

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Reginald Joseph Carter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 30, 2023

Court of Appeals Case No.
22A-CR-2437

Appeal from the Lake Superior
Court

The Honorable Salvador Vasquez,
Judge

Trial Court Cause No.
45G01-1910-MR-31

Memorandum Decision by Judge Tavitias
Judges Bailey and Kenworthy concur.

Tavitias, Judge.

Case Summary

- [1] Reginald Carter was convicted of three counts of murder, a felony, and arson, a Level 4 felony. Carter appeals and argues that the trial court erred by excluding Evidence Rule 404(b) evidence regarding a previous arson committed by another person against one of the victims. We are not persuaded and, accordingly, affirm.

Issue

- [2] Carter raises one issue on appeal, which we restate as whether the trial court committed fundamental error by excluding Evidence Rule 404(b) evidence.

Facts

- [3] Yolanda Mitchell had four daughters: Yoasha, Yoshesha, Yomesha, and Yokeca. Yolanda owned a Honda Odyssey, which contained a bottle of bleach for cleaning and doing laundry.
- [4] In 2019, Yoasha was dating Carter. Yoasha and Carter lived with Yolanda; Yoshesha; Yokeca; Yoasha's, Yoshesha's, and Yokeca's children; Nefertiri Jones; and Nefertiri's son, Dwayne Jones, in a house in Gary, Indiana.
- [5] Yoasha and Carter had a "toxic" relationship. Tr. Vol. IV p. 161. The two frequently fought, and Carter previously strangled Yoasha to the point of unconsciousness on at least two occasions. When confronted regarding his strangling of Yoasha, Carter said, "[A]t least I brought her back." *Id.* at 38. In

mid-October 2019, Yoasha and Carter had an argument, and Carter pushed Yoasha into the wall, which damaged the drywall.

[6] Yoasha owned a nine-millimeter handgun, to which Carter had access. On or about October 23, 2019, Carter made an announcement to Yoasha and her family that “the next time [Carter and Yoasha were] arguing and she reach [sic] for that gun . . . it’s either going to be me or Yoasha . . . and it’s definitely not going to be me.” *Id.* at 174. Additionally, at some point during 2019, Carter told members of Yoasha’s family, “[I]f I ever kill somebody, . . . I’m using bleach, I’m using gloves. No face, no case.” *Id.*

[7] On October 25, 2019, at approximately 8:15 a.m., Carter drove Yolanda’s Honda to pick up Yokeca in Illinois, and he dropped Yokeca off at a gas station. During the car ride, Carter and Yoasha argued over the phone regarding Yoasha’s need for the vehicle. Carter returned to the house, and at approximately 9:30 a.m., he and Yoasha had another argument, which the next-door neighbor and her home health aid overheard. According to the neighbor and her aid, Carter accused Yoasha of leaving with another man, and Yoasha “was pleading no, I didn’t” and “whimpering and begging and crying.” *Id.* at 99, 117.

[8] Sometime after 10:00 a.m., the house was on fire. Word spread, and the family began gathering outside the house; however, they were unable to locate Yoasha, Nefertiri, and Dwayne.

[9] Carter drove Yolanda's Honda to the house and arrived over an hour after everyone else. He was also wearing different clothing than he had worn that morning. When he arrived, Carter "jumped on the hood, rolled over, [and] slid down," which observers described as a "performance." *Id.* at 167. Carter's demeanor was "antsy," "aggravated," and "dramatical," and he did not demonstrate "any grief or sorrow." *Id.* at 169; Tr. Vol. VII p. 26. Law enforcement confronted Carter and told him that there "[m]ight be kids in" the house. Tr. Vol. IV p. 135. Carter responded, "[A]in't no kids in there." *Id.* Yolanda asked Carter where Yoasha was, and Carter told her that Yoasha "ran off with a n****r." *Id.* at 41. At some point, Carter removed his boots and, despite wearing socks, washed his head, hands, and feet with a water bottle.

[10] Several members of Yoasha's family noticed a "strong odor of bleach" in the Honda, which they had not previously noticed. Tr. Vol. VI p. 11. Subsequent DNA testing of the bleach bottle in the Honda revealed "very strong support" that Carter had touched the bottle. *Id.* at 76. Additionally, after law enforcement removed items from the Honda, Yolanda observed a used pair of gloves in a waste bag and saw that Carter's backpack contained a folded towel, which, she claimed, bore the impression of a handgun.

