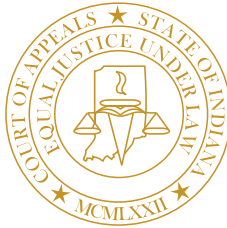


Pursuant to Indiana Appellate Rule 65(E), the trial court and parties shall not take any action in reliance upon this memorandum decision until it is certified.

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Anthony E. Durham,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



October 21, 2026

Court of Appeals Case No.
25A-CR-3289

Appeal from the Morgan Superior Court
The Honorable Dakota VanLeeuwen, Judge

Trial Court Cause No.
55D01-2407-CM-1043

Memorandum Decision by Judge Pyle

Judges Bradford and Kenworthy concur.

Pyle, Judge.

Statement of the Case

[1] Anthony E. Durham (“Durham”) appeals, following a bench trial, his conviction for Class B misdemeanor possession of marijuana.¹ Durham argues that: (1) the trial court committed fundamental error when it admitted evidence of Durham’s marijuana and other drug items; and (2) there is insufficient evidence to support his conviction. We conclude that: (1) Durham has not shown fundamental error in the admission of evidence; and (2) the evidence was sufficient to support Durham’s conviction. Accordingly, we affirm Durham’s conviction for Class B misdemeanor possession of marijuana.

[2] We affirm.

Issues

1. Whether the trial court committed fundamental error when it admitted evidence of Durham’s marijuana and other drug items.
2. Whether there is sufficient evidence to support Durham’s conviction for Class B misdemeanor possession of marijuana.

¹ IND. CODE § 35-48-4-11. Durham was also convicted of Class C misdemeanor possession of paraphernalia and Class C infraction unsafe lane movement but does not challenge those judgments on appeal.

Facts

- [3] On June 29, 2024, a Mooresville Police Department (“MPD”) sergeant (“the Sergeant”) was on patrol in Morgan County. As the Sergeant drove behind a Ford Fiesta, which was driven by Durham (“Durham’s car”), the Sergeant smelled “a strong odor of burnt marijuana” and “smelled it for a prolonged amount of time[.]” (Tr. Vol. 2 at 26, 27). The Sergeant followed Durham’s car onto State Road 144 and saw Durham drive his car to the left of a lane marker.
- [4] The Sergeant then initiated a traffic stop. When the Sergeant walked up to Durham’s car window, the Sergeant again smelled “the strong odor of burnt marijuana” emanating from the inside of Durham’s car. (Tr. Vol. 2 at 28). The Sergeant had Durham exit his car and asked Durham how much marijuana was inside his car. Durham told the Sergeant that he had “a small amount inside of a can.” (Tr. Vol. 2 at 28). Durham also told the Sergeant that he had a black bag on the front seat and some THC vapes and THC gummies. Inside Durham’s car, the Sergeant found the bag containing “green vegetation[.]” thirteen THC vape pens, six THC gummies, another open pack of THC gummies, a bag with a “half smoked” “roach[.]” and a pack of rolling papers. (Tr. Vol. 2 at 30). The Sergeant conducted a mobile THC test on the green vegetation, and the result showed “a presumptive positive range for THC[.]” (Tr. Vol. 2 at 31).

- [5] Thereafter, the Sergeant transported the green vegetation and other evidence to MPD, photographed and weighed it, placed it into evidence bags, checked it into MPD's secured evidence room, and submitted a lab request to have the green vegetation tested by the Indiana State Police Lab ("the ISP Lab"). An MPD detective who served as the evidence technician for MPD ("the Evidence Tech Detective") then took the green vegetation, which had previously been placed in a sealed envelope, from the MPD evidence room to the ISP Lab for testing. The evidence was then placed in the ISP Lab's vault until testing was completed. An ISP forensic scientist ("the Forensic Scientist") conducted the testing and confirmed that the green vegetation was marijuana and that it contained "over one percent of Delta 9 tetrahydro cannabinol, which is also known as THC." (Tr. Vol. 2 at 37). Thereafter, the ISP Lab returned the marijuana to MPD, where the evidence was stored until trial.
- [6] The State charged Durham with Class B misdemeanor possession of marijuana, Class C misdemeanor possession of paraphernalia, and Class C infraction unsafe lane movement.
- [7] Prior to trial and while Durham was represented by counsel, he filed a notice requesting to assert a defense under the Indiana Religious Freedom Restoration Act ("RFRA") ("the RFRA defense notice"). In the RFRA defense notice, Durham acknowledged that he had had "several marijuana products" in his car and asserted that he was "of Pagan religion." (App. Vol. 2 at 31, 33). Durham argued that he should not be subjected to the possession of marijuana statute and charge because of his Pagan religion. The trial court held a hearing on

Durham's notice, determined that Durham had failed to meet his burden, and denied his request to assert a RFRA defense.

