MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Xavier Walker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 3, 2023

Court of Appeals Case No. 22A-CR-1441

Appeal from the Allen Superior Court

The Honorable David M. Zent, Judge

Trial Court Cause No. 02D06-2005-MR-17

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] Xavier Walker appeals his convictions, following a jury trial, for felony murder, level 5 felony attempted robbery, level 6 felony criminal recklessness, and class A misdemeanor resisting law enforcement. He contends that the trial court erred in admitting certain evidence and in ruling on his claim pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), regarding two of the State's peremptory strikes of prospective jurors. He further challenges the sufficiency of the evidence to support his felony murder conviction, and he requests that we review the jury's verdicts for inconsistency. We find no reversible error and therefore affirm.

Facts and Procedural History

[2] The facts most favorable to the verdicts reveal that on May 19, 2020, Jaden Nelson was working at Kroger in Fort Wayne. He texted his pregnant girlfriend, Alayzia Yeazy, and asked her to weigh out twenty-four grams of marijuana, package it, and bring it to him at work so that he could sell it during a break. Nelson had agreed to sell the marijuana to Ronnie Miles. Yeazy drove to Kroger with the marijuana and picked up Nelson. Nelson got in the driver's seat of the car, and Yeazy moved to the front passenger's seat. Nelson drove to the address Miles had given him to meet up for the sale.

[3] When Nelson and Yeazy arrived at the address, Miles and Walker approached the driver's side window of the car. Both Miles and Walker were wearing red hoodies, with the hoods up, and black bottoms. Nelson rolled the window down and handed Miles a piece of the marijuana so that he could see and smell

it. Miles then said, "Y'all hot, Y'all hot[,]" apparently thinking that neighbors and bystanders might be noticing that they were engaged in illegal activity. Tr. Vol. 1 at 242. Miles and Walker got into the backseat of Nelson's car. Miles sat behind Nelson, and Walker sat behind Yeazy. After Nelson told Miles that the marijuana would cost $225, Miles pulled out a handgun and "put it to" Nelson's head. *Id.* at 244. Miles said, "I'ma need that," referring to the bag of marijuana in Nelson's lap. *Id*. at 245.

[4] Nelson immediately put the car in gear and began driving. Walker reached forward over the seat and got in a tug-of-war with Nelson over the marijuana. Nelson "didn't really want to let go" of the bag. *Id*. at 248. Miles then pulled his gun back, "cocked" it, and placed it back against Nelson's head. *Id*. at 249. This caused Nelson to let go of the marijuana. Walker jumped out of the car and ran away with the marijuana as Nelson was still driving. Miles tried to open his car door, but he could not because the door lock on his side was broken. Miles and Nelson began fighting over the gun. At some point during the struggle with the gun, the car swerved to the side of the road and hit a mailbox. The struggle ensued until the gun fired, striking Nelson. Miles then jumped out of the car and ran.

[5] Nelson exclaimed to Yeazy, "Babe, I'm hit. Call 911." Tr. Vol. 2 at 6. Nelson drove to a gas station, got out of the car, and lay on the ground. Yeazy called 911 and attempted to help Nelson while waiting for paramedics. A bystander stopped and administered CPR to Nelson. Paramedics arrived, took over the CPR, and transported Nelson to the hospital, where he was later pronounced

dead. Police officers quickly arrived at the scene, and Yeazy gave them a description of Miles and Walker, as well as the area where they had gotten out of the vehicle. Officers put out a description of the suspects over their radio.

[6] Fort Wayne Police Officer Aaron Bloomfield began searching the area for "a suspect in a red hoodie … [who] was involved, and he ran to the east." *Id*. at 100. While searching, Officer Bloomfield located Walker, who was dressed "in a red [hooded] sweatshirt in the rear driveway coming off the alley behind a house." *Id*. Officer Bloomfield, who was in uniform and traveling in a marked police vehicle, exited his vehicle and said, "Stop. Police." *Id*. at 102. Walker took off running. Officer Bloomfield chased after Walker. As Walker was running, Officer Bloomfield saw "a bag of some kind hit the ground" near Walker's feet as he continued running. *Id*. at 103. Officer Bloomfield drew his weapon and again ordered Walker to stop. Walker stopped in the street "as other officers were already converging on him." *Id*. at 102-03. After Walker was in police custody, Officer Bloomfield retrieved the bag of marijuana that Walker had dropped. Officer Bloomfield also searched the area around the driveway and house where he had first spotted Walker and located a black handgun stashed in a potted plant next to the garage.[1] The gun was dry, even though it had been raining for almost twenty-four hours straight. The homeowner confirmed that the weapon did not belong to him.

