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ATTORNEYS FOR APPELLEE:

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[illegible]

Appellee-Plaintiff.

NAJAM, Judge

STATEMENT OF THE CASE

Michael P. Large appeals his conviction for Battery, as a Class A misdemeanor, following a jury trial. Large presents the following issue for review: whether the trial court's refusal to allow the jury to pose a question to Large following the close of evidence constituted fundamental error.

We affirm.

FACTS AND PROCEDURAL HISTORY

Between 2:30 a.m. and 3:00 a.m. on the morning of February 9, 2008, Large and his friend, Holly Eaton, arrived at the home of Large's grandmother, where Large was living. Eaton's vehicle was parked on the street in front of the home, and the dome light was on. Officer T.J. Pierce stopped to tell Eaton about the dome light. As he was pulling away, he observed Large standing in the fenced back yard, exited his vehicle, and approached Large. The officer asked for Large's name and whether he had any outstanding warrants. He then checked with the dispatcher and learned that Large had no outstanding warrants.

Large told Officer Pierce to leave, and he yelled and cursed at him. Large also said he "was going to have [the officer's] job," that the officer would be "sorry for harassing him," and that "he was going to come out in the street and kick [the officer's] ass." Transcript at 134. Officer Pierce told Large he would be arrested if he came into the street to fight, and he told Large to go inside the house. Large then "yelled out, 'you go ahead and leave, but I'll be waiting for you when you get back' or something to that

[e]ffect[.]” Id. at 136-37. Officer Pierce then yelled for Large to stop and told him he was under arrest.

Officer Pierce headed toward the backyard fence, and Large moved toward the back door of the house. Officer Pierce repeatedly told Large to stop as he jumped the fence into the back yard and approached Large. When the officer reached Large, Large had opened the back screen door and was attempting to unlock the back door of the house. Officer Pierce grabbed Large’s left arm and told him he was under arrest. Large pulled away, and the officer sprayed Large’s face with pepper spray. When Large continued to try to get in the back door, Officer Pierce performed a “body lock” and successfully took Large off his feet. Id. at 146. Both men fell toward some stairs. Officer Pierce was straddling Large’s back, but Large rolled over and continued to struggle. In the struggle, Large struck Officer Pierce several times. Eventually another officer arrived and assisted in completing the arrest.

The State charged Large with battery, as a Class A misdemeanor; resisting law enforcement, as a Class A misdemeanor; public intoxication, as a Class B misdemeanor; and disorderly conduct, as a Class B misdemeanor. The State later amended the battery charge to resisting law enforcement, as a Class A misdemeanor, and the public intoxication charge to battery, as a Class A misdemeanor. At trial, the jury submitted written questions for the trial court to ask Large at the conclusion of his testimony. Later in the trial, on the morning following an adjournment at the close of evidence, the jury requested permission to ask more questions. The trial court addressed that request as follows:

The bailiff informs me that at this point the jury may have some questions. I'm not sure at this point, I think we can entertain the questions, but we may or may not be able to answer them. Let's have them, have those written questions, under the rules there are times when we can answer questions. Sometimes all we can do is refer you back to the instructions that the court will offer you. So if we don't answer them, it's not because we don't respect the question or respect you, it's just sometimes the rules just constrain what we can do and can't do.

(Sidebar with counsel)

I think the attorneys understand this, and I'm going to go ahead and explain this because I think it's important that the jury understand, it may very well and this is a concern that I have and that's why I want to address this, this way. Questions [for] particular witnesses have to be addressed at the time they are on the stand. So now that, in this case, Mr. Large has left the stand, we can't ask those questions. And, ah, in part I feel like it may be my feeling that I didn't make it absolutely clear or even stop and ask you after each witness, do you have questions. So I apologize for that. But in this case we can't direct these questions, and that's the reason why.

Id. at 265-66. Following deliberations, the jury found Large guilty of battery, as a Class A misdemeanor, and not guilty of the remaining charges. The court entered judgment of conviction accordingly, and Large now appeals.

