MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Donald R. Shuler
Barkes, Kolbus, Rife & Shuler, LLP
Goshen, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

George P. Sherman
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jeromie Lee Bright,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 5, 2022

Court of Appeals Case No. 22A-CR-1164

Appeal from the Kosciusko Superior Court

The Honorable Chad M. Miner, Judge

Trial Court Case No. 43D03-2105-F5-368

Friedlander, Senior Judge.

[1] Jeromie Lee Bright appeals from his conviction after a jury trial of one count of Level 5 battery while armed with a deadly weapon,[1] contending that (1) fundamental error occurred during jury selection, and (2) his sentence is inappropriate. Concluding that Bright has failed to establish fundamental error and that he did not receive an inappropriate sentence, we affirm.

Facts and Procedural History

[2] Bright and Frank Perales were high school classmates in the 1990s and "were close friends for a very, very long time." Tr. Vol. 2, p. 93. After graduation, they did not see each other for some time, but later reconnected. Several years prior to the May 5, 2021 incident at issue here, Bright's girlfriend, Ashley Huffman, began talking to Perales about her relationship with Bright. When Bright became aware of her conversations with Perales, he "would go through her phone" and "was tracking her phone." *Id.* at 95. Perales noticed that Bright began making "little insults or little comments," "whether it be in person or around friends or" "on social media." *Id.* He said that "we'd be places [and Bright would] drive by on his motorcycle and rev it up real hard." *Id.*

[3] In the evening on May 5, 2021, after finishing work, Perales had dinner at The Frog Tavern in Syracuse, Indiana. Bright also stopped by the tavern and was waiting outside when Perales finished his dinner. Perales "asked two

[1] Ind. Code §35-42-4-1(g)(2) (2020).

gentlemen" to walk with him out to his vehicle. *Id.* at 96. Though Bright wanted to speak with Perales, Perales declined and left.

[4] Later that same evening, Perales went to the Time Out Inn in Warsaw, where he met Abigail Paulson. The two had changed their plans after Perales' prior encounter with Bright. After they had a few drinks, the two exited the rear of the building and got in their respective vehicles to drive away. Paulson pulled out of the parking lot without incident. Perales, who was driving his white Jeep Grand Cherokee, pulled out of the parking lot and entered the street. As he did so, a large, silver Lincoln Navigator SUV drove in front of Perales' Jeep, blocking the way. The driver of the Navigator, later identified as Bright, did not have the headlamps turned on and his vehicle "barely missed" Perales' Jeep. *Id.* at 99. Perales "slammed on [his] brakes" to avoid a collision. *Id.* Seconds later, Bright began "banging on" the window of Perales' Jeep and "said he was going to kill [Perales]." *Id.*

[5] Perales pulled his Jeep forward a few feet, opened the door of the vehicle, and asked Bright, "what the hell was going on." *Id.* Bright again said that he was going to kill Perales. Bright rushed toward Perales, reaching behind his back to pull out a weapon. Perales, who had martial arts training, tried to tackle Bright because he thought Bright was going to shoot him. When they made contact, Bright struck Perales on the shoulder with a weapon. They landed on the ground, wrestling "around for a minute." *Id.* at 102. People nearby were watching the scene unfold. Perales yelled for a bystander to call the police. Ultimately, Perales gained the upper hand in the struggle, disarming Bright of

the weapon, which was "a black and red nylon rope with a heavy ball on the end of it." *Id.* at 138. Perales then walked back toward the Time Out Inn.

[6] Meanwhile, Bright "got up and he was screaming threats, telling [Perales] he was going to kill [him] and that he was going to get [Perales'] kids, he's going to get [Perales'] family." *Id.* at 105. Bright continued to make threats until he returned to his silver Navigator and drove off.

