MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Amir Devon Chatman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 15, 2023

Court of Appeals Case No. 23A-CR-745

Appeal from the Marion Superior Court

The Honorable Angela Dow Davis, Judge

Trial Court Cause No. 49D27-2207-F2-19205

Memorandum Decision by Judge Bailey
Judges May and Felix concur.

Bailey, Judge.

Case Summary

[1] Amir Chatman appeals his convictions for possession of a firearm by a serious violent felon, as a Level 4 felony;[1] dealing in cocaine, as a Level 4 felony;[2] dealing in methamphetamine, as a Level 4 felony;[3] and dealing in a schedule 1 controlled substance, as a Level 3 felony.[4] Chatman raises one issue for our review, which we revise and restate as whether the court committed fundamental error when it admitted certain evidence seized pursuant to a search warrant. We affirm.

Facts and Procedural History

[2] In the early morning hours of July 15, 2022, Regina Kuhlenschmidt reported to the Indianapolis Metropolitan Police Department that her minor daughter, A.K., "had been taken" and that she had tracked A.K.'s phone to Chatman's house.[5] Ex. at 7. Kuhlenschmidt further reported that she and her boyfriend had gone to Chatman's house, knocked on the door for approximately ten minutes, and pulled A.K. from the house when Chatman opened the door. Kuhlenschmidt requested that officers come to Chatman's house.

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[1] Ind. Code § 35-47-4-5(c) (2023).

[2] I.C. § 35-48-4-1(c)(1).

[3] I.C. § 35-48-4-1.1(c)(1).

[4] I.C. § 35-48-4-2(e)(1).

[5] Kuhlenschmidt knew Chatman as the two had previously been involved in a sexual relationship.

[3] Officers responded to the call and went to Chatman's house, where they spoke to both Kuhlenschmidt and A.K. Kuhlenschmidt reported that she had dropped A.K. off at a Dairy Queen with A.K.'s boyfriend late the prior night. Kuhlenschmidt further reported that she then received a text message from A.K.'s boyfriend indicating that the two had gotten into a fight, that A.K. had left the Dairy Queen, and that someone had "pull[ed] up to [A.K.] as she was walking down the street and kidnap[ped] her." *Id.* Kuhlenschmidt then reported to officers that she was able to track A.K.'s phone to Chatman's house, that Chatman had a gun in his hand when he ultimately opened the door, and that she was able to remove A.K.

[4] Chatman refused to answer the door for the officers, so the responding officers called for Detective Anthony Weaver to come to the scene. When Detective Weaver arrived, he learned that Chatman had left his apartment and was being detained. Detective Weaver then spoke with A.K. about the incident. A.K. reported that she had gotten into an argument with her boyfriend and "walked off," at which point Chatman "pulled up next to her," got out of the car, and "threw her into the front passenger seat of the car." *Id.* at 9. She further reported that Chatman had tied her arms together with zip ties and that he had a "snub-nosed, black or brown colored" handgun on his lap that he threatened to use if she tried to run. *Id.* She also stated that Chatman took her to his apartment, at which point he cut the zip ties. And she reported that she continued to sit on the couch out of fear until Kuhlenschmidt and Kuhlenschmidt's boyfriend arrived.

[5] Based on the reports of Kuhlenschmidt and A.K., Detective Anthony Weaver applied for a search warrant. Specifically, Detective Weaver sought a warrant to search Chatman's car and apartment for a "snub-nosed handgun, scissors, zip-ties and/or anything else to support the allegations." *Id.* at 10. The court granted the search warrant, and officers began to search Chatman's home and car.

[6] During the ensuing search, officers found "mushrooms" in the center console of Chatman's car. Tr. at 155. Inside the house, officers found "a large quantity of marijuana" in the kitchen and under the couch as well as "miscellaneous paraphernalia in plain view." *Id.* at 158. And officers discovered a rifle in a suitcase. In a closet, officers found "a ton of miscellaneous, different narcotics and baggies and scales and large bags of marijuana and small bags of cocaine and meth, things like that." *Id.* Officers also found plastic baggies that contained multicolored pills, which Officer Ryan Bowersox believed to be methamphetamine.