[8] Thereafter, Durham's counsel withdrew her appearance, and Durham represented himself during the remainder of the pretrial process. The State subsequently filed its witness list, which included the names of the Sergeant, the Evidence Tech Detective, the Forensic Scientist, and its exhibit list, which included the marijuana and other items seized from Durham's car. Durham then filed a motion to compel the State to provide the name of its witnesses, its list of evidence, and any audio and video evidence. Thereafter, the trial court issued an order, noting that the State had already filed its witness and exhibit lists. The trial court also noted that Durham was seeking to have the State provide him with "the evidence [it was] presenting prior to trial" and directed Durham that "[a]ny evidence [Durham] wishe[d] to obtain beyond the State's evidence ha[d] to be properly requested by [Durham]." (App. Vol. 2 at 70).

[9] Two days before trial, Durham filed various pretrial motions, including a motion in limine. In his limine motion, Durham sought, in part, to preclude the State from introducing any exhibit that lacked a "documented chain of custody[.]" (App. Vol. 2 at 108).

[10] The trial court held a one-day bench trial in December 2025. Durham appeared pro se for the trial. The trial court first addressed Durham's pretrial motions. In regard to Durham's motion in limine request on the chain of custody, the trial court explained to Durham that he could make an argument on the chain

of custody during trial. The trial court also addressed Durham's previous motion to compel and noted that the State had complied with discovery and had provided Durham with what the State was going to present at trial. Additionally, the trial court noted that Durham had not filed any third-party subpoenas.

[11] During the trial, the State introduced the marijuana and other items from Durham's car as State's Exhibits 1 through 6. The Sergeant, the Evidence Tech Detective, and the Forensic Scientist testified about the chain of custody for the evidence as set forth above. Additionally, the Sergeant and the Evidence Tech Detective confirmed that State's Exhibits 1 through 6 appeared to be in the same or substantially similar condition as when he had had possession of them.

[12] During cross-examination of the Evidence Tech Detective, Durham asked if he had documentation for the chain of custody of the evidence. The Evidence Tech Detective confirmed that he did, and Durham asked if he could provide that to Durham. The trial court informed Durham that the trial was "not a time to ask for documents" and that Durham would have needed to file a third-party subpoena if he had wanted that documentation. (Tr. Vol. 2 at 24). The trial court told Durham that the trial was the "time for [Durham] to ask this witness questions" and instructed Durham to "ask him any questions that [he] ha[d]." (Tr. Vol. 2 at 24, 25). Thereafter, Durham asked the Evidence Tech Detective to confirm that he was "validating" that he had received the evidence from the Sergeant, stored the evidence, and then had transported it to the ISP Lab. (Tr. Vol. 2 at 25). After the Evidence Tech Detective confirmed that

information as correct, Durham did not ask any more cross-examination questions. When the State moved to admit State's Exhibits 1 through 6 into evidence, the trial court specifically asked Durham if he had any objections, and Durham stated that he had no objection to the admission of the evidence.

[13] As for the identification of the green vegetation in State's Exhibit 1, the Forensic Scientist testified about how she had tested the substance and had determined that it was marijuana. The Forensic Scientist also testified about the content level of THC in the substance. Specifically, she testified that the substance contained "over one percent of Delta 9 tetrahydro cannabinol, which is also known as THC." (Tr. Vol. 2 at 37).

[14] The trial court found Durham guilty as charged. Thereafter, the trial court imposed an aggregate twelve-day sentence with credit for time served.

[15] Durham now appeals.

Decision

[16] Durham argues that: (1) the trial court committed fundamental error when it admitted evidence of Durham's marijuana and other drug items; and (2) there is insufficient evidence to support his conviction. We will review each argument in turn.

1. Fundamental Error in Admission of Evidence

[17] Durham first challenges the trial court's admission into evidence of State's Exhibits 1 through 6, which were the marijuana and other drug items found in

his car. Specifically, Durham contends that the trial court should have excluded this evidence because the State failed to establish an adequate foundation for the chain of custody. Durham contends that the foundation was inadequate because the State did not introduce documentation for the chain of custody in addition to the witnesses' testimony.

[18] Durham acknowledges that he did not object to this evidence when the State offered it for admission into evidence. His failure to object to the challenged exhibits and testimony results in waiver of any argument regarding its admissibility. *See Hoglund v. State*, 962 N.E.2d 1230, 1239 (Ind. 2012) (“Failure to object at trial waives the issue for review unless fundamental error occurred.”), *reh’g denied*. Durham recognizes this procedural default and argues that the admission of the evidence constituted fundamental error.

[19] “[F]undamental error in the evidentiary decisions of our trial courts is especially rare.” *Merritt v. State*, 99 N.E.3d 706, 709 (Ind. Ct. App. 2018), *trans. denied*. The fundamental error exception “is extremely narrow and encompasses only errors so blatant that the trial judge should have acted independently to correct the situation.” *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018) (internal quotation marks and citation omitted). “An error is fundamental, and thus reviewable on appeal, if it 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.” *Id.* (internal quotation marks and citation omitted). “Harm is not shown by the fact that the defendant was ultimately convicted; rather harm is found when error is so prejudicial as to

make a fair trial impossible.” *Hoglund*, 962 N.E.2d at 1239. “Fundamental error is meant to permit appellate courts a means to correct the most egregious and blatant trial errors that otherwise would have been procedurally barred, not to provide a second bite at the apple for defense counsel who ignorantly, carelessly, or strategically fail to preserve an error.” *Ryan v. State*, 9 N.E.3d 663, 668 (Ind. 2014), *reh’g denied, abrogated on other grounds by Konkle v. State*, 253 N.E.3d 1068 (Ind. 2025).

