

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Sean Nigel Hindman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 31, 2022
Court of Appeals Case No.
22A-CR-1255
Appeal from the
Hamilton Superior Court
The Honorable
Michael A. Casati, Judge
Trial Court Cause No.
29D01-2102-F4-803

Vaidik, Judge.

Case Summary

- [1] Sean Nigel Hindman appeals his conviction for Level 4 felony unlawful possession of a firearm by a serious violent felon. He contends the trial court erred by denying his request to bifurcate the trial and by denying his motion for mistrial. We affirm.

Facts and Procedural History

- [2] On February 8, 2021, Officer Joseph Ryder of the Fishers Police Department pulled Hindman over for improper lane change. Hindman was alone in the SUV but claimed it had been rented by his sister. Because Officer Ryder smelled “a very strong odor of raw marijuana,” Tr. p. 48, he searched the SUV. In the hatch back, Officer Ryder found two trash bags containing Hindman’s clothes. When Officer Ryder lifted the floor of the hatch back, he found a handgun. Hindman said he did not have a license to carry a handgun but that the gun was not his, he had never touched it, and his DNA would not be on it. However, later testing showed that Hindman’s DNA was on the gun’s grip, sight, rear slide, and trigger.
- [3] The State charged Hindman with Level 4 felony unlawful possession of a firearm by a serious violent felon (based on a 2016 conviction for dealing in cocaine or a narcotic drug) (“the SVF charge”) and three counts of carrying a handgun without a license: one Class A misdemeanor count (the base level) and two Level 5 felony counts based on enhancing circumstances (one because

Hindman had a prior conviction for carrying a handgun without a license, and the other because Hindman had a prior felony conviction).¹

[4] Hindman moved to bifurcate the jury trial of the SVF charge, arguing:

The labeling of the Defendant as a Serious Violent Felon in the trial prior to a finding that the Defendant possessed a firearm is clearly unduly prejudicial to the Defendant, as it could lead the jury to find that the Defendant possessed a firearm merely based on his alleged status as a Serious Violent Felon.

Appellant's App. Vol. II p. 108. The trial court denied that motion but did bifurcate the trial as to the three carrying-a-handgun charges. In the first phase, along with the full SVF charge, the jury would decide the Class A misdemeanor carrying charge. If the jury found Hindman guilty on the Class A misdemeanor charge, a second phase would be held for the jury to consider the two Level 5 felony enhancements.

[5] At trial, Officer Ryder testified as follows after being asked to describe the traffic stop:

I'm just gathering the typical traffic stop information that I do with every traffic stop. Then [dispatch] also informed me that Madison County deemed it necessary to pass along to them for

¹ The State also charged Hindman with two misdemeanor driving offenses and alleged that he is a habitual offender. The State dismissed the driving charges before trial, and the trial court did not impose a habitual-offender enhancement.

me to know that there was a caution placed under [Hindman's] name for possibly armed --

Tr. p. 57. Hindman's attorney immediately objected and moved for mistrial, arguing that the State was "just trying to make [Hindman] look bad" by presenting evidence that Madison County had placed a "possibly armed" caution under Hindman's name and that "[t]here's no way to unring that bell." *Id.* at 58. The trial court declined to order a mistrial but gave the jury the following admonishment:

I am going to instruct you at this time that you are to completely disregard the officer's testimony that he received information that the Defendant might possibly be armed. You are to disregard that testimony and we're going to proceed with further questioning.

Id. at 62.

[6] The jury found Hindman guilty on both the SVF charge and the Class A misdemeanor carrying charge. Hindman then waived his right to jury trial on the Level 5 felony enhancements and was found guilty by the court. However, due to double-jeopardy concerns, the court entered judgment of conviction only on the SVF charge and imposed the maximum sentence of twelve years for that count.

[7] Hindman now appeals.

Discussion and Decision

I. Mistrial

[8] Hindman contends the trial court should have granted his motion for mistrial after Officer Ryder testified that Madison County had placed a “possibly armed” caution under Hindman’s name. The grant of a mistrial is an extreme remedy that is warranted only if no lesser remedy can cure the error or misconduct. *Mathews v. State*, 978 N.E.2d 438, 441 (Ind. Ct. App. 2012), *trans. denied*. The question is whether the defendant “was placed in a position of grave peril to which he should not have been subjected.” *Dorelle-Moore v. State*, 968 N.E.2d 287, 289 (Ind. Ct. App. 2012). Because the trial court “can assess first-hand all relevant facts and circumstances and their impact on the jury,” we review denial of a motion for mistrial only for abuse of discretion. *Ramirez v. State*, 7 N.E.3d 933, 935 (Ind. 2014).

