MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Christopher Kunz
Valerie K. Boots
Marion County Public Defender
Appellate Division
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Ellen H. Meilaender
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Charles Fields,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 14, 2022

Court of Appeals Case No. 22A-CR-807

Appeal from the Marion Superior Court

The Honorable Jennifer Prinz Harrison, Judge

Trial Court Cause No. 49D20-1812-F2-43299

Crone, Judge.

Case Summary

[1] Charles Fields appeals his convictions, following a jury trial, for three counts of level 2 felony dealing methamphetamine and one count of level 3 felony dealing a narcotic drug. He contends that the trial court committed reversible error in admitting certain evidence at trial. He also contends that the trial court committed fundamental error in instructing the jury and that the State presented insufficient evidence to support two of his level 2 felony dealing convictions. Finding no error, and concluding that sufficient evidence supports the challenged convictions, we affirm.

Facts and Procedural History

[2] On November 14, 2018, the Indiana State Police (ISP) set up a controlled buy between a confidential informant (CI) and a person with the "street name" "Skip," who was later identified as Fields. Tr. Vol. 3 at 129. The CI called a phone number and arranged to meet Fields at a Conoco gas station to purchase four ounces of methamphetamine. Before the buy, the CI and his car were searched, and his car was equipped with a recording device. The ISP provided the CI with $1,300 in recorded buy money.

[3] ISP officers followed the CI to the gas station and kept him under surveillance with binoculars and by monitoring the live recording feed. Officers observed a man wearing a distinctive "riveted, or bejeweled[,]" "brown, black, goldish Pelle Pelle jacket" enter the CI's car and engage in the deal. *Id*. at 132, 137. After the buy was completed, officers met up with the CI, obtained a bag

containing four baggies of a white substance from him, and searched him and his car a second time. The substance in two of the bags tested positive for methamphetamine and weighed a total of 54.30 grams, and the untested substance in the other two bags weighed a total of 58.81 grams.

[4] On November 26, 2018, the ISP set up a second controlled buy from Fields. The CI called the same phone number to arrange the deal and agreed to meet Fields at a Shell gas station. Again, the CI and his car were searched, the car was equipped with a recording device, and officers provided the CI with $1,400 in recorded buy money. Officers kept the CI under surveillance as he drove to the gas station. At the same time, other officers were conducting surveillance of a house located on Holloway Avenue. Shortly after being notified that the CI had made the call and arranged the deal, those officers observed Fields exit the house, enter a Chevrolet truck, and drive to the Shell gas station. Fields was wearing the same distinctive Pelle Pelle jacket that he wore during the first controlled buy. After arriving at the gas station, Fields exited his truck, entered the CI's car, and gave the CI drugs in exchange for the money. Fields then returned to the house on Holloway Avenue. The CI met back up with officers, was searched again, and gave officers three bags of what was supposed to be methamphetamine and one bag of what was supposed to be heroin purchased from Fields. Two of the tested bags that were positive for methamphetamine weighed a total of 54.78 grams, and the third untested bag weighed 28.57 grams. The bag that tested positive for heroin weighed 5.05 grams.

[5] On December 5, 2018, the ISP set up a third controlled buy from Fields. The CI called the same phone number to set up the deal and again agreed to meet Fields at the same Shell gas station. The CI and his car were searched, the car was equipped with a recording device, and officers provided the CI with $1,420 in recorded buy money. Officers kept the CI under surveillance as he drove to the gas station while other officers were conducting surveillance at the house on Holloway Avenue. Shortly after officers were notified that the CI had made the call, officers observed Fields leave the house, wearing the same Pelle Pelle jacket, get into the same Chevrolet truck, and drive to the same Shell gas station. In addition to observing that Fields wore the same distinctive jacket, officers also observed that Fields was wearing blue jeans with distinctive red trim. Fields entered the CI's car and gave him four baggies of drugs in exchange for the money. Following the exchange, the CI met back up with officers, was searched, and turned over the baggies. The substance in one of the baggies tested positive for methamphetamine with a total weight of 27.63 grams, and the substance in the other three untested baggies weighed a total of 86.02 grams.