[7] Based on the items found during the first search, Officer Bowersox applied for a second search warrant. In particular, Officer Bowersox sought a warrant to search Chatman's house for "any and all prohibited narcotics," U.S. currency, cell phones, "[f]irearms and ammunition," and paraphernalia. Ex. at 32, 34. The court granted the second search warrant. During the second search, officers found cocaine, more plastic baggies that contained methamphetamine pills, and two firearms. At some point while the searches were occurring, the officers learned that the kidnapping allegation was not true.

[8] The State charged Chatman with possession of a firearm by a serious violent felon, a Level 4 felony; dealing in cocaine, as a Level 4 felony; dealing in methamphetamine, as a Level 4 felony; and dealing in a schedule 1 controlled substance, as a Level 3 felony.[6] Thereafter, Chatman filed a motion to suppress the evidence seized during the two searches of his home and car. Chatman asserted that "the warrant was issued specifically on the bas[i]s to see if [he] kidnapped a specific person" but that the "search and seizure of his belongings violated the scope of why the police were there[.]" Appellant's App. Vol. 2 at 66. He further asserted that, "while police should have been looking for a specific person," they instead "seized guns, drugs, and a safe, that which [sic] had no nexus or reason for them to be seized especially since the police never found any individual in the apartment." *Id*.

[9] The court held a hearing on Chatman's motion. During that hearing, Chatman asserted that the first warrant was invalid because it was based on hearsay statements "about an alleged kidnapping." Tr. at 38. He also asserted that the items seized were "not in plain view" and had "no nexus or relation to what the search warrant was." *Id*. The State responded and asserted that the first warrant was valid because it was based on statements made by both Kuhlenschmidt and A.K. to officers, which gave officers "probable cause to believe that there may have been a kidnapping." *Id*. at 40. The State also

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[6] The State initially charged Chatman with six additional, drug-related counts, but those counts were dismissed prior to trial.

asserted that, while conducting the first search, officers found drugs and a gun, which caused officers to seek the second warrant. The court denied Chatman's motion to suppress.

[10] The court then held a bifurcated jury trial on Chatman's charges. During the first phase of trial, Officer Bowersox and Detective Weaver testified about the results of the two searches of Chatman's home and car. During Officer Bowersox's testimony, the State moved to admit several pieces of evidence. In particular, the State moved to admit several photographs of the rifle officers had found in the suitcase. Chatman had "no objection" to the admission of those pictures. Tr. at 161. When the State moved to admit pictures of a handgun and a revolver, Chatman objected "as to the weight of the evidence[.]" *Id*. at 175. However, when the State moved to admit the actual handgun and revolver, Chatman had "[n]o objection." *Id*. at 181, 183. Chatman also had "[n]o objection" to the admission of the rifle as evidence. *Id*. at 185.

[11] The State then moved to admit various pieces of evidence related to the drug charges. Specifically, the State moved to admit pictures of the multicolored pills that contained methamphetamine. At that point, Chatman objected "as to the weight of the evidence, but not the authenticity of the picture." *Id*. at 165. The court overruled the objection and admitted the photographs. The State also moved to admit pictures that officers had taken from Chatman's room, which depicted what Officer Bowersox believed to be marijuana, cocaine, and mushrooms. Chatman again objected to "as to the weight," which objection the court overruled. *Id*. at 168. When the State moved to admit another

photograph of the multicolored pills that had tested positive for methamphetamine, Chatman objected on the ground that "there was speculation" because the officer could not identify what was in the bag. *Id*. at 171. The court admitted the evidence over Chatman's objection. When the State moved to admit as evidence a bag that contained cocaine and a bag that contained mushrooms, Chatman had "[n]o objection." *Id*. at 222.

[12] A forensic scientist with the Crime Lab also testified. During his testimony, the State moved to admit the laboratory report, which indicated the test results for each of the suspected drug items officers had seized. Chatman had "[n]o objection" to the admission of the laboratory report. *Id*. at 210. The forensic scientist then testified, with no objection, that the items officers had seized included over twenty grams of mushrooms that contained psilocybin, more than two grams of methamphetamine, and more than one gram of cocaine. *See id*. at 213-16.

[13] At the conclusion of the first phase of the trial, the jury found Chatman guilty of the three drug offenses and of having possessed a firearm. Chatman then admitted to being a serious violent felon. The court entered judgment of conviction against Chatman on all counts and sentenced him to an aggregate term of nineteen years in the Department of Correction. This appeal ensued.

