

Thomas Shannon was convicted after a jury trial of two counts of dealing in cocaine as Class B felonies. Because two confidential informants testified they bought cocaine from Shannon and both purchases were carried out under police supervision, the evidence was sufficient to sustain his convictions. The State elicited testimony about Shannon's prior bad acts, but did so in response to assertions Shannon made in his opening statement; the testimony was harmless in light of other evidence of his guilt. We accordingly affirm Shannon's convictions.

FACTS

Keith McCotry became a confidential informant for the Bloomington Police Department after police gathered enough evidence to convict him of dealing in crack cocaine. On April 15, 2004, McCotry told Bloomington Police Detective Cody Forsten that he could buy cocaine from either "SL" (Shawn Mimms) or "T" (Shannon). (Tr. at 161.) Detective Forsten searched McCotry and did not find any drugs or money. Detective Forsten put a wire on McCotry and gave him \$50.00 to purchase cocaine. McCotry telephoned Mimms, who said he and Shannon would be right over.

After Shannon and Mimms arrived, the three men drove off. Shannon handed McCotry a clear baggie containing a small rock of crack cocaine after McCotry handed Shannon the \$50.00. After Shannon and Mimms dropped off McCotry, Detective Forsten again searched him and found no contraband or money on McCotry other than the cocaine.

Steven McGlocklin became a confidential informant for reasons similar to McCotry's. McGlocklin knew both Shannon and Mimms and had delivered packages of

cocaine for them. Near the end of April 2004, McGlocklin rented a motel room for Shannon, using money the police provided. On April 28, 2004, Detective Forsten and Detective Wendy Prichard-Kelly met with McGlocklin. They searched McGlocklin and his truck and found no drugs or money. Detective Forsten gave McGlocklin \$100.00 in buy money and put a wire on him.

McGlocklin drove to the motel and knocked on Shannon's door. Shannon was the only person in the room. McGlocklin selected one of several packages of cocaine Shannon offered and gave him the \$100.00. McGlocklin then left the motel room and drove back to meet the police officers. McGlocklin gave Detective Forsten a small baggie of cocaine and was again searched.

DISCUSSION AND DECISION

1. Insufficient Evidence

Shannon argues the evidence does not support his two convictions. He takes issue with McCotry's and McGlocklin's testimony, arguing McCotry and McGlocklin had reasons to lie given their prior dealings with the police, and the police did not adequately search the informants.

When the sufficiency of the evidence to support a conviction is challenged, we do not reweigh the evidence or judge the credibility of the witnesses. *Wright v. State*, 828 N.E.2d 904, 905-06 (Ind. 2005). We affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.* at 906. It is the job of the fact-finder to determine whether the evidence sufficiently proves each element of the

offense, *id.*, and we consider conflicting evidence most favorably to the trial court's ruling. *Id.*

McCotry and McGlocklin both testified Shannon sold them cocaine. They identified Shannon at trial. Detective Forsten testified he searched McCotry and McGlocklin before and after the buys, and found nothing. Detective Forsten testified as to what occurred during the buys and his testimony matched the testimony of McCotry and McGlocklin. Shannon would have us reweigh the evidence and judge the credibility of the witnesses, which we will not do. There was ample evidence to support Shannon's convictions.

2. Evidentiary Harpoons

Shannon notes the State elicited testimony at trial regarding his prior bad acts. He did not object to the questions he now challenges, so this allegation of error is waived. *Bufkin v. State*, 700 N.E.2d 1147, 1149 (Ind. 1998). In order to avoid waiver, Shannon claims the admission of this evidence was fundamental error.

Fundamental error is a blatant violation of basic principles rendering the trial unfair to the defendant and thereby depriving him of fundamental due process. *Ritchie v. State*, 809 N.E.2d 258, 273 (Ind. 2004), *cert. denied* __ U.S. __, 126 S. Ct. 42 (2005). The error must be so prejudicial to the rights of the defendant as to undermine the fairness of the trial. *Id.* In determining whether a claimed error denies a defendant a fair trial, we consider whether the resulting harm or potential for harm is substantial. *Id.* The element of harm is not shown by the fact that a defendant was ultimately convicted; rather, it depends on whether the defendant's right to a fair trial was detrimentally

affected by the denial of procedural opportunities for the ascertainment of truth to which he would have been entitled. *Id.* at 273-74.

Detective Forsten testified McCotry had advised he would be able to buy cocaine from either “SL” or “T.” (Tr. at 161.) Shannon was known as “T.” (*Id.*) The State elicited the following testimony from McGlocklin:

- Q. Did you ever deliver packages for anyone?
A. Yes, sir.
Q. And who did you deliver packages for?
A. For Thomas Shannon and also for “SL.”
Q. Did you make any money doing that?
A. No.
Q. What did the packages look like?
A. Sometimes they were rolled up paper. Sometimes they were in plastic bags.
Q. Now the packages contained cocaine, did they not?
A. Yes they did.

(*Id.* at 275.)

Otherwise inadmissible evidence may be admissible if the defendant opens the door to questioning. *Samaniego-Hernandez v. State*, 839 N.E.2d 798, 802-03 (Ind. Ct. App. 2005). The State asserts the challenged testimony was elicited not as an evidentiary harpoon but rather to rebut Shannon’s opening statement. There, Shannon suggested the police had provided his name to the informants. The testimony the State elicited showed the informants already knew Shannon.

Further, this evidence was harmless in light of the testimony McCotry and McGlocklin provided with respect to the controlled buys and Detective Forsten’s corroboration of their testimony. *See Perez v. State*, 728 N.E.2d 234, 237 (Ind. Ct. App. 2000) (when jury determination is supported by independent evidence of guilt and it is

likely the evidentiary harpoon did not play a part in the conviction, the error is harmless),
trans. denied 741 N.E.2d 1251 (Ind. 2000).¹

We affirm Shannon's convictions.

SULLIVAN, J., and BAKER, J., concur.

¹ Shannon also asserts the prosecutor committed misconduct during final argument by stating:

Not surprisingly Keith McCotry and Steve McGlocklin had the connections. This was their connection. Thomas Shannon was their connection and they told the police so. Remember Keith McCotry told the police that he was buying off of Thomas Shannon, not the other way around.

(Tr. at 336.) As explained above, this comment was in response to Shannon's opening statement, and was harmless. The reference to it in the State's final argument was therefore not reversible error.