Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

MARCE GONZALEZ, JR.
Dyer, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

RYAN D. JOHANNINGSMEIER
Deputy Attorney General
Indianapolis, Indiana

FILED
Dec 27 2011, 9:31 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

RONNIE MAJOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1105-CR-220
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0810-FA-37

December 27, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Ronnie Major ("Major") appeals from his conviction for battery[1] as a Class C felony. Major presents the following restated issues for our review:

I. Whether the State committed prosecutorial misconduct during Major's trial; and

II. Whether the trial court abused its discretion by allowing medical testimony beyond the doctor's scope of expertise.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 5, 2008, Ant-won Fortier ("Fortier") returned to Gary from Indianapolis with Jocelyn Blair ("Blair") and a woman Fortier knew as "Sugar-Booty." When they arrived at Blair's house, Sugar-Booty exited Fortier's vehicle and began to walk toward the house. Fortier, who had been driving, and Blair were still sitting in the vehicle when Major arrived. Major parked his car approximately ten to fifteen feet from Fortier's vehicle.

Major, who was Blair's former boyfriend, immediately proceeded to shout obscenities at Blair and punched her while she was seated in Fortier's vehicle. Fortier asked Major to leave because Blair's children had come outside of the house. Major responded with more obscenities and talked about needing his money and his truck.

Fortier again asked Major to leave, and Major continued to curse at Fortier. Major approached Fortier with his fist balled and started swinging toward him. Major and Fortier both threw punches and fought. Major ripped Fortier's shirt and tore off his chain and charm. They continued to fight, but eventually separated. Major continued to yell at Fortier,

[1] *See* Ind. Code § 35-42-2-1.

and Fortier continued to ask Major to leave.

Major walked toward his vehicle and pulled a gun from his back while he was fifteen feet from Fortier. Major then aimed his gun at Fortier. Fortier said, "Oh, you're going to shoot me now?" *Tr*. at 97. Major walked toward Fortier who stood still. Major tried to hit Fortier with the gun, but Fortier threw up his arm and then heard a shot. Fortier received an injury to his back and three wounds to his neck. He fell to the ground, and Major ran toward Blair.

Major left soon thereafter, and people began shouting that Fortier had been shot. Fortier went to the house, but left to drive himself to the hospital. Blair, who accompanied him, took over driving because Fortier started to bleed profusely during the trip. Fortier was hospitalized for three to four days. He suffered four bullet wounds on his upper shoulder and left neck area.

The State charged Major with attempted murder, a Class A felony, aggravated battery as a Class B felony, battery as a Class C felony, and battery as a Class A misdemeanor. The jury found Major guilty of battery as a Class C felony. The trial court entered a judgment of conviction on that count and sentenced Major to a term of six years, with two years executed. Major now appeals.

DISCUSSION AND DECISION

I. Prosecutorial Misconduct

Major claims that the State engaged in prosecutorial misconduct during his jury trial through the repeated use of evidentiary harpoons. When reviewing a claim of prosecutorial

misconduct, we must first consider whether the prosecutor engaged in misconduct. *Williams v. State*, 724 N.E.2d 1070, 1080 (Ind. 2000). We then consider whether the alleged misconduct placed the defendant in a position of grave peril to which he should not have been subjected. *Id*. "Whether a prosecutor's argument constitutes misconduct is measured by reference to case law and the Rules of Professional Conduct." *Cooper v. State*, 854 N.E.2d 831, 835 (Ind. 2006). "The gravity of peril is measured by the probable persuasive effect of the misconduct on the jury's decision rather than the degree of impropriety of the conduct." *Id*.

Prior to trial, the defense filed a motion in limine asking the trial court to prohibit Fortier from testifying that he had been shot three times. The trial court granted the motion and explained that Fortier would be allowed to describe the injuries that he received, but would not be able to characterize it as being shot three times. *Tr*. at 21. However, during his cross-examination of Fortier, defense counsel asked Fortier if he told people at the hospital that he had been shot just once. *Id*. at 120. The State objected, citing the prior order in limine with which it had complied. The trial court alerted defense counsel that he had potentially opened the door for the admission of that testimony. Later, during the cross-examination of Dr. Hung Dang ("Dr. Dang"), the physician who treated Fortier at the hospital, Major elicited testimony that Fortier told him that he only remembered being shot once. *Id*. at 231. The defense asked Dr. Dang to explain how Fortier could have received four bullet wounds from one shot. *Id*. During closing argument, defense counsel argued that only one bullet caused all four injuries.

