ATTORNEY FOR APPELLANT:

JEFFREY D. STONEBRAKER
Chief Public Defender
Jeffersonville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MAUREEN ANN BARTOLO
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

JEFFREY COPLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A05-0610-CR-589
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Cecile Blau, Judge
Cause No. 10D02-0507-FC-487

July 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jeffrey Copler ("Copler") appeals from his conviction, after a jury trial, of possession of methamphetamine while also in possession of a firearm, a class C felony.[1]

We affirm.

ISSUE

Whether the trial court admitted improper character evidence regarding Copler's prior use and possession of methamphetamine.

FACTS

On July 25, 2005, Officer Brad Jones of the Clark County Sheriff's Department received a tip from a confidential informant alleging that Copler was in possession of and dealing methamphetamine in the residence that he owned in Memphis, Indiana. The informant claimed to have recently purchased methamphetamine from Copler, adding that Copler had retrieved the methamphetamine from a safe hidden behind a painting in his bedroom. At approximately 4:15 a.m., Officer Jones, Reserve Officer C.J. Rescher, Indiana State Trooper Nathan Abbott, and Officer Nick Mobley went to Copler's residence to do a "stop and knock." Tr. 64. Conrad Coval, Copler's roommate, answered the door and went to wake Copler.

When Copler emerged from his bedroom to meet the officers, "he was sweating and he was acting nervous."[2] Tr. 66. Copler invited Officer Jones and Trooper Abbott inside. The officers informed Copler why they were there and requested permission to

---

[1] Ind. Code § 35-48-4-6(a).

[2] At trial, Officer Jones testified that excessive perspiration and nervousness were potential indicators of methamphetamine use.

search his residence. Officer Jones advised Copler of his right to refuse to consent to a warrantless search and gave him a Consent to Search form. Copler gave both verbal and written consent to the search. The officers began their search in Copler's bedroom. Immediately, Officer Jones observed from a television monitor in the bedroom that Copler's driveway and surrounding areas were under video surveillance.[3] Then, Officer Jones "located a safe in the wall which was behind a picture. [I]t was on like hinges and the picture opened and there was a safe actually imbedded [sic] into the wall." Tr. 71.

Copler unlocked the safe for the officers using a key that Trooper Abbott had found in the bedroom. Inside, the officers discovered a bag containing approximately one and a half grams of a white powdery substance, tens of thousand of dollars in United States currency, and some collectibles. The officers asked Copler to identify the white substance found in the safe. Copler eventually responded that "it was methamphetamine and that he had forgotten it was in there." Tr. 75. Copler denied that he had sold methamphetamine and claimed that it was solely for personal use. Officer Jones field-tested the substance and "it indicated a presence of methamphetamine." Tr. 74. In a subsequent search of the bedroom, the officers located seven loaded weapons in a cabinet next to the door.

The officers asked how much money was in the safe, but Copler declined to answer. Given the large sum of money involved, Officer Jones telephoned Detective Sergeant Randy Burton to come to the premises and take custody of the funds. Detective

---

[3] At trial, Officer Jones testified that in his experience as a law enforcement officer, video surveillance is a common practice in residences in which drug activity is ongoing.

Sergeant Burton, in the presence of Officer Jones, Reserve Officer Rescher and Officer Mobley, later counted the funds at the Clark County Sheriff's Department, arriving at a total of $22,555.00.

Later that same day, the State charged Copler with class C felony possession of methamphetamine while also in possession of a firearm. At his jury trial on May 23, 2006, three officers testified that Copler had stated that he had forgotten that the methamphetamine was in his safe. Subsequently, Copler took the stand and denied making the admission. He testified that his daughter and son-in-law, his roommate and others had access to his bedroom and could have easily placed the methamphetamine in his safe. He also testified that his truck repair shop was the source of the monies found in his safe.[4] Copler testified further that the video surveillance system was for the security of business property stored in his garage.

The trial court allowed the jurors the opportunity to pose questions to Copler. Counsel reviewed the jurors' questions and offered no objections. After both sides had rested, the trial court read several questions to Copler, including the following: "How long have you been using 'meth?'" Tr. 203. Copler responded, "I haven't." Tr. 203. The State indicated that it was "going to explore" Copler's response to the question. Tr. 205. Subsequently, defense counsel objected and the trial court called for a recess. Outside the presence of the jury, the defense argued that Copler's response meant that he was not using methamphetamine "at the present time." Tr. 207. The defense argued

---

[4] The evidence indicates that the State returned the funds to Copler before the initiation of the trial. Copler also alleged that the safe had contained $24,955.00, but that only $22,555.00 was returned to him.

further that the prejudicial effect of Copler's prior methamphetamine use far outweighed the probative value of the evidence.

