

Derrick Williams appeals his convictions and sentences for carrying a handgun without a license as a class C felony¹ and resisting law enforcement as a class A misdemeanor.² Williams raises two issues, which we revise and restate as:

- I. Whether the trial court abused its discretion by allowing the admission of evidence of prior crimes committed by Williams; and
- II. Whether Williams's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On the evening of April 19, 2008, Anderson Police Department Officer Marty Dulworth was on patrol when he received an emergency dispatch. When Officer Dulworth arrived at the address indicated in the dispatch, he saw Williams and another person standing in the roadway. Williams was holding a gun. Officer Dulworth exited his vehicle, identified himself, and asked what was “going on.” Transcript at 163. Williams “took off running,” and Officer Dulworth advised him to stop and chased after him. *Id.* at 163-164. Officer Dulworth chased Williams around some houses and down an alley until Williams disappeared around the corner of another house. As Officer Dulworth rounded the corner, Williams, still running, collided with a vehicle parked in the driveway, fell down, and lost his grip on the gun, which fell onto the concrete. Officer Dulworth grabbed Williams, and they struggled until Williams got away and began running again. Officer Dulworth caught up with Williams at a chain link

¹ Ind. Code § 35-47-2-1 (Supp. 2007); Ind. Code § 35-47-2-23(c) (2004).

² Ind. Code § 35-44-3-3 (Supp. 2006).

fence, tackled him, and placed him in custody. Williams was taken to a hospital for treatment of injuries sustained during his flight from, and struggle with, Officer Dulworth.

The State charged Williams with: (1) Count I, carrying a handgun without a license as a class A misdemeanor; (2) Count II, pointing a firearm as a class D felony; (3) Count III, resisting law enforcement as a class A misdemeanor; and (4) Count IV, an enhancement of Count I, carrying a handgun without a license having been convicted of a felony within fifteen years before the date of the offense as a class C felony. The State also filed an habitual offender enhancement, which it later dismissed.

At trial, Officer Dulworth testified that, at one point while he was chasing Williams, Williams pointed the gun at him. Williams testified that, on the evening in question, he attended a birthday party with Terrell Hampton, that a fight erupted between Hampton and other attendees of the party, and that the nephew of one of the attendees was carrying a gun. He claimed that, when the police arrived, he quickly took the gun from the child and was holding it when Officer Dulworth first saw him. He admitted that he fled from Officer Dulworth. He denied having pointed a gun at Officer Dulworth and testified that he had the following conversation with the officer at the hospital later that evening:

[Officer Dulworth] told me that he wasn't going to charge me after I heard him talking about I pointed a handgun at him. I said, you know, I talked to him and I was asking the people in the Hospital because I couldn't see. And he was like well here I am. And I was like well did you say, you know, I, I pointed a handgun at you and I was like, you know, I would

never do that. I got a three (3) year old son and, you know, I wouldn't do nothing, I wouldn't dare do nothing like that or you could have shot me. I know you would have, I know you would have killed me. And he said well after I got to mention more about my son he said well I'm not going to charge you with a hand, pointing a handgun but you do got several charges coming towards ya.

Id. at 240. Williams then repeated that he “wouldn't dare” point a firearm at an officer.

Id. at 242.

On cross examination, over Williams's objection, the State asked Williams whether he had pled guilty to battery of a police officer and resisting law enforcement two weeks before the evening in question, and Williams admitted that he had. Williams also admitted that he had another prior conviction for resisting law enforcement. The jury found Williams guilty of carrying a handgun without a license as a class A misdemeanor and resisting law enforcement as a class A misdemeanor but acquitted him of pointing a firearm as a class D felony. The State then presented evidence that Williams had been convicted of sexual battery as a class D felony on December 13, 1993, and the jury found Williams guilty of carrying a handgun without a license as a class C felony. The trial court sentenced Williams to seven years for carrying a handgun without a license as a class C felony and to a concurrent term of one year for the resisting law enforcement conviction, for a total sentence of seven years in the Indiana Department of Correction.

I.

The first issue is whether the trial court abused its discretion by allowing the admission of evidence of prior crimes committed by Williams. Specifically, Williams contends that the admission of evidence of his prior convictions for resisting law enforcement and battery of a police officer violated Ind. Evidence Rule 404(b). The State argues that Williams opened the door to this evidence by testifying that he “wouldn’t dare” point a firearm at a police officer because he has a three year old son and the police officer “would have killed [him].” Transcript at 240, 242.

