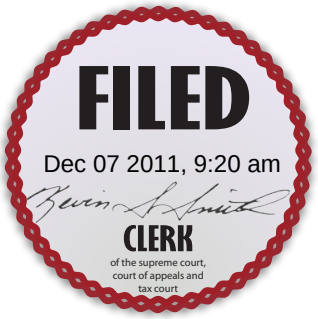

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IN THE
COURT OF APPEALS OF INDIANA

A.H.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A05-1104-JV-208
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary K. Chavers, Judge Pro Tempore
The Honorable Geoffrey A. Gaither, Magistrate
Cause No. 49D09-1010-JD-002895

December 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

A.H. appeals his adjudication as a juvenile delinquent for having committed an offense that would be Possession of Paraphernalia, as a Class A misdemeanor,[1] if committed by an adult. He raises a single issue for our review: whether the juvenile court fundamentally erred by admitting into evidence paraphernalia recovered in a search of his locker.

We affirm.

Facts and Procedural History

On October 18, 2010, Henry Jordan ("Dean Jordan"), the Dean of Students for George Washington Community High School, received a tip from a probation officer that A.H. had brass knuckles in his possession, which is a weapon not allowed at school. Dean Jordan removed A.H. from class and had Officer James Sheroan ("Officer Sheroan"), a school police officer with the Indianapolis Public School Police, search A.H. Officer Sheroan did not find brass knuckles, so Dean Jordan requested A.H. to lead him to his locker, and, once there, asked A.H. whether everything in his locker belonged to him. A.H. told him yes.

Officer Sheroan then searched A.H.'s locker; inside, he found a tube and a little pipe that both he and Dean Roberts thought smelled like marijuana. Without being questioned, A.H. blurted out that he found the device on the way to school and had picked it up because

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[1] Ind. Code § 35-48-4-8.3(b); App. 18. A.H. points out, and the State concedes, that the State alleged A.H. committed an act that would be Possession of Paraphernalia as a Class B misdemeanor if committed by an adult. But the Dispositional Order, Order on Fact Finding Hearing, and Chronological Case Summary all indicate that A.H. was found to have committed an act that would be Possession of Paraphernalia as a Class A Misdemeanor (even though the court orally found as true the allegation as a Class B misdemeanor at the hearing). However, A.H. makes no argument concerning these inconsistencies and instead focuses his arguments on the propriety of the search leading to the discovery of his paraphernalia, which we discuss below.

he wanted the bowl off the top of it. From there, Officer Sheroan took A.H. to the school administration office, where he was detained. Officer Sheroan used a field test kit to test some residue from the bowl of the device. It tested positive for marijuana. Subsequent forensic tests also confirmed that the device contained marijuana residue.

On October 19, 2010, the State alleged A.H. had committed an act that would be Possession of Paraphernalia as a Class B misdemeanor if committed by an adult and on January 6, 2011, the juvenile court held a denial hearing. During the course of the proceedings, the State sought to admit the device recovered from A.H.'s locker and the laboratory investigation report that confirmed it held marijuana residue. A.H.'s counsel did not object. The juvenile court then entered a true finding as to the Possession of Paraphernalia allegation.

The juvenile court then heard evidence concerning two other separate allegations against A.H. and made a true finding as to each.[2] A.H. also admitted as true his commission of a separate allegation of Possession of Marijuana, as a Class A misdemeanor if committed by an adult. At a dispositional hearing on March 25, 2011, the juvenile court ordered A.H. to be placed with the Department of Correction for a recommended term of six months.

He now appeals.

Discussion and Decision

A.H. argues that the juvenile court erred when it admitted into evidence the

[2] If committed by an adult, these offenses would be Burglary, as a Class C felony, and Theft, as a Class D felony. The hearing on these offenses proceeded immediately after the possession charge, and continued on March 9, 2011.

paraphernalia found in his locker. He concedes that he did not object to the admission of the paraphernalia at the hearing, but nevertheless asserts that its admission was fundamental error.

A claim 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 exception 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." Id. (quoting Mathews v. State, 849 N.E.2d 578, 587 (Ind. 2006)). The asserted error must either "make a fair trial impossible" or constitute "clearly blatant violations of basic and elementary principles of due process." Id. (quoting Clark v. State, 915 N.E.2d 126, 131 (Ind. 2009)). This exception is only available in "egregious circumstances." Id. (quoting Brown v. State, 799 N.E.2d 1064, 1068 (Ind. 2003)).

In Brown, our supreme court held that claimed error in admitting unlawfully seized evidence at trial is not preserved for appeal unless an objection is lodged at the time the evidence was offered, and that such a claim, without more, does not amount to fundamental error. 929 N.E.2d at 205. The court explained why:

> [B]ecause improperly seized evidence is frequently highly relevant, its admission ordinarily does not cause us to question guilt. That is the case here. The only basis for questioning Brown's conviction lies not in doubt as to whether Brown committed these crimes, but rather in a challenge to the judicial process. We do not consider that admission of unlawfully seized evidence ipso facto requires reversal. Here, there is no claim of fabrication of evidence or willful malfeasance on the part of the investigating officers and no contention that the evidence is not what it appears to be. In short, the claimed

error does not rise to the level of fundamental error.

Id. at 207.

A.H. makes no allegation of fabrication or willful malfeasance on the part of the Dean Jordan or Officer Sheroan, and he does not contend that the evidence was not what it appeared to be. Nor does the record contain any evidence that would support such allegations. Essentially, A.H., like Brown, "makes no contention that he did not receive a fair trial, other than his assertion that the evidence was the product of an unconstitutional search and seizure." Id. at 208. He therefore has not asserted fundamental error, and we need not reach the issue of whether or not the search of his locker was lawful. See id. (declining to address whether the search of Brown's home, which yielded drugs and paraphernalia leading to his arrest for several drug-related offenses, was lawful when he failed to lodge an objection at trial when the seized items were offered to the jury).

Conclusion

Because A.H. did not object at his hearing to the admission of the paraphernalia evidence seized from his locker, he has waived the issue for our review. Moreover, because he has not asserted any fabrication of evidence or willful malfeasance on the part of Dean Jordan or Officer Sheroan, and does not maintain that the evidence is not what it appears to be, he has not established clearly blatant violations of basic and elementary principles of due process, or that a fair trial was impossible. We therefore find no fundamental error, and affirm the juvenile court's dispositional order.

Affirmed.

MATHIAS, J., and CRONE, J., concur.