DISCUSSION AND DECISION

Large contends that the trial court committed fundamental error by refusing to ask him questions that were tendered by the jurors on the day following the close of all the evidence. We initially observe that Large did not object to the trial court's refusal to ask the questions. As such, Large has not preserved the issue for appellate review. Miller v. State, 716 N.E.2d 367, 370 (Ind. 1999). In an effort to avoid waiver, Large contends that the court's refusal to ask those questions constitutes fundamental error.

The fundamental error doctrine is extremely narrow. Rowe v. State, 867 N.E.2d 262, 266 (Ind. Ct. App. 2007) (citing Sandifur v. State, 815 N.E.2d 1042, 1046 (Ind. Ct.

App. 2004), trans. denied). To qualify as fundamental error, an error must be so prejudicial to the rights of the defendant as to make a fair trial impossible. Id. Further, the error must constitute a blatant violation of basic principles, the harm, or potential for harm must be substantial, and the resulting error must deny the defendant fundamental due process. Id. Large has not met that burden.

Indiana Evidence Rule 614(d) provides: “A juror may be permitted to propound questions to a witness by submitting them in writing to the judge, who will decide whether to submit the questions to the witness for answer.” And Indiana Jury Rule 20(a)(7) states in part: “The court shall instruct the jury before opening statements by reading the appropriate instruction which shall include at least . . . [t]hat jurors may seek to ask questions of the witnesses by submission of questions in writing.” A trial court must give a preliminary instruction that does not leave the jurors in doubt as to how they may ask questions. Howard v. State, 818 N.E.2d 469, 480 (Ind. Ct. App. 2004), trans. denied. A trial court is merely required not to leave the jurors in doubt as to how to submit a question. Id. The court’s method of accomplishing this requirement is reviewed for an abuse of discretion. See id. at 480; Dowdy v. State, 672 N.E.2d 948, 953 (Ind. Ct. App. 1996), trans. denied.

Large argues that the trial court’s refusal to allow the jury to ask him additional questions, following the close of the evidence, “impaired the jury’s understanding of the facts and discovery of the truth.” Appellant’s Brief at 6. He also contends that the decision “impact[ed] his ability to present his defense.” Id. But Large has neither argued nor shown that he was prevented from presenting or questioning witnesses or from

offering other evidence. Whether the trial court allowed the jury to ask questions of a witness was not part of Large's defense.

Still, Large complains that the trial court's refusal to reopen the case after the close of evidence to ask the jurors' questions constitutes fundamental error. We cannot agree. In the preliminary instructions, the court apprised the jury of the procedure for submitting questions to witnesses. In particular, the court instructed the jurors:

During the trial you may want to ask questions of witnesses. For a question to be answered, certain procedures must be followed. First, you must wait until the attorneys have completed their questioning of a witness. Please do not speak directly to the witness, the attorneys or the court. Then, before the witness leaves the stand, write down your question and raise your hand. If I do not call on you, please address me so that I do not overlook your question. Juror questions, like those of attorneys, must conform to the rules of evidence. I will privately review any written question with the attorneys and will determine whether it is legally proper. If it is, I will ask the witness to answer your question. If a question is not asked, you should not speculate as to the answer or the reason for the ruling.

Transcript at 108-09 (emphasis added). This procedure was well within the trial court's discretion. As noted above, the jury took advantage of this procedure by asking three questions of Large at the close of his testimony. Large has not shown that this procedure made a fair trial impossible.

In support of his argument, Large cites Vinson v. State, 735 N.E.2d 828 (Ind. Ct. App. 2000), trans. denied, abrogated on other grounds by Long v. State, 743 N.E.2d 253, 257 n.6 (Ind. 2001) (regarding the retention of police officers at counsel's table despite separation-of-witnesses order). In Vinson, we held that the trial court was within its discretion when it granted the State's request to reopen the case, following the close of evidence, in order for a juror to ask a question of a witness. Vinson, 735 N.E.2d at 836.

But that case involved a review for an abuse of discretion, not fundamental error. Thus, Vinson is inapposite. Further, here, no party asked for the evidence to be reopened in order for the juror question to be asked. Large has not shown that the trial court committed fundamental error by failing to sua sponte reopen the evidence to allow the juror's questions.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.