We review a trial court’s decision to admit or exclude evidence for an abuse of discretion. Ware v. State, 816 N.E.2d 1167, 1175 (Ind. Ct. App. 2004). An abuse of discretion occurs if a trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. Id. However, the improper admission of evidence is harmless error when the conviction is supported by substantial independent evidence of guilt sufficient to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction. Id.

Ind. Evidence Rule 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pre-trial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Courts utilize the following two-part test in determining the admissibility of evidence under 404(b). Piercefield v. State, 877 N.E.2d 1213, 1216 (Ind. Ct. App. 2007), trans. denied. First, a trial court must determine “whether the evidence of other[] crimes, wrongs, or acts is relevant to a matter at issue other than the defendant’s propensity to commit the charged act.” Id. (quoting Wilson v. State, 765 N.E.2d 1265, 1270 (Ind. 2002)). Then the trial court must determine “whether the probative value of the evidence outweighs the prejudicial effect under Indiana Evidence Rule 403.” Id. To determine whether the trial court abused its discretion, we employ the same test. Ware, 816 N.E.2d at 1175. In addition, otherwise inadmissible evidence may be admitted if the defendant has “opened the door.” Ortiz v. State, 741 N.E.2d 1203, 1208 (Ind. 2001). However, “the evidence relied upon to ‘open the door’ must leave the trier of fact with a false or misleading impression of the facts related.” Id.

Here, we need not decide whether the trial court abused its discretion in admitting the evidence because any error in the admission of evidence concerning his prior convictions was harmless. At trial, the evidence in question was admitted in response to Williams’s testimony that he “wouldn’t dare” point a firearm at an officer. Transcript at 240, 242. However, the jury acquitted Williams of pointing a firearm as a class D felony. Williams was convicted of carrying a handgun without a license as a class C felony and resisting law enforcement as a class A misdemeanor. Williams does not challenge these convictions, and, at any rate, Williams admitted at trial that he possessed the gun and fled from Officer Dulworth. We therefore find substantial evidence in the record to support

his convictions. Accordingly, we conclude that, to the extent that the trial court may have abused its discretion by allowing the admission of evidence that Williams had previously been convicted of battery of a police officer and two counts of resisting law enforcement, the admission of the evidence was at worst harmless error.³ See, e.g., Ortiz, 741 N.E.2d at 1208 (holding that the admission of evidence of defendant’s prior bad acts was harmless error where defendant’s conviction was supported by substantial independent evidence of guilt).

II.

The next issue is whether Williams’s sentence is inappropriate in light of the nature of the offenses and the character of the offender. First, we note that Williams argues that his sentence is both inappropriate and “manifestly unreasonable.” Appellant’s Brief at 13. Before January 1, 2003, Ind. Appellate Rule 7(B) provided: “The Court shall not revise a sentence authorized by statute unless the sentence is manifestly unreasonable in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). Today, the same rule provides: “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is *inappropriate* in light of the nature of the offense and the character of the offender.” (emphasis added). We no longer apply the “manifestly unreasonable”

³ Because we find that the admission of evidence of Williams’s prior bad acts is harmless error, we need not address his contention that the evidence was also inadmissible because the State failed to comply with the notice requirements of Ind. Evidence Rule 404(b).

standard.⁴ Thus, we will address only Williams's argument that his sentence is inappropriate.

Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offenses reveals that Williams was carrying a handgun without a license and that he fled from Officer Dulworth after the officer identified himself and ordered Williams to stop. He had been convicted of sexual battery as a class D felony within fifteen years of committing the present offenses, which elevated the handgun charge to a class C felony.

Our review of the character of the offender reveals that Williams has other prior convictions as well, including three counts of resisting law enforcement as class A misdemeanors, carrying a handgun without a license as a class C felony, possession of a firearm by a convicted felon in Georgia, and battery resulting in bodily injury as a class D felony. Williams also has numerous probation violations.

⁴ The change in language is not simply a matter of semantics. Patterson v. State, 846 N.E.2d 723, 730 n.7 (Ind. Ct. App. 2006). The Indiana Supreme Court's revision to the rule "changed its thrust from a prohibition on revising sentences unless certain narrow conditions were met to an authorization to revise sentences when certain broad conditions are satisfied." Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005).

Given Williams's numerous prior convictions as well as the failure of lesser measures to help him reform his behavior, we cannot say that his sentence is inappropriate.

For the foregoing reasons, we affirm Williams's convictions and sentences for carrying a handgun as a class C felony and resisting law enforcement as a class A misdemeanor.

Affirmed.

KIRSCH, J. and BRADFORD, J. concur