[6] The same day, officers obtained and executed a search warrant for the house on Holloway Avenue. Fields, a juvenile male, and another individual named Larry McFarland were located in an upstairs bedroom. Officers found paperwork bearing McFarland's name in that upstairs bedroom. Officers brought Fields and McFarland downstairs, handcuffed them, and read them their *Miranda* rights. Fields stated that he did not want to talk to officers. In the downstairs bedroom, officers found the Pelle Pelle jacket and the blue jeans with red trim.

In the pocket of the jeans, officers found a large amount of cash and a wallet containing Fields's driver's license. In the pocket of the jacket, police found a large amount of cash, including $1,300 of the recorded buy money. A blue cell phone was lying on the floor plugged into a charger. Officers called the same number used by the CI to arrange the controlled buys, and the blue cell phone rang. Officers also located two utility bills in that bedroom bearing Fields's name.

[7] On the bedroom floor, officers found a large plastic bin with a lid. Inside the bin, officers located a bag containing 186.54 grams of methamphetamine worth approximately $2,000. On a small table next to the bin, officers found three digital scales with a white substance on them. Beneath the table were two plastic sandwich bag boxes, one of which contained bags and the other a digital scale. Under the pillow on the bed, officers found a Sig Sauer handgun. During the search, Fields informed Detective Nathaniel Raney that he was cold and asked if he could have a jacket. Detective Raney responded to Fields's inquiry by asking him which jacket was his, and Fields identified the Pelle Pelle jacket as his. Detective Raney gave Fields the Pelle Pelle jacket and draped it over his shoulders since he was handcuffed. Detective Raney did not engage in any other conversation with Fields.

[8] In July 2019, the State charged Fields with ten criminal counts including four counts of level 2 felony dealing in methamphetamine, one count of level 2 felony dealing in a narcotic drug, one count of level 3 felony possession of methamphetamine, two counts of level 4 felony unlawful possession of a

firearm by a serious violent felon, one count of level 6 felony maintaining a common nuisance, and one count of class A misdemeanor possession of marijuana. In May 2021, the State also alleged that Fields was a habitual offender. The State subsequently filed, and the court granted, a motion to dismiss one of the firearm counts as well as the counts for maintaining a common nuisance and possession of marijuana.

[9] A jury trial was held in November 2021. The jury found Fields guilty of three counts of level 2 felony dealing in methamphetamine and the count of level 3 felony dealing a narcotic drug. The jury also found that Fields was a habitual offender. Following a sentencing hearing, the trial court imposed concurrent sentences of twenty years on each of the dealing in methamphetamine convictions and sixteen years on the dealing a narcotic drug conviction. The court enhanced the sentence on one of the dealing in methamphetamine convictions by ten years based on the habitual offender finding, for an aggregate sentence of thirty years. This appeal ensued.

Discussion and Decision

Section 1 – The trial court did not err in admitting certain evidence.

[10] Fields first argues that the trial court erred in admitting, over his objection, his statement to Detective Raney identifying the Pelle Pelle jacket as belonging to him. Specifically, Fields argues that his statement was solicited by police in violation of his Fifth Amendment right to remain silent, and therefore the

statement was inadmissible. "The general admission of evidence at trial is a matter we leave to the discretion of the trial court." *Clark v. State*, 994 N.E.2d 252, 259-60 (Ind. 2013). "We review these determinations for abuse of that discretion and reverse only when admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Id*. at 260. "However, when a constitutional violation is alleged, the proper standard of appellate review is de novo." *Ackerman v. State*, 51 N.E.3d 171, 177 (Ind. 2016), *cert. denied*. "The State has the burden to demonstrate that the measures it used to seize information or evidence were constitutional." *Curry v. State*, 90 N.E.3d 677, 683 (Ind. Ct. App. 2017) (citations omitted), *trans. denied* (2018).