The State argued that Copler's response to the juror's question, "left the Jury with a misleading impression that [Copler] ha[d]n't been using methamphetamine," when, in fact, Copler had been arrested in August of 2004 for possession of methamphetamine and had entered guilty pleas to both possession of methamphetamine and possession of paraphernalia approximately three months before this trial. Tr. 208. Continuing, the trial court initially sustained the defense's objection. Thereafter, the State argued that it was "entitled to question [Copler] on his answer," namely, that he had not been using methamphetamine. Tr. 212. The trial court then agreed. The following colloquy then ensued between the State and Copler in the presence of the jury:

> [State]: Mr. Copler, I want to expound a little bit on one of the answers you gave to one of this Jury's questions. The Jury asked you 'how long have you been using methamphetamine?' What did you answer to that?
>
> Copler: That I haven't.
>
> [State]: You haven't what?
>
> Copler: I haven't presently been using methamphetamine.
>
> [State]: You haven't presently been using methamphetamine?
>
> Copler: Correct.
>
> [State]: What does 'presently' mean?
>
> Copler: I did at one point years past until I see what it done and---
>
> [State]: Years past? Are you sure about that?
>
> Copler: A year, probably a year. I was, probably a year.

[State]: Okay. A year past.

Copler: Yes sir.

[State]: And tell me how that information came about. In other words, were you arrested for that?

Tr. 212-13. Before Copler could answer the final question, the defense objected, and during the bench conference, argued that Copler had already acknowledged his past methamphetamine use and that admitting evidence of his prior methamphetamine arrest and conviction would be "highly prejudicial." Tr. 213. The State responded that Copler's "answers keep changing and [the State is] entitled to at least pin him down to an answer as far as when he last used [methamphetamine] to answer the Jury's question." Tr. 214. Defense counsel responded, "I'll go along with that but that's different than introducing a conviction." Tr. 214. The trial court permitted the State to ask additional questions specifically limited to establishing when Copler had last used methamphetamine. The State asked then Copler when he had last used methamphetamine, to which Copler replied, "It would have been . . . over a year. I'd say about a year and a half." Tr. 215.

The jury found Copler guilty of class C felony possession of methamphetamine with a firearm. On July 17, 2006, the trial court conducted Copler's sentencing hearing and, in its order issued on July 20, 2006, sentenced Copler to three years in the Department of Correction, with two years of the sentence to be served through Community Corrections, and the third year to be served on home detention under strict probation terms. Copler now appeals.

Additional facts will be provided below.

DECISION

Copler contends that the trial court erred when it permitted the State to elicit testimony about his prior use and possession of methamphetamine. Copler argues that he is "entitled to a reversal of his conviction based upon the intentional injection of this highly prejudicial evidence by the State." Copler's Br. 12. We disagree.

The admission of evidence is within the sound discretion of the trial court, and the decision to admit evidence will not be reversed absent a showing of manifest abuse of discretion by the trial court resulting in the denial of a fair trial. *Goldsberry v. State*, 821 N.E.2d 447, 453-54 (Ind. Ct. App. 2005). We reverse only where the decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* at 454.

Under Indiana Evidence Rule 404(b),

> 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 . . . .

In order to admit Rule 404(b) evidence, the court must (1) determine that the evidence is relevant to a matter at issue other than the defendant's propensity to commit the charged act; and (2) balance the probative value of the evidence against its prejudicial effect pursuant to Rule 403.[5] *Hooper v. State*, 779 N.E.2d 596, 601 (Ind. Ct. App. 2002). This balancing is reviewed for an abuse of discretion. *Jackson v. State*, 728 N.E.2d 147, 152

[5] "[A]ll relevant evidence is inherently prejudicial in a criminal prosecution, so the inquiry boils down to a balance of probative value against the likely unfair prejudicial impact the evidence may have on the jury." *Samaniego-Hernandez v. State*, 839 N.E.2d 798, 803 (Ind. Ct. App. 2005).