[1] It was subsequently determined that this was not the weapon used by Miles in the shooting.

[7] Nelson died of a single gunshot wound to the chest. The State charged sixteen-year-old Walker with felony murder, level 2 felony attempted robbery, level 6 felony criminal recklessness, class A misdemeanor resisting law enforcement, and class A misdemeanor dangerous possession of a firearm. The State also filed a use of a firearm sentencing enhancement. The State subsequently moved to dismiss the possession of a firearm charge, which the trial court granted. A jury trial began in March 2022. The jury found Walker guilty on all remaining charges but found that the State failed to prove the necessary elements of the firearm sentencing enhancement.

[8] A sentencing hearing was held on May 23, 2022. The trial court reduced the attempted robbery count to a level 5 felony due to double jeopardy concerns. The court sentenced Walker to fifty years for felony murder, three years for attempted robbery, one year for criminal recklessness, and one year for resisting law enforcement. The trial court ordered that the felony murder and attempted robbery sentences be served concurrent to one another and consecutive to the other sentences, for an aggregate sentence of fifty-two years. This appeal ensued.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion or commit fundamental error in admitting evidence.

[9] Walker makes two evidentiary challenges that we address in turn. We note that as a general matter, a trial court has broad discretion in ruling on the

admissibility of evidence, and we will disturb its rulings only where it is shown that the court abused that discretion. *Hoglund v. State*, 962 N.E.2d 1230, 1237 (Ind. 2012). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id*.

[10] Walker's first assertion is that the trial court abused its discretion in permitting Fort Wayne Police Department Detective Lucas MacDonald to testify that Walker stated during a police interview that he ran from police because he had a warrant out for his arrest. Specifically, Walker claims that any reference to the fact that he had a warrant out for his arrest was inadmissible "bad act evidence" pursuant to Indiana Evidence Rule 404(b), which provides that "[e]vidence 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." Appellant's Br. at 38. However, the record reveals that Walker made no contemporaneous objection during Detective MacDonald's testimony referencing the warrant. The failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error on appeal. *Sparks v. State*, 100 N.E.3d 715, 720 (Ind. Ct. App. 2018). This is because a contemporaneous objection affords the trial court the opportunity to make a final ruling on the matter in the context in which the evidence is introduced. *Id*. In other words, we will not find that the trial court abused its discretion absent a

proper contemporaneous objection.[2] Walker has waived appellate review of this issue.

[11] Walker next directs us to additional testimony from Detective MacDonald that was admitted by the trial court. Detective MacDonald testified that his office had a departmental policy to not interview police officers involved in a shooting for at least seventy-two hours. When asked about the rationale for that policy, Detective MacDonald stated that "[s]tudies have shown that after three (3) sleep cycles from a traumatic event that your memory actually becomes better, and you get a more accurate statement." Tr. Vol. 2 at 228.

[12] As with the testimony already discussed, Walker failed to make a contemporaneous objection, which would generally result in waiver of the issue on appeal. *Sparks*, 100 N.E.3d at 720. However, regarding this testimony, Walker claims that the fundamental error exception to the waiver rule applies. An error is fundamental, and thus reviewable on appeal, if it "made a fair trial