[11] The Self-Incrimination Clause of our federal constitution provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself[.]" U.S. Const. amend. V. In *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), the United States Supreme Court adopted the "now-famous" *Miranda* warnings to safeguard the right against self-incrimination. *B.A. v. State*, 100 N.E.3d 225, 230 (Ind. 2018). "They apply to suspects under custodial interrogation, who must be told that they have 'a right to remain silent, that any statement [they do] make may be used as evidence against [them], and that [they have] a right to the presence of an attorney, either retained or appointed.'" *Id*. (alterations in *B.A.*) (quoting *Miranda*, 384 U.S at 444).

[12] The *Miranda* warnings are designed to protect against the coercive pressures inherent in a custodial interrogation setting. *Hartman v. State*, 988 N.E.2d 785,

788-89 (Ind. 2013).[1] "Once warnings have been given the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Miranda*, 384 U.S. at 473. It is well established it is the State's burden to prove that the suspect's right to remain silent was scrupulously honored. *Jenkins v. State*, 627 N.E.2d 789, 796 (Ind. 1993).

[13] However, "not every question a police officer asks a person in custody constitutes" an interrogation. *Murrell v. State*, 747 N.E.2d 567, 573 (Ind. Ct. App. 2001)*, trans. denied*. Interrogation has been defined to include both express questioning of the defendant and "words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response" from the defendant. *Furnish v. State*, 779 N.E.2d 576, 579 (Ind. Ct. App. 2002), *trans. denied* (2003). *Miranda* is not triggered, and a constitutional violation does not occur, if it does not appear that the purpose of the question is to obtain a confession from the suspect. *Murrell*, 747 N.E.2d at 573.

[14] Here, the record indicates that after being informed of his *Miranda* rights, Fields indicated that he did not wish to answer questions. This was an obvious invocation of his right to remain silent. The police scrupulously honored this request and did not question Fields. It was Fields who, unsolicited, later initiated communication with Detective Raney. Fields complained that he was

[1] The parties agree that Fields was in custody when he made the statement identifying the jacket.

cold and asked if he could have a jacket. Detective Raney did not ask Fields if the Pelle Pelle jacket was his. He simply responded to Fields's inquiry by asking which jacket was his so that he could give him the item he was requesting. Fields identified the Pelle Pelle jacket as belonging to him. Detective Raney gave Fields the jacket and did not ask Fields any questions about the jacket or about the items found in the pockets. We do not view this situation as an obvious effort by Detective Raney to coerce or induce Fields into incriminating himself or to obtain a confession. In other words, we are not convinced that Detective Raney knew or should have known that his response to Fields's question would, in turn, likely elicit an incriminating response from Fields. Accordingly, we find no constitutional violation in the manner in which Fields's statement identifying the jacket was obtained. The trial court did not err in admitting the statement.

Section 2 – The trial court did not commit fundamental error in instructing the jury.

[15] Fields next contends that the trial court erred in instructing the jury. Specifically, Fields challenges final instruction number 37 regarding the evidence necessary to prove his "intent to deliver" methamphetamine to support his conviction for dealing in methamphetamine as charged in Count 1. The well-settled standard by which we review challenges to jury instructions affords great deference to the trial court. *State v. Snyder*, 732 N.E.2d 1240, 1244 (Ind. Ct. App. 2000). The manner of instructing the jury lies within the trial court's sound discretion. *Id*.

[16] Fields acknowledges that he did not object to the challenged instruction at trial, arguing on appeal that the inclusion of the challenged instruction amounted to fundamental error. "A claim that has been waived by a defendant's failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred." *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). "The 'fundamental error' rule is extremely narrow, and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process." *Boesch v. State*, 778 N.E.2d 1276, 1279 (Ind. 2002). "The error claimed must either 'make a fair trial impossible' or constitute 'clearly blatant violations of basic and elementary principles of due process.'" *Brown*, 929 N.E.2d at 207 (quoting *Clark v. State*, 915 N.E.2d 126, 131 (Ind. 2009)). The fundamental error exception to the waiver rule is available only in egregious circumstances. *Id*. This requires a defendant to show that the trial court should have raised the issue sua sponte due to a blatant violation of basic and elementary principles, undeniable harm or potential for harm, and prejudice that makes a fair trial impossible. *Harris v. State*, 76 N.E.3d 137, 140 (Ind. 2017).

