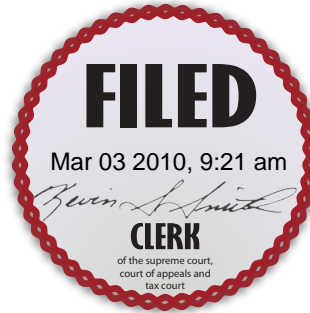


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

JOSHUA MAURER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 61A01-0906-CR-308
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PARKE CIRCUIT COURT  
The Honorable Samuel A. Swaim, Judge  
Cause No. 61C01-0807-FB-134

**MARCH 3, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARTEAU, Senior Judge**

## STATEMENT OF THE CASE

Defendant-Appellant Joshua Maurer appeals his conviction of burglary, a Class B felony. Ind. Code § 35-43-2-1. We affirm.

## ISSUES

Maurer raises two issues for our review, which we restate as:

- I. Whether the trial court abused its discretion in admitting pictures of articles seized in an allegedly unconstitutional search.
- II. Whether the trial court abused its discretion in allowing a police officer to testify as a skilled witness.

## FACTS AND PROCEDURAL HISTORY

In June of 2008, Maurer and Matthew Samuels burglarized a Parke county residence owned by Brian Collings, stealing six guns, foreign currency, a collector's knife, and a fireman's watch. Two of the guns were sold to a local resident, who traded one of the guns to Pat Robbins. Robbins then traded the gun to a gun shop owner, and Collings, who was visiting the gun shop, identified the gun as his own.

Detective Justin Cole and Sergeant Jason Frazier of the Parke County Sheriff's office investigated the burglary. Maurer, who by that time was a resident of the Parke County jail, made a call on a monitored phone in which he asked his father, Larry, to remove an autographed Peyton Manning football from his truck. After listening to the call, Detective Cole ran a check on this football and discovered that it had been stolen from a police officer in Greene County.

Approximately three weeks later, the Indiana State Police, pursuant to a Greene County search warrant issued in another matter pertaining to the theft of weapons, searched Maurer's Vigo County residence and a truck, both owned by Maurer's father. Sergeant Frazier and Detective Cole (Parke County) accompanied the State Police during the execution of the search warrant. During the search, two items from the Parke County burglary were discovered, the gold fireman's watch and the foreign currency.

Prior to trial, Maurer filed a motion to suppress "any and all items of personal property connected with the burglary and theft of Brian Collings' residence in Parke County" that were obtained during the search of the Vigo County residence and the truck. (Appellant's App. at 38). In the middle of trial, the trial court excused the jury and held a hearing on the motion to suppress. After the hearing, the trial court denied the motion.

When the trial resumed, Sergeant Frazier testified without objection about the items seized from the Vigo County residence. When the State subsequently offered pictures of the seized items, Maurer's counsel stated that he had "no objection." (Tr. at 217-219).

Detective Cole testified regarding Maurer's cell phone records, identifying and providing the location of the towers that Maurer's numerous cell phone calls "bounced off of" on the day of the burglary. Defendant initially objected, arguing that there was an insufficient foundation to qualify Detective Cole as an expert. The State responded that it was not attempting to qualify Detective Cole as an expert, but rather someone with "specialized knowledge." (Tr. at 229). Detective Cole then testified without objection as

to Maurer's approximate location based on his cell phone use, which placed him in the vicinity of the Parke County burglary at the approximate time the offense occurred. The State also presented a tape of Maurer admitting on a monitored jail phone that the police found some of the stolen items in the truck he had been driving.

A jury found Maurer guilty of Class B felony burglary, and the trial court sentenced him to a prison term of eighteen years. Maurer now appeals.

## DISCUSSION AND DECISION

### I. PROPRIETY OF SEARCH AND SEIZURE

Maurer contends that the trial court erroneously admitted the pictures of the items seized from his residence and truck. He argues that the items were the result of an illegal search because Sergeant Frazier and Detective Cole took advantage of the Greene County warrant to seize items stolen in the Parke County burglary.

Our reading of the transcript discloses that the admission of the pictures followed Sergeant Frazier's testimony identifying the seized items. There was no objection to this testimony at trial, and there is none on appeal.<sup>1</sup> The seized items are merely cumulative of the testimony, and any error in admitting the seized items is harmless. *See Pavey v. State*, 764 N.E.2d 692, 703 (Ind. Ct. App. 2002), *trans. denied*.

Furthermore, when a trial court denies a motion to suppress evidence, the defendant must renew his objection to admission at trial. Failure to make an objection at

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<sup>1</sup> Maurer argues in his appellate brief that holding him accountable for failure to mention the testimony in his original brief is "hyper-technical." However, it is the appellant's responsibility to make his arguments, and an appellate court should not do so.

trial results in waiver of any error. *Wright v. State*, 593 N.E.2d 1192, 1194 (Ind. 1992), *cert. denied*, 506 U.S. 1001, 113 S.Ct. 605, 121 L.Ed.2d 540, *abrogated on other grounds* by *Fajardo v. State*, 859 N.E.2d 1201 (Ind. 2007). Therefore, when trial counsel specifically stated “no objection” to the admission of the pictures, any error in their admission was waived.