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[2] Our review of the record reveals that, prior to the start of trial, Walker made a general objection to any reference to his police interview statement during the State's opening on grounds that he made the statement prior to meaningful consultation with his mother. Following a brief hearing outside the presence of the jury, the trial court determined that meaningful consultation occurred prior to the statement, and the court overruled the objection. Then, long after Detective MacDonald's testimony, Walker made a general objection to any reference to the warrant on prejudice grounds. It is well established that litigants must state their objections with specificity. *Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017), *trans. denied*. Indeed, any grounds for objections not raised at trial are not available on appeal, and a party may not add to or change his grounds in the reviewing court. *Treadway v. State*, 924 N.E.2d 621, 631 (Ind. 2010). Therefore, Walker's Evidence Rule 404(b) challenge to Detective MacDonald's testimony is not available on appeal, both because it was not contemporaneous and because it lacked specificity. In addition, unlike his next evidentiary challenge, we need not address whether fundamental error occurred because Walker makes no such claim regarding this evidence. *See Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011) (concluding that failure to raise fundamental error regarding issue in principal appellate brief results in waiver of issue).

impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm." *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018) (citations omitted). These errors create an exception to the general rule that a party's failure to object at trial results in a waiver of the issue on appeal. *Id*. This exception, however, is "extremely narrow" and encompasses only errors so blatant that the trial judge should have acted independently to correct the situation. *Id*.

[13] Walker claims that he was deprived of a fair trial because the trial court failed to intervene and strike the above-mentioned testimony due to the State's failure to "qualify Detective MacDonald as an expert on memory development or sleep science." Appellant's Br. at 43. Even assuming that Detective MacDonald's testimony regarding memory and sleep cycles rose to the level of expert testimony within the meaning of Indiana Evidence Rule 702,[3] Walker has not demonstrated that admission of the evidence constituted fundamental error.

[14] Significantly, Detective MacDonald's testimony was isolated and extremely brief. This testimony was given in the context of Detective MacDonald simply acknowledging that police spoke to Alayzia Yeazy immediately after the

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[3] That rule provides:

> (a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.
>
> (b) Expert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles.

Ind. Evidence Rule 702.

robbery and shooting. Detective MacDonald was then asked about the internal departmental policy regarding interview timelines and his understanding of the rationale underlying that policy. The State asked only two questions about the policy and then immediately shifted questioning to an entirely different subject. The State did not delve into the specifics of Yeazy's statements to police or ask the detective to apply the alleged "scientific" rationale for the departmental policy to her statements or to make any conclusions regarding the accuracy of the statements in light of the rationale. Thereafter, during closing argument, the State briefly referenced Detective MacDonald's testimony to help explain one possibility as to why Yeazy's initial statements to police, given right after she experienced the trauma of the robbery and shooting, might have lacked some details that were subsequently included in her trial testimony. Then, rather than dwell on this testimony, the State emphasized the plethora of unchallenged evidence that corroborated the details of Yeazy's trial testimony. Under the circumstances, we cannot say that the challenged testimony made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm. Walker has not demonstrated fundamental error.

Section 2 – The trial court did not clearly err in denying Walker's *Batson* claim.

[15] During voir dire, the State used peremptory challenges to exclude two African-American female jurors on the basis that (1) potential juror 17 had a domestic battery conviction and had previously served on a jury and found a defendant

not guilty under facts similar to the present case, and (2) potential juror 18 had failed to disclose on her jury questionnaire that she had been charged with domestic battery. In response to Walker's *Batson* objection, the State explained that it was its policy to strike any juror charged with or convicted of domestic battery, and the State also pointed out that potential juror 18 was not honest on her questionnaire. The State further noted that two African-American jurors remained on the jury. The trial court overruled Walker's objections.

[16] Walker argues that the trial court clearly erred in overruling his *Batson* objection and concluding that the State's reasons for those two peremptory strikes were not a pretext for intentional discrimination. "Purposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure." *Batson*, 476 U.S. at 86. "The exclusion of even a sole prospective juror based on race, ethnicity, or gender violates the Fourteenth Amendment's Equal Protection Clause." *Addison v. State*, 962 N.E.2d 1202, 1208 (Ind. 2012). "Pursuant to *Batson* and its progeny, a trial court must engage in a three-step process in evaluating a claim that a peremptory challenge was based on race." *Cartwright*, 962 N.E.2d at 1220. At the first step, the defendant must make a prima facie showing that there are "circumstances raising an inference that discrimination occurred." *Addison*, 962 N.E.2d at 1208. At the second step, if the defendant makes a prima facie showing, the burden shifts to the prosecution to "'offer a race-neutral basis for striking the juror in question.'" *Id*. at 1209 (quoting *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008)). "A race-neutral explanation means 'an