[11] After the fire was extinguished, law enforcement began investigating the cause of the fire. An accelerant-sniffing dog alerted to the presence of accelerants at several locations in the home, which laboratory analysis later revealed to contain gasoline and other flammable substances. Additionally, an accelerant-sniffing dog alerted to the presence of accelerants on Carter's shoes, socks, and

boxer shorts. Law enforcement determined that the fire was “intentionally set.” Tr. Vol. V p. 71.

[12] Inside the house, law enforcement located the bodies of Yoasha, Nefertiri, and Dwayne, all of whom had gunshot wounds. Police recovered: (1) a spent bullet from the .35 caliber family, which “include[s] . . . 9 millimeter” bullets, from Nefertiri’s body; (2) a “9 millimeter caliber” bullet fragment in the room where Nefertiri’s body was located; (3) a “spent copper jacket fragment[,] which is the outer jacketing of a bullet,” outside of the northwest corner of the house; and (4) a “mutilate[ed]” piece of metal consistent with copper and lead in the Honda’s glove compartment. Tr. Vol. VI pp. 134-36. Law enforcement did not recover Yoasha’s nine-millimeter firearm.

[13] The coroner determined that Yoasha, Dwayne, and Nefertiri died from gunshot wounds before the fire was set. Yoasha and Dwayne were shot in the head from close range, and Nefertiri was shot twice in the back. Yoasha’s and Nefertiri’s bodies smelled like “fuel.” Tr. Vol. V p. 163.

[14] On October 28, 2019, the State charged Carter with three counts of murder, a felony, and one count of arson, a Level 4 felony. On June 24, 2022, Carter filed a notice of intent to introduce, pursuant to Evidence Rule 404(b), evidence regarding an arson that occurred on December 23, 2016, at the apartment of Yoasha and her then-husband, Willie Carter¹ (“Willie”). Yoasha and Willie

¹ Willie Carter and Carter are not related.

were both determined to be suspects in the 2016 arson; however, the case was never solved.

[15] The trial court held a pretrial conference on August 12, 2022. The trial court ruled that evidence regarding the 2016 arson would be inadmissible at trial and stated:

[I] see nothing [] that would suggest to me that the fire of [] December 23rd, 2016, is [in] any way connected with the fire in this instance With this lack of nexus or connection[,] that would lead to presenting this jury with highly prejudicial information that really lacks the probative value necessary to allow it to come in, I think [Evidence Rule] 403 keeps it out.

Supp. Tr. Vol. II p. 14.

[16] The trial court held a jury trial on August 15 through 19, 2022. Carter did not attempt to submit evidence of the 2016 fire at trial. The jury found Carter guilty on all four counts. The trial court entered judgments of conviction on the same and sentenced Carter to consecutive sentences totaling 205 years. Carter now appeals.

Discussion and Decision

[17] Carter argues that the trial court abused its discretion by excluding evidence regarding the 2016 arson. We disagree.

[18] Trial courts have broad discretion to admit or exclude evidence, and we review the trial court's determination for an abuse of that discretion. *Combs v. State*,

168 N.E.3d 985, 990 (Ind. 2021). We will reverse only where the trial court's determination is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights. *Clark v. State*, 994 N.E.2d 252, 259-60 (Ind. 2013). Moreover, even when the trial court's evidentiary ruling is erroneous, "[i]f the conviction is properly supported by other independent evidence of guilt, the error is harmless." *Williams v. State*, 43 N.E.3d 578, 581 (Ind. 2015).

[19] Here, at the pretrial conference, the trial court ruled that evidence regarding the 2016 arson would be inadmissible at trial pursuant to Evidence Rule 403 because the risk of prejudice substantially outweighed the evidence's probative value. As a threshold matter, we agree with the State that Carter waived his challenge to the trial court's exclusion of the evidence by failing to make an offer of proof at trial. *See, e.g., Angulo v. State*, 191 N.E.3d 958, 969 (Ind. Ct. App. 2022) ("Failure to make an offer of proof results in waiver of the claim." (citing *King v. State*, 799 N.E.2d 42, 48 (Ind. Ct. App. 2003), *trans. denied*)).

[20] Because Carter failed to make an offer of proof at trial, he is required to show that the trial court's exclusion of the evidence constitutes fundamental error. *See Tibbs v. State*, 59 N.E.3d 1005, 1015 (Ind. Ct. App. 2016) (citing *Young v. State*, 746 N.E.2d 920, 924 (Ind. 2001)), *trans. denied*. "A fundamental error is a substantial, blatant violation of basic principles rendering the trial unfair to the defendant [] and applies only when the actual or potential harm cannot be denied." *Wilson v. State*, 4 N.E.3d 670, 676 (Ind. Ct. App. 2014) (citing *Carter v. State*, 754 N.E.2d 877, 881 (Ind. 2001)). Carter, however, fails to argue

fundamental error in his brief. Any argument as to fundamental error, therefore, is also waived. *See Bradfield v. State*, 192 N.E.3d 933, 935 (Ind. Ct. App. 2022).