[20] “For fungible items such as . . . drugs, an adequate foundation is laid when the whereabouts of an exhibit is shown from the time it came into the possession of the police.” *Mateo v. State*, 981 N.E.2d 59, 66 (Ind. Ct. App. 2012), *trans. denied*. “To establish a proper chain of custody, the State must give reasonable assurances that the evidence remained in an undisturbed condition.” *Troxell v. State*, 778 N.E.2d 811, 814 (Ind. 2002). “However, the State need not establish a perfect chain of custody, and once the State strongly suggests the exact whereabouts of the evidence, any gaps go to the weight of the evidence and not to admissibility.” *Id.* (cleaned up). “Moreover, there is a presumption of regularity in the handling of evidence by officers, and there is a presumption that officers exercise due care in handling their duties.” *Id.* “To mount a successful challenge to the chain of custody, [a defendant] must present evidence that does more than raise a mere possibility that the evidence may have been tampered with.” *Id.*

[21] Here, the State provided “reasonable assurances that the evidence remained in an undisturbed condition” through the testimony of the Sergeant, the Evidence

Tech Detective, and the Forensic Scientist about the chain of custody for the evidence. *See Troxell*, 778 N.E.2d at 814. Their testimony showed that the marijuana and other evidence obtained from Durham’s car was taken to the MPD where it was packaged in evidence bags and secured until the time it was transported to the ISP Lab, where it was again secured until it was tested and eventually returned to the MPD. Because the witnesses’ testimony provided “reasonable assurances that the evidence remained in an undisturbed condition[,]” we conclude that there was no error, let alone fundamental error, in the admission of State’s Exhibits 1 through 6. *See Troxell*, 778 N.E.2d at 814 (concluding that there was no error or fundamental error where witnesses testified to the chain of custody).²

2. Sufficiency of the Evidence

[22] We next turn to Durham’s argument that there is insufficient evidence to support his conviction for Class B misdemeanor possession of marijuana. We disagree.

[23] “Sufficiency-of-the-evidence claims trigger a deferential standard of review in which we neither reweigh the evidence nor judge witness credibility, instead reserving those matters to the province of the jury.” *Hancz-Barron v. State*, 235

² We also reject Durham’s suggestion that the trial court impeded his ability to cross-examine the Evidence Tech Detective when the trial court explained to Durham that trial was a time for Durham to ask questions and not to request documentation. Indeed, the record reveals that Durham was able to cross-examine the witness about the chain of custody.

N.E.3d 1237, 1244 (Ind. 2024) (cleaned up). “A conviction is supported by sufficient evidence if there is substantial evidence of probative value supporting each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.” *Id.* (cleaned up). “In conducting that review, we consider only the evidence that supports the jury’s determination, not evidence that might undermine it.” *Id.*

[24] To convict Durham of Class B misdemeanor possession of marijuana, the State was required to prove beyond a reasonable doubt that Durham knowingly or intentionally possessed marijuana. *See* I.C. § 35-48-4-11(a)(1). To prove that the substance possessed is marijuana, the State was required to “prove beyond a reasonable doubt that a substance is marijuana by proving that the substance’s delta-9-THC concentration exceeds 0.3% on a dry weight basis.” *Fritz v. State*, 223 N.E.3d 265, 277 (Ind. Ct. App. 2023). *See also Lakes v. State*, 224 N.E.3d 373, 375 (Ind. Ct. App. 2024). “[T]he State [does] not need to prove the exact percent concentration of THC, but [it does] need to prove the substance possessed was marijuana.” *Fedij v. State*, 186 N.E.3d 696, 709 (Ind. Ct. App. 2022).

[25] Here, the Forensic Scientist testified that the green vegetation was marijuana and that it contained “over one percent of Delta 9 tetrahydro cannabinol, which is also known as THC.” (Tr. Vol. 2 at 37). Accordingly, the State presented sufficient evidence to show that the green vegetation substance that Durham possessed was marijuana. *See Fritz*, 223 N.E.3d at 277; *Fedij*, 186 N.E.3d at 709. Indeed, Durham acknowledges the sufficiency of the Forensic Scientist’s

testimony, but he attempts to challenge the weight of that testimony by resurrecting his chain-of-custody argument and suggesting that her testimony would not be sufficient if the chain of custody had not been properly established. We, however, have already determined that Durham's chain-of-custody argument is without merit.

[26] Durham's argument that there was insufficient evidence to support his conviction is nothing more than a request to reweigh the evidence and credibility of witnesses, which we decline to do. *See Hancz-Barron*, 235 N.E.3d at 1244. The evidence presented at trial supports the trial court's determination, as trier of fact, that Durham possessed marijuana. Accordingly, we affirm Durham's conviction for Class B misdemeanor possession of marijuana.

[27] Affirmed.

Bradford, J., and Kenworthy, J., concur.

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