In an attempt to avoid waiver, Maurer cites *Camm v. State*, 908 N.E.2d 215 (Ind. 2009). In *Camm*, our supreme court held that the waiver rule may not always be applied with “unyielding rigidity.” *Id.* at 222. For two reasons, the court refused to apply the waiver rule in *Camm*. First, although Camm’s trial objections were untimely, he had “consistently objected to the speculation of witnesses—before, during, and after trial—and the trial court was well aware of the issue.” *Id.* Second, because waiver allowed the State to “bootstrap ... evidence into admissibility by putting it in, forcing a denial, and then claiming it was put in issue by the defendant.” *Id.*

*Camm* is inapplicable here. Maurer made no trial objections, late or otherwise, to the introduction of the pictures. Indeed, he specifically stated that he had “no objection” to their admission. Furthermore, there was no attempt by the State to bootstrap evidence against Maurer, the practice that caused the *Camm* court to refuse application of the waiver rule.

Maurer cites *Hayworth v. State*, 904 N.E.2d 684, 694 (Ind. Ct. App. 2009) as support of his claim that admission of the evidence is fundamental error. The fundamental error doctrine serves, in extraordinary circumstances, to permit appellate

consideration of a claim of trial court error even though the defendant failed to make a contemporaneous objection during the course of trial. *Hardley v. State*, 905 N.E.2d 399, 402 (Ind. 2009). The doctrine applies to those errors deemed “so prejudicial to the rights of the defendant as to make a fair trial impossible.” *Id.* (quoting *Barany v. State*, 658 N.E.2d 60, 64 (Ind. 1995)). “The mere fact that error occurred and that it was prejudicial will not satisfy the fundamental error rule.” *Absher v. State*, 866 N.E.2d 350, 355 (Ind. Ct. App. 2007). The fundamental error exception “applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denied the defendant fundamental due process.” *Hayworth*, 904 N.E.2d at 694 (quoting *McQueen v. State*, 862 N.E.2d 1237, 1241 (Ind. Ct. App. 2007)).

The admission of evidence obtained in violation of a defendant’s constitutional right to be protected against unlawful searches and seizures is not necessarily fundamental error. *See Swineheart v. State*, 268 Ind. 460, 376 N.E.2d 486, 491 (Ind. 1978); *Covelli v. State*, 579 N.E.2d 466, 471 (Ind. Ct. App. 1991), *trans. denied*; *but see Hayworth, id.* Here, where the pictures were merely cumulative of Sergeant Frazier’s testimony, there is no error, fundamental or otherwise.

## II. TESTIMONY OF A WITNESS WITH “SPECIALIZED KNOWLEDGE”

Maurer contends that the trial court abused its discretion in allowing Detective Cole to testify about establishing Maurer’s location on the day of the burglary by interpreting Maurer’s cell phone usage. Maurer argues that even though Detective Cole

had reviewed cell phone records “several times” and had learned through his training, education, and experience to determine location through cell phone usage, he failed to establish a foundation through testimony of specific training sessions and experience.

Officer Cole’s testimony was admitted without objection<sup>2</sup>, not as a matter of scientific principles governed by Indiana Evidence Rule 702, but rather as a matter of observation of a person with “specialized knowledge.” Witnesses possessing specialized knowledge are often called skilled witnesses or “skilled lay observers.” *Warren v. State*, 725 N.E.2d 828, 831 (Ind. 2000). A “skilled witness” is a person with “a degree of knowledge short of that sufficient to be declared an expert under Ind. Evid. R. 702, but somewhat beyond that possessed by ordinary jurors.” *Mariscal v. State*, 687 N.E.2d 378, 380 (Ind. Ct. App. 1997), *trans. denied*. In order to be admissible, opinion testimony of a skilled witness must be “(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.” *Id.* (quoting Indian Evidence Rule 701).

Our review of the transcript discloses that Detective Cole testified about the training and experience that enabled him to determine location of a caller by determining what cell phone tower a call is “bouncing off of.” Detective Cole simply read the subpoenaed cell phone records that provided the location of the towers that picked up the cell phone’s signal and then used a “cheat sheet” provided by the phone company to arrive at locations. Locating the tower that a cell phone was hitting off of was “just a

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<sup>2</sup> Maurer’s objections were based on Evid.R. 702 and relevancy. Neither objection is relevant to Detective Cole’s qualifications as a person with specialized knowledge.

matter of cross referencing the cheat sheet and the actual records. (Tr. 232). Detective Cole's testimony was rationally based on his perceptions, and the testimony helped the jurors understand and determine Maurer's location at the time of the burglary. The trial court did not abuse its discretion in allowing the testimony.

Affirmed.

FRIEDLANDER, J., concurs.

KIRSCH, J., concurs in result.