MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brandon Artis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 12, 2023

Court of Appeals Case No. 23A-CR-1045

Appeal from the Vanderburgh Superior Court

The Honorable Robert J. Pigman, Judge

Trial Court Cause No. 82D03-2209-MR-5620

Memorandum Decision by Judge Mathias
Judges Riley and Crone concur.

Mathias, Judge.

[1] Brandon Artis appeals his convictions for murder, Level 3 felony robbery, Level 4 felony unlawful possession of a firearm by a serious violent felon, and two counts of Level 5 felony intimidation. Artis raises two issues for our review, which we restate as follows:

> 1. Whether the trial court abused its discretion when it overruled Artis's objection to certain evidence under Indiana Evidence Rule 401.
>
> 2. Whether the trial court committed fundamental error in the admission of evidence.

[2] We affirm.

Facts and Procedural History

[3] During the late evening hours of August 27, 2022, Artis entered the home of Trey McGillicudy; Trey's girlfriend, Sessily Bruner; their three children; and Sessily's mother, Crystal Joines. Artis knew Trey to sell marijuana, and inside the home he pointed a firearm at Trey while demanding Trey's marijuana and cash.

[4] Sessily entered the room. She observed that Trey was holding their youngest child while Artis pointed the firearm at Trey. As Trey set the child down, Artis shot and killed Trey. Sessily attempted to perform CPR on him, but Artis pointed his firearm at her and directed her to stop and to put Trey's marijuana into trash bags. Sessily complied. As he left the residence, Artis also took a

Louis Vuitton belt, three phones, and car keys. Crystal, who also saw Artis inside the residence, then called 9-1-1.

[5] After arriving on the scene, officers with the Evansville Police Department found a gold necklace near the street. They pinged Trey's cell phone, which they discovered on a sidewalk about half-way between Trey's residence and Artis's residence.

[6] Thereafter, officers obtained and executed a search warrant for Artis's residence. Inside Artis's residence, officers discovered large quantities of marijuana and cash. They also recovered a Louis Vuitton belt and Artis's cell phone. The location services for Artis's phone placed Artis at or near Trey's residence at the time of Trey's death. However, while officers found ammunition inside Artis's residence, they did not locate a firearm. On three occasions over the next week, officers observed Artis drive his girlfriend to a local gun store, where she purchased a firearm, allegedly for Artis.

[7] The State charged Artis in relevant part with murder, Level 3 felony robbery, Level 4 felony unlawful possession of a firearm by a serious violent felon, and two counts of Level 5 felony intimidation. At his ensuing jury trial, Sessily and Crystal both identified Artis as the person who had entered their home and killed Trey. The State also admitted the Louis Vuitton belt, which Artis did not dispute had belonged to Trey, as well as the location information for Artis's cell phone. *See* Tr. Vol. 3, p. 164.

[8] The State also admitted into evidence two photographs that showed Artis wearing a gold necklace identical to the gold necklace recovered near Trey's residence the night of his death. Artis objected to the admission of the photographs on the basis of relevance, which the trial court overruled. Those photographs also showed Artis's tattoos, one of which depicted an "AK47 Draco-style firearm" on his abdomen. *Id.* at 57.

[9] The State further sought to have evidence of Artis and his girlfriend's post-murder gun purchase admitted into the record. Artis objected to that evidence on the basis of relevance. The State argued that the evidence was relevant to show that Artis "had a weapon to commit the crime and then no longer had a weapon" and thus needed to replace it. Tr. Vol. 2, p. 5. The court overruled Artis's objection and admitted the evidence.

[10] Thereafter, the jury found Artis guilty of murder, Level 3 felony robbery, Level 4 felony unlawful possession of a firearm by a serious violent felon, and two counts of Level 5 felony intimidation. The trial court entered its judgment of conviction and sentenced Artis accordingly. This appeal ensued.