Discussion and Decision

[14] Chatman contends that the trial court abused its discretion when it admitted into evidence the drugs and guns officers had seized pursuant to the search warrants. Chatman initially challenged the admission of this evidence through a motion to suppress but now appeals following a completed trial. Thus, while Chatman contends that the court erred when it denied his motion to suppress, the issue is appropriately framed as whether the court abused its discretion when it admitted the evidence at trial. *Connor v. State*, 114 N.E.3d 901, 904 (Ind. Ct. App. 2018). However, "the ultimate determination of the constitutionality of a search or seizure is a question of law that we consider de novo." *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014).

[15] On appeal, Chatman contends that the court abused its discretion when it admitted the items seized from his home and car as evidence because the first search warrant was invalid. In particular, he contends that "the application for the search warrant failed to establish the credibility of" A.K. or Kuhlenschmidt. Appellant's Br. at 10. And he contends that, had officers not conducted the first search, there would be no basis for the second search warrant.

[16] However, Chatman acknowledges that "no objections were raised when the seized items were offered into evidence during trial."[7] *Id*. at 17. It is well

[7] While Chatman attempted to lodge an objection to some of the items, he only objected as to the "weight" of the evidence. Chatman does not address those purported objections on appeal, nor does he make any argument that it was a valid objection. Rather, it is well settled that it is the role of the factfinder to weigh the evidence. *See Drane v. State*, 867 N.E.2d 144. 146 (Ind. 2007). And while Chatman objected to one piece of evidence on the ground of speculation, he did not object to that evidence as being improperly seized.

settled that "[a] pre-trial motion to suppress does not preserve an error for appellate review; the defendant must make a contemporaneous objection sufficient to preserve the issue for appeal." *Scott v. State*, 924 N.E.2d 169, 174 (Ind. Ct. App. 2010), *trans. denied*. The failure to make such an objection waives any claim on appeal that the evidence was improperly admitted. *Id.* Here, Chatman's failure to lodge a proper, contemporaneous object results in a waiver of this issue for our review.

[17] To avoid waiver, Chatman contends that the admission of the evidence against him constituted fundamental error. "An error is fundamental, and thus reviewable on appeal, if it made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm." *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018) (quotation marks omitted).

[18] However, "fundamental error in the evidentiary decisions of our trial courts is especially rare." *Merritt v. State*, 99 N.E.3d 706, 709-10 (Ind. Ct. App. 2018), *trans. denied*. That is because fundamental error

> is extremely narrow and encompasses only errors so blatant that the trial judge should have acted independently to correct the situation. At the same time, if the judge could recognize a viable reason why an effective attorney might not object, the error is not blatant enough to constitute fundamental error.

Durden, 99 N.E.3d at 652 (emphasis added; quotation marks and citations omitted).

[19] "An attorney's decision not to object to certain evidence or lines of questioning is often a tactical decision, and our trial courts can readily imagine any number of viable reasons why attorneys might not object." *Nix v. State*, 158 N.E.3d 795, 801 (Ind. Ct. App. 2020), *trans. denied*; *cf. Merritt*, 99 N.E.3d at 710 ("The risk calculus inherent in a request for an admonishment is an assessment that is nearly always best made by the parties and their attorneys and not sua sponte by our trial courts."). As we have explained:

> Fundamental error in the erroneous admission of evidence might include a claim that there has been a "fabrication of evidence," "willful malfeasance on the part of the investigating officers," or otherwise that "the evidence is not what it appears to be." *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). But absent an argument along those lines, "the claimed error does not rise to the level of fundamental error." *Id*.

Nix, 158 N.E.3d at 801.

[20] Here, Chatman does not make any argument that there has been a fabrication of evidence, willful malfeasance by the investigating officers, or that the evidence against him was not what it appeared to be. Rather, the crux of Chatman's argument on appeal is simply that this Court should review the denial of his motion to suppress as if he had properly preserved that issue for appellate review and consider whether the warrant was invalid. But considering Chatman's argument on appeal "would turn fundamental error from a rare exception to the general rule for appellate review," which we will not do. *Nix*, 158 N.E.3d at 801-02. Therefore, we conclude that Chatman has

not met his burden to show fundamental error in the admission of the drugs or guns.

Conclusion

[21] Chatman has not shown that the court committed fundamental error when it admitted the evidence against him. We therefore affirm Chatman's convictions.

[22] Affirmed.

May, J., and Felix, J., concur.