ATTORNEY FOR APPELLANT

Susan D. Rayl
Hand Ponist Smith & Rayl
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tiffany A. McCoy
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Jason Schnitzmeyer,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 5, 2021

Court of Appeals Case No. 20A-CR-1311

Appeal from the Marion Superior Court

The Honorable Mark Stoner, Judge

The Honorable Jeffrey Marchal, Magistrate

Trial Court Cause No. 49G06-1804-F3-11027

May, Judge.

[1] Jason Schnitzmeyer appeals his conviction of Level 3 felony dealing in methamphetamine.[1] Schnitzmeyer argues the trial court: (1) abused its discretion when it admitted incriminating text messages into evidence under Indiana Evidence Rule 403; and (2) committed fundamental error when it admitted those same text messages into evidence in violation of Indiana Evidence Rule 404(b). We affirm.

Facts and Procedural History

[2] On March 30, 2018, Lawrence Police Officer Jeffrey Gray heard two gunshots in the area that he was patrolling. Once he arrived at the scene where the gunshots occurred, Officer Gray discovered an open van parked in front of a house later identified as Schnitzmeyer's home. Schnitzmeyer stated that the van belonged to Brad McKinney, who was the victim of the shooting.[2] Schnitzmeyer knew McKinney because McKinney occasionally sold items, such as drones and other electronic gadgets, out of his van to Schnitzmeyer. When additional police officers arrived on the scene, Schnitzmeyer cooperated with the investigation of McKinney's shooting by allowing the officers into his home. Police secured McKinney's cell phone at the scene and collected Schnitzmeyer's cell phone when he arrived at the Lawrence Police Department

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[1] Ind. Code § 35-48-4-1.1(a)(2) & (d)(2).

[2] McKinney died in the shooting. Schnitzmeyer was not charged with any crime related to McKinney's death.

for an interview. Police later obtained a search warrant for Schnitzmeyer's residence and shed. During a search of Schnitzmeyer's home, officers located numerous electronics and firearms, and inside the shed, they discovered 1.88 grams of methamphetamine along with a pipe containing methamphetamine residue and Schnitzmeyer's DNA.

[3] On Schnitzmeyer's cell phone, officers discovered a text message thread between Schnitzmeyer and McKinney that began on February 27, 2018, and ended on March 30, 2018. For example, the two men exchanged messages on February 27, 2018, in which McKinney offered Schnitzmeyer an 18 Volt Drill and Bostitch Impact Set, to which Schnitzmeyer replied he can offer "more than tools" in exchange and might have "a g[3] to a g in a half of go" and "a bar or two stashed." (Ex. Vol. I at 114) (grammatical errors in the original). In response McKinney stated, "if the go decent im good with a g and a couple bars if possible." (*Id.*) (grammatical errors in the original).

[4] Schnitzmeyer and McKinney intermittently exchanged additional messages in which they arranged trades and meetings. On March 3, 2018, during an exchange with McKinney, Schnitzmeyer sent a message that said: "No, I know you don't have money, that's why there is never a money exchange between us. It's always a tradeoff matter." (Tr. Vol. II at 196.) Schnitzmeyer made a similar statement on March 16, 2018, "I don't sell. I trade," when texting with

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[3] During his testimony at trial, Officer Samuel Cook explained that a "g" stands for a gram and is a term commonly used in drug dealing activity. (Tr. Vol. II at 179.)

McKinney. (*Id*. at 197.) The last message between Schnitzmeyer and McKinney occurred on March 30, 2018, when Schnitzmeyer texted McKinney that he "probably got about a half to a whole G that I'm trying to get rid of," to which McKinney responded that he had a drone and other items available, and the two men agreed to meet later that day. (Ex. Vol. I at 59-60.)