1. The trial court did not abuse its discretion when it admitted the gun-purchase evidence as relevant evidence.

[11] On appeal, Artis first contends that the trial court abused its discretion when it overruled his relevance objection and admitted the gun-purchase evidence. We apply an abuse-of-discretion standard to a trial court's decision on the admissibility of evidence, with reversal warranted only if the trial court's ruling

is clearly against the logic and effect of the facts and circumstances before the court and the error affects a party's substantial rights. *McCoy v. State*, 193 N.E.3d 387, 391 (Ind. 2022). Indiana Evidence Rule 401 provides that evidence is relevant if it has "any tendency" to make "more or less probable" a fact that is "of consequence in determining the action." And Evidence Rule 402 provides that relevant evidence is admissible unless otherwise provided by law or our Evidence Rules.

[12] We cannot say that the trial court abused its discretion when it concluded that the gun-purchase evidence was relevant. The "destruction[] or suppression of evidence may properly be considered by the jury as an admission of the defendant's guilt or his guilty knowledge." *Larry v. State*, 716 N.E.2d 79, 81 (Ind. Ct. App. 1999). Although officers located ammunition in Artis's residence, no firearm was discovered, and the firearm used to murder Trey was never found. After the execution of the search warrant, the officers observed Artis's girlfriend purchasing a new firearm for Artis.

[13] That evidence demonstrates that Artis had at one time possessed a firearm, that he was no longer in possession of that firearm, and that, shortly after Trey's death, he wanted to purchase a new firearm. And that evidence collectively made it more probable that Artis may have destroyed or suppressed the murder weapon, which he then sought to replace. We therefore affirm the trial court's admission of the gun-purchase evidence under Indiana Evidence Rule 401.

2. The trial court did not commit fundamental error when it admitted the gun-purchase evidence and the photographs of Artis wearing the gold necklace.

[14] Much of Artis's argument on appeal is devoted to his attempt to demonstrate that the trial court erred under Evidence Rules 403 and 404 both when it admitted the gun-purchase evidence and when it admitted the photographs of Artis wearing the gold necklace, which photographs also showed that Artis had a tattoo of a firearm. Evidence Rule 403 provides that, even if evidence is relevant under Rule 401, the court may exclude it "if its probative value is substantially outweighed by a danger of . . . unfair prejudice . . . ." Evidence Rule 404(a) generally prohibits the use of evidence of "a person's character . . . to prove that on a particular occasion the person acted in accordance with th[at] character . . . ." And Evidence Rule 404(b) generally prohibits "[e]vidence of a crime, wrong, or other act" to prove "a person's character in order to show that on a particular occasion the person acted in accordance with the character."

[15] Artis did not object to the admission of the gun-purchase evidence or the photographs under Evidence Rules 403 or 404. He therefore has not preserved these arguments for appellate review. *E.g.*, *Nix v. State*, 158 N.E.3d 795, 800 (Ind. Ct. App. 2020), *trans. denied*. To avoid his trial counsel's waiver of these issues, on appeal Artis asserts that the trial court committed fundamental error when it did not *sua sponte* exclude the gun-purchase evidence and the photographs under Rules 403 and 404.

[16] "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). And "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).

[17] We have repeatedly recognized that "[a]n 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*, 158 N.E.3d at 801 (citing *Merritt*, 99 N.E.3d at 710). Thus, our Supreme Court has made clear that 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.*

[18] Artis's fundamental-error arguments do not suggest that the evidence at issue "is not what it appears to be." *See id.* He therefore cannot demonstrate fundamental error in the trial court's admission of that evidence.

[19] Still, Artis contends that our Court has held that a conviction based on inadmissible character evidence violates fundamental due process, citing *Oldham v. State*, 779 N.E.2d 1162, 1173-1175 (Ind. Ct. App. 2002), *trans. denied*. Insofar as *Oldham* stands for such a principle, we conclude that our Supreme Court's subsequent clarification of fundamental error in *Brown* and *Durden* supersedes the *Oldham* panel's analysis.

Conclusion

[20] For all of the above-stated reasons, we affirm Artis's convictions.

[21] Affirmed.

Riley, J., and Crone, J., concur.