[17] Final instruction number 37 provided as follows:

> A person may be convicted of possession with intent to deliver methamphetamine if the amount of methamphetamine involved is at least twenty-eight (28) grams. No additional evidence is necessary.

Appellant's App. Vol. 3 at 84. Although this language was taken almost verbatim from Indiana Code Section 35-48-4-1.1, which indeed provides that the weight of the methamphetamine alone may be sufficient evidence of "intent to deliver," Fields suggests that this instruction "ordered the jury to find Fields possessed the drugs in the bedroom based solely upon the weight of the drugs, and to not consider any other evidence." Appellant's Br. at 34-35.

[18] We agree with Fields that the instruction, when read in isolation, is terse and inartful, to say the least. However, Fields ignores that when we consider a claim of fundamental error with respect to jury instructions, we do not look at a single instruction in isolation, we look to the jury instructions as a whole and in reference to one another. *Munford v. State*, 923 N.E.2d 11, 14 (Ind. Ct. App. 2010). Here, the jury was given an explicit instruction listing the essential elements of the crime of dealing in methamphetamine, including that the State was required to prove that Fields knowingly or intentionally possessed (with intent to deliver) methamphetamine in excess of ten grams. As noted by the State, both parties, during closing argument, reinforced to the jury its role in determining, based upon evidence wholly separate from the weight of the methamphetamine found in the downstairs bedroom of the house, whether it was Fields who possessed that methamphetamine. In other words, the jury was well aware that possession, and not simply intent to deliver, was at issue and needed to be proven beyond a reasonable doubt. Under the circumstances, we do not believe that a blatant violation of basic and elementary principles occurred resulting in undeniable harm or potential for harm, making a fair trial

impossible. Fields has not met his burden to establish that the trial court committed fundamental error in instructing the jury.

Section 3 – The State presented sufficient evidence to support the challenged convictions.

[19] Fields challenges the sufficiency of the evidence to support two of his convictions. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is "not necessary that the evidence 'overcome every reasonable hypothesis of innocence.'" *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). "We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt." *Bailey*, 907 N.E.2d at 1005.

[20] To convict Fields of dealing in methamphetamine as a level 2 felony as charged in Count 1, the State was required to prove that Fields (1) possessed with intent to deliver; (2) methamphetamine; (3) in an amount of at least ten grams. Ind. Code § 35-48-4-1.1(a)(2)(A), -(e)(1). Fields challenges only the sufficiency of the evidence that he possessed the methamphetamine found in the house.

[21] Possession can be actual or constructive, and a conviction for a possessory offense does not depend on catching a defendant red-handed. *Gray v. State*, 957

N.E.2d 171, 174 (Ind. 2011). A person constructively possesses contraband when the person has (1) the capability to maintain dominion and control over the item; and (2) the intent to maintain dominion and control over it. *Id*. Fields does not argue that he did not have capability to maintain dominion and control over the methamphetamine found in the downstairs bedroom of the house on Holloway. Rather, he challenges only the State's evidence regarding his intent. Where, as here, the defendant is in nonexclusive possession of the location in which the contraband is found, i.e., the house, the inference of intent for constructive possession must be supported by additional circumstances pointing to the defendant's knowledge of the nature of the controlled substances and their presence. *Johnson v. State*, 59 N.E.3d 1071, 1074 (Ind. Ct. App. 2016).

[22] Those additional circumstances include: (1) incriminating statements by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant. *Henderson v. State*, 715 N.E.2d 833, 836 (Ind. 1999). These enumerated circumstances are non-exhaustive; ultimately, the question is whether a reasonable factfinder could conclude from the evidence that the defendant knew of the nature and presence of the contraband. *Gray*, 957 N.E.2d at 174-75.