explanation based on something other than the race of the juror.'" *Highler v. State*, 854 N.E.2d 823, 827 (Ind. 2006) (quoting *Hernandez v. New York*, 500 U.S. 352, 360 (1991)). "Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Addison*, 962 N.E.2d at 1209 (quoting *Purkett v. Elem*, 514 U.S. 765, 768 (1995)). "[T]he issue is the facial validity of the prosecutor's explanation." *McCormick v. State*, 803 N.E.2d 1108, 1110 (Ind. 2004) (quoting *Purkett*, 514 U.S. at 768).

[17] Even if the State's reasons appear on their face to be race-neutral, at the third step, the trial court must perform the essential task of assessing whether the State's facially race-neutral reasons are credible. *Addison*, 962 N.E.2d at 1209. The second and third steps must not be conflated. *See id.* at 1210 ("The analytical structure established by *Batson* cannot operate properly if the second and third steps are conflated.") (quoting *United States v. Rutledge*, 648 F.3d 555, 559 (7th Cir. 2011)). In determining whether the State's explanation for the strike is credible and not a pretext for discriminatory intent, the trial court must consider the State's explanation "in light of all evidence with a bearing on it." *Id*. (quoting *Miller-El v. Dretke*, 545 U.S. 231, 251-52 (2005)); *see also Snyder*, 552 U.S. at 478 ("[I]n considering a *Batson* objection, or in reviewing a ruling claimed to be *Batson* error, all of the circumstances that bear upon the issue of racial animosity must be consulted."). Although this third step requires the trial court to evaluate "the persuasiveness of the justification" proffered by the prosecutor, "the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." *Highler*, 854 N.E.2d at

828 (quoting *Purkett*, 514 U.S. at 768). At this stage, the defendant may offer additional evidence to demonstrate that the prosecutor's reasons are pretextual. *Addison*, 962 N.E.2d at 1210. Then, "in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination." *Id*. at 1209 (quoting *Snyder*, 552 U.S. at 477).

[18] "[U]pon appellate review, a trial court's decision concerning whether a peremptory challenge is discriminatory is given great deference, and will be set aside only if found to be clearly erroneous." *Cartwright*, 962 N.E.2d at 1221 (quoting *Forrest v. State*, 757 N.E.2d 1003, 1004 (Ind. 2001)); *see also Jeter v. State*, 888 N.E.2d 1257, 1265 (Ind. 2008) ("On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous.") (citing *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008)), *cert. denied*. "The trial court's conclusion that the prosecutor's reasons were not pretextual is essentially a finding of fact that turns substantially on credibility. It is therefore accorded great deference." *Highler*, 854 N.E.2d at 828. We also note that "where ... a prosecutor has offered a race-neutral explanation for the peremptory challenge and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant had made a prima facie showing of purposeful discrimination becomes moot." *Cartwright*, 962 N.E.2d at 1222 (emphasis omitted); *accord Addison*, 962 N.E.2d at 1209 n.2.

[19] Walker's argument on appeal appears to focus on the third step. Specifically, he argues that the State's indisputably race-neutral reasons for striking two

African-American jurors were pretextual. He waxes poetic on appeal about other jurors who he believes also could have been stricken for similar race-neutral reasons but were not. Be that as it may, Walker offered no persuasive argument to the trial court based upon all of the circumstances that bear upon the issue of racial animosity as to why the State's race-neutral explanations regarding these two potential jurors were not credible. Indeed, the trial court specifically noted that there was no indication that the State's strikes were racially motivated, and, upon our review of all of the circumstances presented, including the fact that two other African-American jurors remained on the jury, we must agree. We remind Walker that he bore the ultimate burden of persuasion regarding racial motivation. *Highler*, 854 N.E.2d at 828. Moreover, it is the trial court's task to judge the credibility of the prosecutor, and we defer to its conclusion. *Id*. Therefore, we cannot say that the trial court clearly erred in finding that the State's race-neutral reasons for striking the two jurors were not a pretext for intentional discrimination.