[9] Hindman argues the trial court abused its discretion because “there could be no more prejudicial evidence in an unlawful possession of a firearm trial than the hearsay evidence from a law enforcement agency that defendant is possibly armed.” Appellant’s Br. p. 11. For three reasons, we disagree. First, the reference to Hindman being “possibly armed” was fleeting and isolated. *See Lucio v. State*, 907 N.E.2d 1008, 1011 (Ind. 2009) (affirming denial of mistrial where reference to defendant previously being incarcerated was “fleeting, inadvertent, and only a minor part of the evidence against the defendant”). Second, the trial court clearly admonished the jury to disregard the improper

testimony. There is a strong presumption that juries follow court instructions, and so there is a strong presumption that an admonition cures evidentiary error.

Id. Third, the evidence that Hindman possessed the gun was very strong.

Hindman was the only person in the SUV, the gun was found in the hatch back close to Hindman's belongings, and testing revealed Hindman's DNA at several places on the gun. Our Supreme Court has established that the strength of the State's proper evidence is relevant to determining whether the defendant was placed in a position of grave peril by the introduction of improper evidence. *See James v. State*, 613 N.E.2d 15, 22-23 (Ind. 1993); *Szpyrka v. State*, 550 N.E.2d 316, 317-18 (Ind. 1990).

[10] The trial court did not abuse its discretion by denying Hindman's motion for mistrial.

II. Bifurcation

[11] Hindman also argues the trial court should have granted his motion to bifurcate the SVF charge. We review such a decision for an abuse of discretion. *Dugan v. State*, 860 N.E.2d 1288, 1290 (Ind. Ct. App. 2007), *trans. denied*.²

[12] As Hindman notes, we have explained that the bifurcation of SVF charges "serves the ends of justice" because it prevents the jury's decision on the issue of

² In addition to his abuse-of-discretion argument, Hindman briefly asserts that the denial of his motion to bifurcate violated his right to due process under the U.S. Constitution. He waived this argument by (1) failing to make it in the trial court and (2) failing to support it with cogent reasoning or citation to relevant legal authority.

possession from being tainted by the knowledge that the defendant has a prior conviction for a serious felony. *See Williams v. State*, 834 N.E.2d 225, 227-28 (Ind. Ct. App. 2005). Hindman contends:

What would have best served the interests of justice here was to try first the misdemeanor carrying a handgun charge, as it did not contain an element of a prior conviction of any sort. In the event of a conviction on the misdemeanor charge the trial court could then proceed on the Level 4 and Level 5 felonies, as those require proof of prior convictions.

Appellant's Br. pp. 8-9. He asserts that bifurcation of the carrying charges gave the trial court "the perfect opportunity to bifurcate the SVF charge." *Id.* at 9.

[13] While the trial court probably should have bifurcated the SVF charge, since it was already bifurcating the carrying charges, we agree with the State that any error was harmless in light of the strong evidence of possession. An error in the admission of evidence (here, evidence that Hindman had a prior drug-dealing conviction) doesn't require reversal "unless it prejudices the defendant's substantial rights." *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). "To determine whether an evidentiary error was prejudicial, we assess the probable impact the evidence had upon the jury in light of all of the other evidence that was properly presented." *Id.* "If we are satisfied the conviction is supported by independent evidence of guilt such that there is little likelihood the challenged evidence contributed to the verdict, the error is harmless." *Id.*

[14] Again, the evidence that Hindman possessed the gun was substantial. He was the only person in the SUV when it was pulled over, the gun was found in the

hatch back close to his belongings, and testing revealed his DNA on several parts of the gun.³ We are confident there is little likelihood the jury's knowledge of Hindman's prior drug-dealing conviction contributed to its finding on the element of possession.

[15] Affirmed.

Riley, J., and Bailey, J., concur.

³ In his opening brief, Hindman suggests that the DNA evidence might have been unreliable because "his [sister] rented the vehicle and could have been a contributor." Appellant's Br. pp. 11-12. As the State points out in its brief, Hindman admitted in a pre-sentencing interview that the person who rented the SUV was not his sister but a childhood friend. Appellant's App. Vol. II p. 143. In his reply brief, Hindman generally questions the DNA evidence but makes no mention of the sister theory, so we consider it abandoned.