MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Edward M. Smid
Smid Law LLC
Fishers, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Rolland G. Shoup, II,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 17, 2022

Court of Appeals Case No. 22A-IF-122

Appeal from the Marion Superior Court

The Honorable Marcel A. Pratt, Jr., Judge

Trial Court Cause No. 49D22-2106-IF-23648

Crone, Judge.

Case Summary

[1] Rolland G. Shoup, II, appeals the trial court's finding, following a bench trial, that he committed the infraction of speeding. We affirm.

Facts and Procedural History

[2] At approximately 9:15 a.m. on June 22, 2021, Shoup was driving his red GMC truck near the 9220 block of Crawfordsville Road in Indianapolis. Clermont Police Department Officer John Mattingly was parked in his patrol car in a parking lot when, using his patrol car's in-car radar, a Python II, he tracked Shoup's vehicle as traveling at fifty miles per hour in the thirty-mile-per-hour zone. Officer Mattingly then used a handheld radar, a Genesis VP, and tracked Shoup's vehicle as traveling at fifty-five or fifty miles per hour. Officer Mattingly initiated a traffic stop of Shoup's vehicle. When Officer Mattingly approached the vehicle, Shoup "was highly irate and upset with [Officer Mattingly] for stopping him." Tr. Vol. 2 at 6. Officer Mattingly issued a speeding ticket to Shoup.

[3] On June 28, 2021, the State filed a traffic citation alleging that Shoup had committed the infraction of speeding. A bench trial was held on January 3, 2022. The State presented the police officer's testimony regarding the radar readings he obtained when tracking Shoup's vehicle. Shoup's defense was that a television station antenna near where he was pulled over "could have interfered" with the readings. *Id*. at 9. At the conclusion of the trial, the court

found, by a preponderance of the evidence, that Shoup committed the infraction and ordered him to pay $171. This appeal ensued.

Discussion and Decision

Section 1 – Shoup has waived his challenge to the State's alleged discovery violation.

[4] We first address Shoup's assertion that the "State deliberately failed to provide all requested discovery" to him. Appellant's Br. at 10. Specifically, Shoup contends that the State failed to reveal in its answers to interrogatories or in response to his request for production of documents that, in addition to the handheld radar gun, a Python II in-car radar was also used to record his speed. Shoup baldly suggests that he was "denied due process" because he was unable "to conduct research on a potential interference of the second radar gun used … due to the State's failure to disclose information" prior to the bench trial. *Id*. at 12.

[5] We agree with the State that Shoup waived this assertion by failing to object and request relief during trial. "Where there has been a failure to comply with discovery procedures, the trial judge is usually in the best position to determine the dictates of fundamental fairness and whether any resulting harm can be eliminated or satisfactorily alleviated." *Kindred v. State*, 524 N.E.2d 279, 286-87 (Ind. 1988). A party's failure to object to and request relief from a discovery error therefore waives the issue for appellate review. *Etienne v. State*, 716 N.E.2d 457, 461 n.2 (Ind. 1999) ("The proper remedy for a violation of a trial court's

discovery order is a continuance, or in extreme circumstances, a mistrial."). Because Shoup did not specifically object when Officer Mattingly testified about his use of the Python II, any alleged discovery violation is waived. *See Troxel v. Troxel*, 737 N.E.2d 745, 752 (Ind. 2000) ("A party may not raise an issue for the first time in a motion to correct error or on appeal.").[1]

[6] In his reply brief, Shoup argues that even if he "did not object at trial, fundamental error occurred." Reply Br. at 5. Although an issue is generally waived on appeal if not raised at the trial level, an appellate court may address the issue if a party alleges fundamental error occurred. *Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011). But a party may not raise an issue, such as fundamental error, for the first time in a reply brief. *Id*. Shoup failed to allege fundamental error in his principal appellate brief, and therefore the issue is waived.

Section 2 – Shoup has also waived his claim that the trial court abused its discretion in admitting certain evidence.

[7] Shoup next argues that the trial court abused its discretion in admitting the results of the in-car and handheld radars because the State failed to lay a

---

[1] Rather than object on the basis of an alleged discovery violation and request a continuance, Shoup's counsel merely stated, "I was unaware of the Python II that was used in the vehicle." Tr. Vol. 2 at 8. However, the State subsequently countered that it "certainly believes that the information of both devices was provided to the Defense." *Id.* at 17. Notably, Shoup did not provide the trial court (or this Court) with the actual discovery requests/responses to determine if any requested evidence was indeed not disclosed. Without more, Shoup has failed to meet his burden to show that a discovery violation occurred, much less what fundamental fairness would have dictated under the circumstances.

sufficient foundation for admission. As noted by Shoup, "[t]o lay a proper foundation for the admission of radar test results, the State must establish that the radar device was properly operated and regularly tested." *Marlatt v. State*, 715 N.E.2d 1001, 1002 (Ind. Ct. App. 1999). However, Shoup failed to make any foundational objection at trial regarding the admissibility of the radar readings. It is well settled that an objection asserting a lack of adequate foundation must be made at the time the foundation is being laid. *Id.* (citing *Mullins v. State*, 646 N.E.2d 40, 48 (Ind. 1995)). Moreover, the complaining party may not object in general terms but must state the objection with specificity. *Id.* Because Shoup failed to lodge a timely objection at trial along with an explanation as to why the evidentiary foundation was inadequate, he has waived the issue on appeal. *Id*.

Section 3 – Sufficient evidence supports the trial court's finding that Shoup committed speeding.

[8] Finally, Shoup contends that insufficient evidence supports the trial court's finding that he committed the infraction of speeding. Traffic infractions are civil, rather than criminal, in nature. *Coleman v. State*, 49 N.E.3d 1043, 1045 (Ind. Ct. App. 2016). Thus, the State bears the burden of proving the commission of the infraction by only a preponderance of the evidence. *Rosenbaum v. State, 930 N.E.2d 72, 74 (Ind. Ct. App. 2010), trans. denied*. When reviewing a challenge to the sufficiency of the evidence supporting a trial court's finding that an individual committed an infraction, we do not reweigh evidence or reassess the credibility of witnesses. *Id*. We look only to the evidence that

supports the judgment and to all the reasonable inferences that may be drawn therefrom. *Id*. If there is substantial evidence of probative value to support the judgment, we will not reverse. *Id*.

[9] Indiana Code Section 9-21-5-2(a) provides in relevant part that "a person may not drive a vehicle on a highway at a speed in excess of the following maximum limits: (1) Thirty (30) miles per hour in an urban district." A person who violates this subsection commits a class C infraction. Ind. Code § 9-21-5-2(b).

[10] Here, Officer Mattingly testified that he was seated in his patrol car when both his handheld and in-car radars recorded Shoup driving at fifty miles per hour in a zone where the speed limit was thirty miles per hour. Although Shoup claimed that there was a television antenna in the area that "could" have interfered with the radars, Tr. Vol. 2 at 9, Officer Mattingly testified that he had never had issues with equipment malfunctioning in that area due to an antenna and he had not heard of other officers experiencing any issues. Shoup's argument on appeal that the radar readings were unreliable is simply a request for this Court to reweigh the evidence and reassess witness credibility, a task not within our prerogative on appeal. Sufficient evidence supports the trial court's finding, and therefore we affirm it.

[11] Affirmed.

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