[21] Waiver notwithstanding, we cannot say that the trial court committed fundamental error. The evidence regarding the 2016 arson constitutes what courts have called “reverse 404(b) evidence” because it illuminates the prior “bad acts” of a person other than the defendant. *See Garland v. State*, 788 N.E.2d 425, 429-30 (Ind. 2003). The Indiana Supreme Court has held that reverse 404(b) evidence is admissible provided it meets the requirements of Rule 404(b). *Id.* at 430.

[22] Evidence Rule 404(b) provides, in relevant part:

(1) *Prohibited Uses.* Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses; Notice in a Criminal Case.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. . . .

[23] “When a trial court assesses the admissibility of 404(b) evidence, it must ‘(1) determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than [a] propensity to commit the charged act and (2) balance the probative value of the evidence against its prejudicial effect

pursuant to Rule 403.’” *Nicholson v. State*, 963 N.E.2d 1096, 1100 (Ind. 2012) (quoting *Ortiz v. State*, 716 N.E.2d 345, 350 (Ind. 1999)). Pursuant to Evidence Rule 403, “[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.”

[24] Here, we fail to see the relevance of the 2016 arson. That arson was committed at a different location nearly three years before the arson that is the subject of this case. *See Hicks v. State*, 690 N.E.2d 215, 220 (Ind. 1997) (explaining that the remoteness and similarity of a prior act are factors to be considered, though not dispositive, when determining relevance). Yoasha and Willie were both suspects in the 2016 arson, and the case was never solved. Moreover, what little probative value the 2016 arson bears on the instant case is substantially outweighed by the risk of confusing the evidence regarding the two separate arsons. We cannot say that the trial court abused its discretion.

[25] Finally, even if the trial court erred by excluding evidence regarding the 2016 arson, which we do not find, the error would be harmless because the State presented substantial independent evidence of Carter’s guilt. Carter and Yoasha had a toxic relationship, and Carter had a history of physically abusing Yoasha, including during the weeks and days leading up to the fire. Shortly before the fire, Carter and Yoasha had an argument during which Carter accused Yoasha of leaving with another man; Yoasha “was pleading” and

“whimpering and begging and crying”; and Carter’s tone was “low” as if he was “trying to scare somebody.” Tr. Vol. IV pp. 99-100, 117, 130.

[26] Carter also warned Yoasha and her family that the next time Yoasha pointed her nine-millimeter handgun at him “it’s either going to be me or Yoasha . . . and it’s definitely not going to be me.” *Id.* at 173. Law enforcement found a bullet and bullet fragments that were consistent with a nine-millimeter handgun at the scene, but they were unable to locate Yoasha’s handgun. Yolanda also saw the impression of a handgun on a towel in Carter’s backpack at the scene of the fire. The jury could have reasonably concluded that Carter shot Yoasha using Yoasha’s handgun and then disposed of the handgun.

[27] Additionally, Carter once told Yoasha’s family, “[I]f I ever kill somebody, . . . I’m using bleach, I’m using gloves. No face, no case.” *Id.* at 174. Here, a used pair of gloves were recovered from the Honda, the Honda had a strong smell of bleach, and DNA testing provided strong support that Carter handled the bottle of bleach. Moreover, two potential witnesses were also killed, and the victims’ bodies were set on fire. The jury could have reasonably found that the gloves, bleach, and fire were used to cover up evidence of the murders.

[28] Finally, Carter’s behavior at the scene was suspicious. Carter arrived at the scene over an hour after the other family members, and he was wearing different clothing than he had worn that morning. Carter appeared to put on a “performance” to feign surprise about the fire, expressed knowledge that “no kids” were in the house during the fire, and appeared to wash himself despite

still wearing socks. *Id.* at 167, 135. Moreover, multiple areas of the house tested positive for gasoline and other flammable substances, and an accelerant-sniffing dog alerted to the presence of gasoline on Carter's clothing. Based on the overwhelming evidence against Carter, we cannot say that the trial court committed fundamental error by excluding 404(b) evidence regarding the 2016 arson.

Conclusion

[29] The trial court did not commit fundamental error by excluding 404(b) evidence regarding the 2016 arson. Accordingly, we affirm.

[30] Affirmed.

Bailey, J., and Kenworthy, J., concur.