Section 3 – The State presented sufficient evidence to support Walker's felony murder conviction.

[20] Walker next challenges the sufficiency of the evidence to support his felony murder conviction. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is "not necessary that the evidence 'overcome every reasonable hypothesis of

innocence.'" *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). "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." *Bailey*, 907 N.E.2d at 1005.

[21] Indiana Code Section 35-42-1-1 provides in pertinent part: "A person who ... kills another human being while committing or attempting to commit ... robbery ... commits murder, a felony." The State need not prove the intent to kill, but only the intent to commit the underlying felony. *Luna v. State*, 758 N.E.2d 515, 517 (Ind. 2001). A person is subject to conviction for felony murder based on accomplice liability for the underlying offense. *Id*. The State's accomplice liability theory here required it to prove that Walker knowingly or intentionally aided Miles in the commission of the attempted robbery that resulted in Nelson's death. Ind. Code § 35-41-2-4. Walker's sole assertion is that the State presented insufficient evidence that he was an accomplice to the attempted robbery.

[22] It is well established that the responsibility of a principal and an accomplice is the same. *Taylor v. State*, 840 N.E.2d 324, 338 (Ind. 2006). The following four factors guide our assessment of whether a person aided another in the commission of a crime: (1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) a defendant's conduct before, during, and after the

occurrence of the crime. *Garland v. State*, 788 N.E.2d 425, 431 (Ind. 2003). We conclude that the State presented evidence to support all four factors here.

[23] There is no dispute that Walker was present at the scene of the crime. The evidence indicates that he arrived at the scene with Miles, he was armed with a gun, and he and Miles wore matching clothing. When Miles entered Nelson's car, Walker acted in concert with Miles and also entered the car. The evidence further indicates that Walker not only failed to oppose the robbery, but actively participated in the robbery by taking the marijuana away from Nelson as Miles pointed a gun to Nelson's head. As for his conduct after the robbery and shooting, Walker fled the scene, dropped the stolen marijuana, and discarded his gun. Walker was apprehended running in the direction of Miles's cousin's home, where Miles had fled. We agree with the State that "the pieces of evidence before us here fit together into a coherent whole" that incriminates Walker as an accomplice. *Young v. State*, 198 N.E.3d 1172, 1177 (Ind. 2022). In other words, the totality of the evidence favorable to the State, and the reasonable inferences that the jury could draw from that evidence, were substantially probative of Walker's guilt. The State presented sufficient evidence to support Walker's conviction for felony murder under accomplice liability.

Section 4 – Walker's claim regarding inconsistent verdicts is not available for our review.

[24] Walker finally requests that we vacate his criminal recklessness conviction. He claims that the jury's finding that he was guilty of level 6 felony criminal recklessness, which required a finding that he was armed with a firearm, was

inconsistent with his acquittal on the firearm sentencing enhancement. However, it is well established by our supreme court that "[j]ury verdicts in criminal cases are not subject to appellate review on grounds that they are inconsistent, contradictory, or irreconcilable." *Beattie v. State*, 924 N.E.2d 643, 649 (Ind. 2010). Walker concedes that his claim is unreviewable under Indiana law, as well as that of a majority of other jurisdictions, but simply lodges his disagreement with the law and urges us to follow the different position taken by a minority of jurisdictions. We must decline his invitation, as "we are bound to follow the precedent of our supreme court." *Minor v. State*, 36 N.E.3d 1065, 1074 (Ind. Ct. App. 2015) (citation omitted). Accordingly, any inconsistency in Walker's acquittal on the sentencing enhancement and his conviction for level 6 felony criminal recklessness is not subject to appellate review. Walker's convictions are affirmed.

[25] Affirmed.

Robb, J., and Kenworthy, J., concur.