[5] Police believed the text conversation on the day of March 30, 2018, revealed an agreement between Schnitzmeyer to deliver methamphetamine to McKinney in exchange for items McKinney possessed. Therefore, on April 4, 2018, the State charged Schnitzmeyer with Level 3 felony dealing in methamphetamine and Level 5 felony possession of methamphetamine.[4] The State later filed a habitual offender allegation.[5] Following jury trial on February 26, 2020, the jury returned a guilty verdict on both felony counts, and Schnitzmeyer pled guilty to the habitual offender enhancement without a plea agreement. The trial court entered a conviction of only dealing in methamphetamine due to double jeopardy concerns and sentenced Schnitzmeyer to three years for the felony. The court imposed an additional six-year habitual offender enhancement, for a total sentence of nine years, and then the court suspended three years.

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[4] Ind. Code § 35-48-4-6.1(a) & (b)(2).

[5] Ind. Code § 35-50-2-8.

Discussion and Decision

[6] The trial court has broad discretion to rule on the admissibility of evidence, and a reviewing court will reverse the trial court's decision only upon finding an abuse of discretion. *Holloway v. State*, 69 N.E.3d 924, 929 (Ind. Ct. App. 2017), *trans. denied*. An abuse of discretion occurs when "admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Id.* We will not reweigh the evidence and will resolve all conflicts in favor of the trial court's ruling. *Id.* As such, the trial court's ruling is presumptively correct, and a challenger bears the burden on appeal of persuading us that the trial court erred in its exercise of discretion. *Sears Roebuck & Co. v. Manuilov,* 742 N.E.2d 453, 457 (Ind. 2001).

1. Indiana Evidence Rule 403

[7] A trial court's evidentiary rulings are controlled by the Indiana Rules of Evidence. Pursuant to those rules, "[i]rrelevant evidence is not admissible" while "[r]elevant evidence is admissible," barring a few exceptions. Indiana Evidence Rule 402. Evidence is considered relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence" and such fact must be of "consequence in determining the action." Evid. R. 401. Notwithstanding the relevant nature of the evidence, a trial court in its discretion is permitted to exclude relevant evidence "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." Evid. R. 403.

[8] Prior to his trial, Schnitzmeyer filed a motion *in limine* against the admission of text messages he and McKinney exchanged before March 30, 2018. Schnitzmeyer asserted that the messages were not relevant and that, under Rule 403, any probative value gleaned from the messages was outweighed by their prejudicial effect. Specifically, Schnitzmeyer noted that the messages detailed Schnitzmeyer's use of illegal drugs and referenced trading and selling various gadgets, which the jury could erroneously infer actually referred to dealing in stolen goods. In response, the State clarified that the text messages were not being utilized for an impermissible purpose prohibited by the Rules of Evidence; the relevance and admissibility of the messages was based on their tendency to explain the unusual dealing relationship involving goods, rather than money, between Schnitzmeyer and McKinney, and thereby Schnitzmeyer's intent to deal. Particularly, the messages elucidated a scheme in which Schnitzmeyer would provide McKinney with drugs in exchange for various electronics and gadgets. The trial court found the messages were relevant and any prejudicial effect did not outweigh the probative value, but the court did offer to issue a limiting instruction, which Schnitzmeyer did not request.

[9] During trial, Officer Cook testified that the text messages between Schnitzmeyer and McKinney were consistent with drug-dealing activity. (Tr. Vol II at 196.) For example, in his messages to McKinney, Schnitzmeyer discussed trading goods such as guns, jewelry, and drones in exchange for "snow," (Ex. Vol. I at 93), "fast," (*id.* at 69), or "ice tickets." (*Id.* at 108.) As

explained by Officer Cook during his testimony, terms such as "windshield, glass, ice, go, [and] fast," (Tr. Vol. II at 170), are frequent euphemisms for methamphetamine, because communication between dealers and users is not typically "open and blatant." (*Id*. at 176.) The text messages opposed by Schnitzmeyer therefore corroborate Officer Cook's testimony that Schnitzmeyer and McKinney knew each other, that Schnitzmeyer possessed methamphetamine, and that Schnitzmeyer engaged in a pattern of exchanging the drug for various gadgets.

