

Case Summary

John B. Myles appeals his convictions for robbery and criminal confinement. Specifically, he contends that the trial court erred in admitting U.S. currency found during a search of his apartment three months after the robbery and in admitting his mug shots and booking sheet. Finding that the trial court erred in admitting these items (but that it properly admitted Myles' fingerprint card) and that the error is harmless, we affirm Myles' convictions.

Facts and Procedural History

On October 4, 2006, Cindy Allbritten was working as a store manager at Walgreens in Schererville. When Cindy arrived for work at approximately 7:30 a.m., fellow employee Anita Walker was already there. As Cindy was opening the door, a man approached Cindy and Anita, pointed a gun at them, and ordered them to enter the store office. When Cindy looked at the man's face, he told her, "Don't look at me, or I'll kill you." Tr. p. 35. The man then instructed Cindy to open the store safe at gunpoint. Cindy opened the safe and removed approximately \$2200. The man then handcuffed Cindy and Anita so that they were face down on the floor. As the man bagged the money, he told Cindy and Anita several times, "Don't turn around or I'll kill you." *Id.* at 40. The man left Walgreens. Another employee arrived approximately fifteen minutes later, found the women on the floor, and called the police.

Police officers arrived on the scene about five minutes later and removed the handcuffs from Cindy and Anita. The police were able to lift fingerprints from the handcuffs. Cindy described the robber as a dark-skinned, African-American male in his

sixties with a medium build. She said he was wearing a black hat and a long, black trench coat. Anita similarly described the man as a dark-skinned, African-American male in his sixties with pockmarked skin and a medium build. She also said he was wearing a hat and a dark jacket.

In January 2007, both Cindy and Anita identified Myles in a photo array as the man who had robbed Walgreens and handcuffed them. Also in January 2007, a search warrant was obtained and executed for Myles' apartment. Police officers found U.S. currency totaling \$2920. In January 2008, the Indiana State Police Lab matched Myles' fingerprints to a print taken from the handcuffs.

The State charged Myles with Class B felony robbery, two counts of Class B felony criminal confinement, and two counts of Class D felony criminal confinement. The State also alleged that Myles was a habitual offender. Following a jury trial, Myles was found guilty as charged. Myles then pled guilty to being a habitual offender. The trial court sentenced Myles to twenty years for Class B felony robbery, enhanced by ten years for the habitual offender finding, and twelve years for each count of Class B felony criminal confinement, to be served concurrent to each other but consecutive to robbery. The court did not enter judgment of conviction for the two counts of Class D felony criminal confinement. Thus, Myles' aggregate sentence is forty-two years. Myles now appeals.

Discussion and Decision

Myles contends that the trial court erred in admitting U.S. currency totaling \$2920 that was found during the search of his apartment three months after the robbery and in admitting his mug shots and booking sheet.

I. U.S. Currency

Myles contends that the trial court erred in admitting the \$2920 that was confiscated from his apartment because there “was no evidence that the money was in any way related to the crime charged against [him].” Appellant’s Br. p. 7. As such, he argues that the money is not relevant and is therefore inadmissible. Evidence having any tendency to make the existence of a material fact more or less probable than it would be without the evidence is relevant. Ind. Evidence Rule 401. Evidence that is not relevant is not admissible. Ind. Evidence Rule 402. We review a trial court’s ruling as to relevance for an abuse of discretion. *Candler v. State*, 837 N.E.2d 1100, 1105 (Ind. Ct. App. 2005), *reh’g denied*.

Myles first highlights that the search of his apartment was conducted on January 12, 2007, which was more than three months after the robbery of Walgreens. Next, Myles points out that the dollar amounts are not the same. The amount of cash found in Myles’ apartment was approximately \$700 more than what was taken from store. Finally, Myles claims that the money taken from Walgreens had no unique identifying characteristics that could be compared to the money found in his apartment. We agree with Myles that the \$2920 is irrelevant, given the money was found three months after the robbery, the amounts of money were different, and the money taken from Walgreens had no unique identifying characteristics. For this reason, the main case upon which the

State relies for support, *Davis v. State*, 275 Ind. 509, 418 N.E.2d 203 (1981), is readily distinguishable. In that case, the defendant was found with cash on his person *two hours* after the burglary. *Id.* at 206. Because the \$2920 is irrelevant, it is inadmissible pursuant to Evidence Rule 402.

Nevertheless, evidence admitted in violation of Evidence Rule 402 does not require a conviction to be reversed “if its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect a party’s substantial rights.” *Houser v. State*, 823 N.E.2d 693, 698 (Ind. 2005) (quotation omitted). In addition, “[t]he improper admission of evidence is harmless error when the conviction is supported by substantial independent evidence of guilt as to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction.” *Cook v. State*, 734 N.E.2d 563, 569 (Ind. 2000), *reh’g denied*.

We find the error to be harmless. Here, the evidence shows that both Cindy and Anita identified Myles in a photo array three months after the robbery. In addition, Myles’ fingerprint was found on handcuffs used to confine the women. This is substantial independent evidence of Myles’ guilt.

II. Mug Shots and Booking Sheet

Myles next contends that the trial court erred in admitting his mug shots and booking sheet into evidence, which was admitted at trial as State’s Exhibit 59. A trial court has broad discretion in ruling on the admissibility of evidence. *Boney v. State*, 880 N.E.2d 279, 289 (Ind. Ct. App. 2008), *trans. denied*. Therefore, we will not reverse the trial court’s decision to admit evidence absent an abuse of discretion.

Specifically, State's Exhibit 59 consists of three photos (two front views and one profile view) of Myles and his fingerprints, which were taken on the day of his arrest in this case. Myles' fingerprint card contains his signature and arrest information, and there is another page, entitled Lake County Sheriff's Department, which contains Myles' personal information and details about this case. At trial, the State argued that because identification was at issue, this information was relevant to compare the appearance of Myles' skin and his signature/fingerprints.

"Generally, evidence of a defendant's criminal history is highly prejudicial and is not admissible." *Boatright v. State*, 759 N.E.2d 1038, 1042 (Ind. 2001). The admission of a photo array or fingerprint evidence can lead jurors to conclude that a defendant has been previously arrested. *Id.* However, "mug shots" are not *per se* inadmissible and may be admissible if "they are not unduly prejudicial" and "they have substantial independent probative value." *Id.* (quotations omitted).

We first note that the mug shots and booking information are for this case, not a previous case. Myles was obviously arrested on these charges, and the mug shots and booking information reflect only that he was arrested and booked on the current charges. Thus, the prejudice is minimal. In any event, the State concedes that "[t]he fingerprint card likely should have been redacted to exclude arrest information. The text pages of the record likely should have been omitted." Appellee's Br. p. 5. We agree with the State on this point. Myles' arrest information contained within these pages has no substantial independent probative value.

As for the fingerprints themselves, although a fingerprint expert testified at trial and concluded that there was a match, the jury was free to compare Myles' fingerprints found on the handcuffs to his fingerprints on the fingerprint card on its own. As such, Myles' fingerprints contained within State's Exhibit 59 were properly admitted. Finally, as for the mug shots, the State simply does not argue on appeal that they have substantial independent probative value, which is required. Instead, the State argues that any error in admitting the mug shots was harmless. We agree that any error is harmless. As noted above, there is substantial independent evidence of Myles' guilt. That is, both Cindy and Anita identified Myles in a photo array three months after the robbery, and Myles' fingerprint was found on handcuffs used to confine the women. We therefore affirm Myles' convictions.

Affirmed.

DARDEN, J., and RILEY, J., concur.