[23] Here, the methamphetamine was found in the downstairs bedroom. Although the large amount of methamphetamine itself was hidden away in a tote bin, there were numerous other items suggestive of dealing that were in plain view, including multiple digital scales with white residue on them, sandwich baggie boxes, and multiple cell phones. More significantly, the contraband was clearly mingled with items owned by Fields, including the Pelle Pelle jacket (with recorded buy money in a pocket) and the blue jeans with the red trim that had his wallet in the pocket. Officers further found a group utility bill in Fields's name for that house in the bedroom in close proximity to the drugs, as well as the cell phone used to set up the controlled buys. All of this evidence is clearly suggestive that Fields, and not another resident of the house, occupied that specific bedroom. A reasonable factfinder could conclude from this evidence that Fields knew of the nature and presence of the methamphetamine found in the downstairs bedroom, and therefore that he had the intent to maintain dominion and control over it. Sufficient evidence supports this conviction for level 2 felony dealing in methamphetamine.

[24] Fields similarly challenges his conviction for level 2 felony dealing in methamphetamine as charged in Count 7, which was based on evidence obtained during the third controlled buy. To convict Fields of that charge, the State was required to prove that he knowingly or intentionally delivered methamphetamine in an amount of at least ten grams. Ind. Code § 35-48-4-1.1(a)(1)(A), -(e)(1).

[25] Fields argues that the State failed to prove that he had prior possession of the methamphetamine before the third controlled buy and delivered it to the CI, as opposed to the CI already possessing the methamphetamine. Specifically, Fields challenges the adequacy of the State's proof that the third controlled buy was conducted properly. A properly conducted controlled buy will permit an inference that the defendant had prior possession of a controlled substance. *Ross v. State*, 908 N.E.2d 626, 630 (Ind. Ct. App. 2009). This Court has described a properly conducted controlled buy as follows:

> A controlled buy consists of searching the person who is to act as the buyer, removing all personal effects, giving him money with which to make the purchase, and then sending him into the residence in question. Upon his return he is again searched for contraband. Except for what actually transpires within the residence, the entire transaction takes place under the direct observation of the police. They ascertain that the buyer goes directly to the residence and returns directly, and they closely watch all entrances to the residence throughout the transaction.

Vaughn v. State, 13 N.E.3d 873, 888 (Ind. Ct. App. 2014) (quoting *Watson v. State,* 839 N.E.2d 1291, 1293 (Ind. Ct. App. 2005)), *trans. denied*.

[26] Detective Raney testified that another officer "searched the informant in front of [him] for weapons, drugs, contraband, money, and none were located." Tr. Vol. 4 at 18. He further testified, "After we knew that the vehicle and the informant did not have any contraband on them, I photographed the police buy monies." Tr. Vol. 4 at 18-19. Detective Raney stated that the buy money was given to the CI, and the vehicle was equipped with a recording device. He

stated that officers kept the CI under video surveillance during the entire transaction and that they searched the CI again after the buy was completed and recovered four baggies of a substance, some of which tested positive for methamphetamine weighing well more than 10 grams.

[27] Fields suggests that without specific testimony from Detective Raney that "he observed anyone search the CI's car" and not simply the CI's person, the jury was "left to speculate about whether Fields or the CI initially had the drugs prior to buy number 3." Appellant's Br. at 41. We disagree. Detective Raney's testimony that he did not green-light the controlled buy until "[a]fter" he knew that the "vehicle *and* the [CI] did not have any contraband on them" supports a reasonable inference that the CI's car, in addition to his person, was searched and revealed no drugs. Tr. Vol. 4 at 18-19 (emphasis added). Accordingly, we reject Fields's suggestion that the jury could not properly infer that he had prior possession of the methamphetamine.

[28] In any event, a challenge to the adequacy of the controls (such as the pre-buy search) involved in a controlled buy goes to the weight and credibility of the evidence, which we will not reweigh on appeal. *Heyen v. State*, 936 N.E.2d 294, 302 (Ind. Ct. App. 2010)*, trans. denied* (2011). As Fields makes no other claim regarding the adequacy of the State's evidence, we decline to discuss it further. Sufficient evidence supports Fields's conviction as charged in Count 7 for level 2 felony dealing in methamphetamine.

[29] Affirmed.

May, J., and Weissmann, J., concur.