[10] Because the messages are relevant and permissible based on their tendency to demonstrate a particular drug trading scheme between Schnitzmeyer and McKinney and a relationship between the two, we now consider whether that relevance is substantially outweighed by any risk of unfair prejudicial effect. All relevant evidence is inherently prejudicial to a defendant. *State v. Seabrooks*, 803 N.E.2d 1190, 1194 (Ind. Ct. App. 2004), *reh'g denied*. Because the bar for unfair prejudice, rather than mere prejudice, is high, courts err on the side of admissibility and consider whether there is risk that a jury will "substantially overestimate the value of the evidence or that the evidence will arouse or inflame the passions or sympathies of the jury." *Id*. at 1195.

[11] Here the burden on the State was to demonstrate that on March 30, 2018, the day of his arrest, Schnitzmeyer possessed methamphetamine with the intent to deal. Schnitzmeyer asserts that the State should have proven its case with only the text messages exchanged on March 30, 2018, as Schnitzmeyer's arrest centered around the methamphetamine transaction discussed on that day alone.

(Br. of Appellant at 17-18.) However, as demonstrated by our analysis *supra*, the contested text messages were relevant in establishing Schnitzmeyer's intent, his relationship with McKinney, and his identity, and any prejudice does not substantially outweigh the highly probative value of the text messages. *See Echeverria v. State*, 146 N.E.3d 943, 949 (Ind. Ct. App. 2020) (drug ledgers containing names, dates, and dollar amounts of prior drug transactions were admissible due to their "substantial probative value for purposes of establishing intent, identity, or even preparation, and while they might have some prejudicial effect, it does not outweigh their probative value"), *trans. denied*. Accordingly, the trial court did not abuse its discretion in overruling Schnitzmeyer's objection based on Evidence Rule 403.

2. Indiana Evidence Rule 404(b)

[12] Schnitzmeyer also argues that the admission of the text messages was impermissible under Evidence Rule 404(b). However, as the State notes, Schnitzmeyer did not assert a Rule 404(b) objection at trial. As such, Schnitzmeyer's Rule 404(b) claim is waived for appeal. *See Matter of D.H.*, 119 N.E.3d 578, 586 (Ind. Ct. App. 2019) ("party waives on appeal an issue that was not raised before the trial court"). To escape waiver, Schnitzmeyer argues the trial court committed fundamental error, which would permit us to review his claim. *Id*. Fundamental error provides a narrow exception and occurs when there exist egregious trial errors. *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), *trans. denied*. "In order for this court to reverse based on fundamental error, the error must have been a clearly blatant violation of basic

and elementary principles, and the harm or potential for harm must be substantial and appear clearly and prospectively." *Id*.

[13] Evidence Rule 404(b) renders inadmissible evidence of "a crime, wrong, or other act" to prove conformity therewith. Evid. R. 404(b)(1). However, such evidence may be admissible for other purposes, "such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Evid. R. 404(b)(2). As such, evidence may be admissible for a permitted purpose under Rule 404(b) contingent upon the following requirements: first, the court must determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant's propensity to commit the charged act; and second, the court must balance whether the probative value of the evidence is outweighed by prejudicial effect. *Pierce v. State*, 29 N.E.3d 1258, 1269 (Ind. 2015).

[14] The State argues the text messages between Schnitzmeyer and McKinney sent prior to March 30, 2018, were relevant for a permitted purposed because they demonstrate and explain the trading relationship between the two men, Schnitzmeyer's intent to deal rather than retain methamphetamine for personal use, and Schnitzmeyer's identity as the owner of the contraband, which are all permissible purposes excluded from the bar set forth by Evidence Rule 404(b)(1). However, Schnitzmeyer asserts that in order to prevail on the claim that evidence of prior acts is properly probative of intent, he himself must first put intent at issue.

[15] The intent exception is narrow and is available when a defendant goes beyond merely denying the charged culpability and affirmatively presents a claim of particular contrary intent. *Wickizer v. State*, 626 N.E.2d 795, 799 (Ind. 1993). When a defendant alleges in trial a particular contrary intent, "whether in opening statement, by cross-examination of the State's witnesses, or by presentation of his own case-in-chief, the State may respond by offering evidence of prior crimes, wrongs, or acts to the extent genuinely relevant to prove the defendant's intent at the time of the charged offense." *Id*. *See Moore v. State*, 653 N.E.2d 1010, 1017 (Ind. Ct. App. 1995) ("in order that intent is affirmatively presented as an issue, an accused must in effect admit to the commission of the act, but profess that he acted with some intent contrary to that required by the statute under which he is charged"), *trans. denied*.