(Ind. 2000). In addition, otherwise inadmissible evidence may become admissible where the defendant "opens the door" to questioning on that evidence. *Samaniego-Hernandez v. State*, 839 N.E.2d 798, 802 (Ind. Ct. App. 2005). "[T]he evidence relied upon to 'open the door' must leave the trier of fact with a false or misleading impression of the facts related." *Id. See Jackson*, 728 N.E.2d at 152 (finding that murder defendant's testimony that he loved his wife every single day of their marriage, opened the door to evidence of his earlier arrest for battering his wife approximately two years before he allegedly murdered her).

Here, at the close of the evidence, the jurors were given the opportunity to pose questions to Copler.[6] They first submitted their questions to the trial court for review by counsel. The record reveals that defense counsel entered no objections to the questions and thereafter, the trial court read the following question to Copler: "How long have you been using 'meth?'" Tr. 203. Copler responded, "I haven't." Tr. 203. Armed with the knowledge that Copler had been arrested for possession of methamphetamine and paraphernalia in August 2004, and further, had entered a guilty plea to those charges in March of 2006, just months before the trial, the State argued that it was entitled to explore Copler's response. Specifically, the State argued that Copler had "misled the

[6] Pursuant to Indiana Evidence Rule 614(d), the determination of whether to propound a juror's question to the witness rests within the trial court's sound discretion. *Dowdy v. State*, 672 N.E.2d 948, 953 (Ind. Ct. App. 1996). The trial court's decision, in its role as gatekeeper, to pose that particular jury question to Copler gives us pause. We question the form of the question as well as the relevancy of either Copler's prior drug use or the duration thereof; however, we will defer to the discretion of the trial court on this matter in that Copler did not timely object prior to the question being asked; nor did he move the trial court to withdraw the question or admonish the jury accordingly.

Jury and [that] the Jury [wa]s entitled to have that clarified." Tr. 209. The trial court agreed, and we find no error.

In reaching this conclusion, we are guided by *Samaniego*, wherein a police informant conducted a controlled buy of cocaine from Samaniego, and thereafter, turned over the cocaine to the police. The police later executed a search warrant in Samaniego's home and found significant quantities of cocaine, paraphernalia and evidence of dealing. Samaniego was arrested, charged with felony possession of cocaine with intent to deliver, and was later convicted by a jury.

On appeal, Samaniego challenged the admission of evidence of the controlled buy, arguing that it should have been excluded under Rule 404(b). We disagreed, finding that during the trial, Samaniego had "fostered the impression that he knew nothing about the cocaine found in his home and therefore could not have possessed the requisite elements of knowledge and intent to deliver it." *Samaniego*, 839 N.E.2d at 803. Accordingly, we held that

> evidence of the controlled buy was not introduced solely to prove the forbidden inference of Samaniego's propensity to commit the charged crime. Rather, Samaniego put his knowledge of the cocaine at issue, thereby "opening the door" to the admissibility of evidence from the controlled buy.

Id. We considered the fact that relevant evidence may still be inadmissible under Rule 404(b) if its probative value is substantially outweighed by the danger of unfair prejudice. *Id.* However, we concluded that the evidence of the controlled buy was highly probative to challenge the impression that Samaniego lacked knowledge of the cocaine found in his home, and therefore, affirmed the trial court's judgment.

Here, Copler's testimony, like Samaniego's, fostered the false impression that he had not been involved with methamphetamine when he earlier testified to the following: (1) that someone else must have placed the methamphetamine in his safe; (2) that he had never claimed to have "forgotten" about the methamphetamine in his safe; and (3) that he had not used methamphetamine. In so doing, Copler opened the door to the admissibility of evidence that he had used methamphetamine within a year of the instant charge.

The trial court applied the Rule 403 balancing analysis and concluded that the probative value of the evidence outweighed the danger of unfair prejudice to Copler. We accept the trial court's determination that evidence of Copler's prior methamphetamine use was probative to refute the impression that he had fostered before the jury that he had neither used nor was aware of the presence of methamphetamine in his home. We do not find that the trial court abused its discretion or that Copler was denied a fair trial. Thus, we affirm the trial court's determination that the probative value of Copler's prior methamphetamine use outweighed the danger of unfair prejudice.

Affirmed.

BAKER, C.J., and ROBB, J., concur.