and security camera footage placing Carter in proximity to Biege's house during the appropriate timeframe; (5) Carter having arrived, intoxicated, at a nearby residence in possession of jewelry shortly after the crime, which included a ring that matched the description of a wedding band that belonged to Biege's late husband; (6) the recovery of the Jeep—

containing Carter's Walgreens receipt—in South Bend; (7) injuries sustained by Carter potentially consistent with a physical altercation close to the time of the crime; (8) and the presence of the victim's blood in the Jeep.

[26] Even without Carter's statements to police, we conclude that a jury could reasonably determine that Carter was guilty of murder on the basis of the foregoing evidence. To the extent that Carter argues that the evidence was inconsistent or untrustworthy, Carter asks us to reweigh that evidence, and our standard of review does not allow us to reweigh evidence or judge the credibility of witnesses. Accordingly, we conclude that the evidence was sufficient to sustain Carter's conviction.

Conclusion

[27] The trial court did not commit fundamental error by admitting Carter's statement to police; nor did the trial court commit fundamental error in its placement of the jury instruction. The State presented sufficient evidence to sustain Carter's conviction for murder. We affirm.

[28] Affirmed.

Mathias, J., and Weissmann, J., concur.