An order in limine is not a final determination of the admissibility of the evidence referred to in the motion. *Smith v. State*, 506 N.E.2d 31, 35 (Ind. 1987). In order to preserve error in the overruling of a pre-trial motion in limine, the appealing party must object to the admission of the evidence at the time it is offered. *Simmons v. State*, 760 N.E.2d 1154, 1158 (Ind. Ct. App. 2002). Failure to object at trial constitutes waiver of review unless an error is so fundamental that it denied the accused a fair trial. *Mitchell v. State*, 455 N.E.2d 1131, 1132 (Ind. 1983). Our Supreme Court has stated that the doctrine of fundamental error is only available in egregious circumstances. *See Brown v. State*, 799 N.E.2d 1064, 1068 (Ind. 2003) (fundamental error available only in egregious circumstances).

During the cross-examination of Fortier, Major opened the door to the admission of evidence of the number of shots that were fired, the characterization which Major successfully prohibited by way of the motion in limine. "A party may not invite error, then later argue that the error supports reversal, because error invited by the complaining party is not reversible error." *Kingery v. State*, 659 N.E.2d 490, 494 (Ind. 1995). "Generally, when a defendant injects an issue into the trial, he opens the door to otherwise inadmissible evidence." *Stokes v. State*, 908 N.E.2d 295, 302 (Ind. Ct. App. 2009). Thus, any argument on appeal that the State committed prosecutorial misconduct by way of violation of the order in limine fails. The error was invited by Major during cross-examination.

Furthermore, Major has failed to establish fundamental error. Major has failed to show that he was deprived of a fair trial. He introduced evidence that only one bullet caused the injuries to Fortier. He also introduced, through his own testimony and during cross-

examination, his defenses of self-defense and accident. There was no fundamental error here.

We disagree with Major's characterization of the State's conduct as prosecutorial misconduct through the repeated use of evidentiary harpoons. An evidentiary harpoon is the placing of inadmissible evidence before the jury with the deliberate purpose of prejudicing the jury against a defendant. *Kirby v. State*, 774 N.E.2d 523, 535 (Ind. Ct. App. 2002). The evidentiary harpoon doctrine is a type of prosecutorial misconduct. *Roberts v. State*, 712 N.E.2d 23, 34 (Ind. Ct. App. 1999). However, a claim of prosecutorial misconduct is waived when the defendant fails to immediately object, request an admonishment, and then move for a mistrial. *Reynolds v. State*, 797 N.E.2d 864, 868 (Ind. Ct. App. 2003).

The portions of the record to which Major cites in support of his argument do not show an objection based upon a violation of the order in limine. Instead, when Major did object, the basis of the objection, more often than not, was foundational. We conclude that Major has failed to establish that the State engaged in prosecutorial misconduct.

II. Medical Testimony

Major also challenges the trial court's admission of certain medical testimony claiming that in so doing the trial court abused its discretion. A trial court has broad discretion in ruling on the admissibility of evidence. *Edwards v. State*, 930 N.E.2d 48, 50 (Ind. Ct. App. 2010). We will reverse a trial court's ruling on the admissibility of the evidence only when the trial court abuses its discretion. *Id*. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the

trial court. *Boggs v. State*, 928 N.E.2d 855, 862 (Ind. Ct. App. 2010).

In particular, Major claims that Dr. Dang was not qualified to give expert opinions on the number of times the victim was shot, which wounds were entrance wounds and which were exit wounds, and the trajectory of the bullet or bullets. Indiana Evidence Rule 702 provides as follows:

> (a) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.
>
> (b) Expert scientific testimony is admissible only if the court is satisfied that the scientific principles upon which the expert testimony rests are reliable.

In support of this argument, Major cites to the portion of the transcript containing Dr. Dang's direct testimony and deems it all to be "speculative." *Appellee's Br.* at 17 (citing *Tr*. at 196-212).

We agree with the State that Major has failed to sufficiently develop his argument with appropriate citations to the record and, thus, has waived this argument for review. *See* Ind. App. Rule 46(A)(8)(a) (each contention must be supported by citations to parts of appendix or record on appeal); *Johnson v. State*, 675 N.E.2d 678, 684 (Ind. 1996) (under prior codification of same rule, insufficient statement of supporting citations to record does not enable reviewing court to comprehend allegations in brief).

Potential waiver notwithstanding, we conclude that the trial court did not abuse its discretion. Dr. Dang was Fortier's treating physician at the hospital and had knowledge of his wounds and the treatment of those wounds. His experience was in general surgery to the

abdominal area, and he testified that he had treated many gunshots wounds. Dr. Dang explained that through his experience in the treatment of gunshot wounds and through his medical education he learned the difference between entrance and exit wounds and testified about those differences. On cross-examination, he testified about Fortier's wounds in such a way that supported Major's argument that Fortier's wounds were caused by one bullet. Furthermore, the trial court sustained Major's objection to testimony about bullet trajectory. The trial court did not abuse its discretion as Dr. Dang was not allowed to testify beyond the scope of his expertise.

Affirmed.

BARNES, J., and BRADFORD, J., concur.