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**IN THE
COURT OF APPEALS OF INDIANA**

RANDALL RYAN RICHARDSON,)

Appellant-Defendant,)

vs.)

No. 76A04-0604-CR-188)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE STEUBEN CIRCUIT COURT
The Honorable Allen N. Wheat, Judge
Cause No. 76C01-0507-FD-729

October 11, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Randall Ryan Richardson (“Richardson”) appeals his conviction and sentence for Illegal Possession of Chemical Reagents or Precursors, a Class D felony.¹

We affirm.

Issues

Richardson raises two issues which we restate as follows:

- I. Whether the trial court erred fundamentally in instructing the jury, and
- II. Whether Richardson’s sentence was inappropriate in light of his prior criminal convictions.

Facts and Procedural History

Richardson and Amber Feldbauer (“Feldbauer”) used methamphetamine together. During the evening and early hours of July 28 and 29, 2005, Richardson and Feldbauer purchased several items at three different stores in Michigan and Indiana. At all three stores, Richardson and Feldbauer both made separate purchases of items capable of being used in the manufacture of methamphetamine. At Felpausch in Michigan, Richardson purchased Topcare Cold and Allergy pills, containing pseudoephedrine. At Meijer in Indiana, Richardson purchased iodine, hydrochloric acid, and matches containing red phosphorous. Finally, at Wal-Mart in Indiana, Richardson purchased more matches, among other things. As they walked out, a Wal-Mart employee followed them and noted the license plate of the car Richardson was driving. A second Wal-Mart employee notified police that the two had

¹ “A person who possesses two (2) or more chemical reagents or precursors with the intent to manufacture a controlled substance commits a Class D felony.” Ind. Code § 35-48-4-14.5(e). Indiana Code lists 39

purchased items potentially used in the manufacture of methamphetamine.

In questioning Richardson and Feldbauer and searching the car, Officers Michael Meeks (“Officer Meeks”) and Christopher Boyer found matches, coffee filters, road flairs with red phosphorous, iodine, hydrochloric acid, pseudoephedrine, and other items capable of being used in the manufacture of methamphetamine. Feldbauer told Officer Meeks that their intention was “to gather things for a methamphetamine lab.” Tr. at 104. Indeed, at trial, Richardson acknowledged that he “knew what these things were being bought for,” but testified that he intended to “give [the items] to somebody that [Feldbauer] knew, I guess, to make meth with.” Tr. at 114, 118. On July 29, 2005, the State charged Richardson with Illegal Possession of Chemical Reagents or Precursors, namely pseudoephedrine, hydrochloric acid, red phosphorous, and iodine.

On November 9, 2005, a jury found Richardson guilty as charged. The preliminary and final jury instructions contained the following sentence: “You should attempt to fit the evidence to the presumption that Mr. Richardson is innocent and that every witness is telling the truth, if it can reasonably be done.” Tr. at 48, 127 and App. at 25, 41. Richardson neither objected nor tendered proposed alternatives to either the preliminary or final jury instructions.

On March 6, 2006, the trial court sentenced Richardson to the maximum sentence of 1095 days imprisonment,² suspending 365 days and placing Richardson on probation during

substances that constitute “chemical reagents or precursors,” including pseudoephedrine, hydrochloric acid, red phosphorous, and iodine. I.C. § 35-48-4-14.5(a).

² A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. I.C. § 35-50-2-7(a).

that time, as recommended by the probation officer. Richardson was fined \$250.00. In sentencing Richardson, the trial court found his prior criminal history, consisting of six misdemeanor convictions since 1988, as an aggravating circumstance. Meanwhile, the trial court found mitigating circumstances in Richardson's remorse and the hardship his sentence will cause his family. The trial court, however, assigned these little weight. Richardson's attorney acknowledged that, "the recommendation [ultimate sentence] of the probation department is not unreasonable in this case." Tr. at 151.

Discussion and Decision

I. Jury Instruction

Richardson argues that the trial court committed fundamental error by instructing the jury that a presumption exists that every witness is telling the truth. On appeal, Richardson acknowledges that he did not object at trial to any of the trial court's instructions. By failing to object or to tender an alternative instruction, Richardson waived a claim of error on appeal. See Williams v. State, 771 N.E.2d 70, 72 (Ind. 2002). We therefore limit our review to whether the instruction constitutes fundamental error.

Once waived, an issue will warrant reversal only if it amounts to fundamental error. Fundamental error is a substantial blatant violation of basic principles rendering the trial unfair to the defendant and, thereby, depriving the defendant of fundamental due process. The error must be so prejudicial to the rights of a defendant as to make a fair trial impossible.

Carter v. State, 738 N.E.2d 665, 677 (Ind. 2000) (citations omitted).

In its preliminary and final jury instructions, the trial court stated, "[y]ou should attempt to fit the evidence to the presumption that Mr. Richardson is innocent and that every witness is telling the truth, if it can reasonably be done." Tr. at 48, 127 and App. at 25, 41.

Our Supreme Court approved a trial court's use of a very similar instruction in Young v. State, 696 N.E.2d 386, 390 (Ind. 1998). At that time, the instruction in Young was Indiana Pattern Jury Instruction 1.23, revised significantly in December, 2003. Even though the pattern instruction has since been revised, the giving of this very similar instruction is far from fundamental error.

II. Nature of the Offense and Character of the Offender

Richardson further argues that his sentence is inappropriate in light of the nature of his offense and his character. "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." Ind. Appellate Rule 7(B).

The trial court imposed the maximum sentence of three years, suspending one year. As to the nature of the offense, Richardson drove to three different stores in two states, coordinated with Feldbauer to make separate purchases at each store, and acknowledged at trial that he knew the purchased items would be used to make methamphetamine. As to his character, Richardson has six prior misdemeanors, with at least one more pending in Michigan. During the sentencing hearing, even Richardson's attorney acknowledged that a sentence of three years, with one suspended, was "not unreasonable in this case." Tr. at 151. We do not believe the sentence imposed was inappropriate in light of the nature of the offense or Richardson's character.

Conclusion

There was no fundamental error contained in the trial court's jury instruction. The

maximum sentence of three years, with one year suspended, was not inappropriate in light of the nature of the offense and Richardson's character as exhibited by his prior criminal convictions.

We affirm.

RILEY, J., and MAY, J., concur.