[16] In his opening statement, Schnitzmeyer argued:

> They got a search warrant for the house, the shed. They searched everything. Did they find scales? No. Did they find prepackaged meth? No. Did they find baggies to package meth? No. They found nothing that you would typically see at a dealer's house and the reason is because [Schnitzmeyer] is not a dealer.

(Tr. Vol. II at 116.) During cross-examination of Officer Cook, Schnitzmeyer challenged whether 1.88 grams of methamphetamine could instead simply be a two-day supply for personal use. (*Id*. at 180-81.) Finally, during closing argument, Schnitzmeyer again reiterated that he was not a drug dealer. (*Id*. at 198.) The totality of Schnitzmeyer's statements demonstrate that he not only denied dealing the methamphetamine, but he disputed the requisite intent to

deal and presented a contrary explanation that he could have intended to personally use the drug. *See Evans v. State*, 727 N.E.2d 1072, 1080 (Ind. 2000) (evidence of prior bad act deemed admissible since defendant placed his intent at issue when he affirmatively presented a claim of self-defense, a particular contrary intent). *See also Johnson v. State*, 722 N.E.2d 382, 384 (Ind. Ct. App. 2000) (defendant charged with rape placed his intent at issue during cross-examination of victim when he alleged that she had engaged in consensual sexual intercourse with him; as such, evidence of defendant's prior sexual misconduct was deemed admissible).

[17] Because intent is a crucial consideration in crimes of drug possession and dealing where the State is burdened with proving both intent to possess and intent to deal, Schnitzmeyer's text messages were informative for the purpose of reconciling whether his intent was truly to possess the drugs for personal use or to deliver them to McKinney. *See Davis v. State*, 791 N.E.2d 266, 270 (Ind. Ct. App. 2003) ("intent, being a mental state, can only be established by considering the behavior of the relevant actor, the surrounding circumstances, and the reasonable inferences to be drawn from them"), *reh'g denied, trans. denied.*

[18] We consider the contested text messages relevant and instructive in demonstrating Schnitzmeyer's intent, relationship, and identity, and thereby permissible under Evidence Rule 404(b). As demonstrated by our Rule 403 relevancy analysis *supra*, although inclusion of the messages may prompt a jury to consider Schnitzmeyer's prior discussions of methamphetamine as an

indication that on March 30, 2018, he acted in accordance with his prior acts, this does not substantially outweigh the highly probative value of the text messages themselves. This determination satisfies the second part of the Rule 404(b) admissibility analysis and demonstrates the trial court did not commit fundamental error by admitting this evidence. *See Purifoy v. State*, 821 N.E.2d 409, 413 (Ind. Ct. App. 2005) (introduction of prejudicial evidence was not "such a blatant denial of fundamental due process" as to require reversal of conviction, particularly when the conviction was not based solely on prejudicial evidence alone), *trans. denied. See also Hoglund v. State*, 962 N.E.2d 1230, 1240 (Ind. 2012) (because defendant's conviction was supported by substantial independent evidence of his guilt and the improper admission of the evidence was cumulative of other evidence properly before the jury, the error in admitting testimony was harmless).

Conclusion

[19] The trial court did not abuse its discretion or commit fundamental error when it admitted incriminating text messages between Schnitzmeyer and McKinney sent prior to Schnitzmeyer's arrest on March 30, 2018. The text messages were highly probative in demonstrating that Schnitzmeyer intended to deal, that the trading scheme between Schnitzmeyer and McKinney was specifically for the exchange of drugs for gadgets, and that the two men had an ongoing relationship centered around this trade. Because the messages were not introduced for the impermissible purpose of demonstrating Schnitzmeyer acted

in accordance with his prior acts and because the risk of unfair prejudice did not outweigh this highly probative value, the messages were therefore both relevant and admissible. We accordingly affirm the judgment of the trial court.

[20] Affirmed.

Kirsch, J., and Bradford, C.J., concur.