[7] Warsaw Police Department Officer Ryan Connors responded to the dispatch and spoke with Perales. He observed that Perales' "hands were shaking, he was a little, um, distraught." *Id.* at 143. He further observed that Perales' arm, shoulder, and back were red. The next day, Perales noticed that he had pain in the area where Bright had hit him.

[8] Law enforcement officers located Bright's vehicle parked at the Kosciusko County Sheriff's Department parking lot. Warsaw Police Department Officer Zachary Smith testified that Bright appeared "very [] confused in his mannerisms. He was not confident on where he just came from." *Id.* at 136. Officer Smith observed the black and red nylon rope with a heavy ball on the end of it in the front passenger seat of Bright's vehicle. Officer Connors looked at the weapon and determined that it was "a monkey fist." *Id.* at 147. Officer Connors, who had served in the military and obtained "a black belt in the [Marine Corps] martial arts program," was familiar with the use of such a weapon and knew that it could cause injuries such as broken bones. *Id.* Officer Connors did not observe that Bright had any injuries.

[9] The State charged Bright with one count of Level 5 battery while armed with a deadly weapon and one count of Level 5 felony criminal confinement, which was dismissed prior to trial. At the conclusion of Bright's jury trial, he was found guilty of Level 5 felony battery while armed with a deadly weapon. He was sentenced to a term of five years with eighteen months suspended to probation. Bright now appeals.

Discussion and Decision

1. Fundamental Error in Jury Selection

[10] Bright did not object when a potential juror, identified in the transcript only as "THE JUROR," disclosed during voir dire that, "I don't personally know [Perales], but I live right next door to the mother of his children. I know his children. I kind of know the family." *Id.* at 53. The potential juror was either Juror #21, #23, #24, or #25, who were being questioned at the time this statement was made. Despite this lack of objection, Bright argues that "the trial court should have acted on its own to dismiss the juror in question from serving on the jury," and contends now that "[t]he [n]eighbor's [p]resence on the [j]ury [s]hould be [c]onsidered [f]undamental [e]rror." Appellant's Br. pp. 11-12.

[11] "The fundamental error doctrine is an exception to the general rule that the failure to object at trial constitutes a procedural default precluding consideration of an issue on appeal." *Jewell v. State*, 887 N.E.2d 939, 940 n.1 (Ind. 2008). "The fundamental error exception is extremely narrow, and applies only when the error constitutes a blatant violation of basic principles, the harm or potential

for harm is substantial, and the resulting error denies the defendant fundamental due process." *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010) (internal quotations omitted). "The error claimed must either make a fair trial impossible or constitute clearly blatant violations of basic and elementary principles of due process." *Id.* (internal quotations omitted). "This exception is available only in egregious circumstances." *Id.* (internal quotations omitted).

[12] Here, the potential juror in question was only identified as "THE JUROR" when potential jurors #21, #23, #24, and #25 were being questioned. Tr. Vol. 2, p. 53. Potential jurors #23 and #24 were excused. And Bright appears to believe that "THE JUROR" served on the jury, because he says, "It is unclear from the transcript if the juror in question is Juror #21 or Juror #25." Appellants Br. p. 11, n1. In his argument, Bright offers no explanation why "THE JUROR" must have been juror #21 or juror #25. Absent evidence establishing that "THE JUROR" actually served on Bright's jury, Bright has failed to demonstrate fundamental error at trial.

[13] Assuming for the sake of argument that the juror in question served, that individual was questioned about the extent of the juror's knowledge of Perales' family and if that knowledge would affect the juror such that the juror could not serve in a fair and impartial manner. The transcript shows that the person did not provide an audible response, leading to the inference that the person merely nodded their head affirmatively or negatively in response. Nonetheless, there apparently was nothing in that person's response that prompted defense counsel to make a record of any issue concerning this individual.

[14] Moreover, Bright has not presented a claim on appeal that he wished to strike the person from the jury but could not do so because he had exhausted all of his peremptory challenges. "The exhaustion rule requires parties to peremptorily remove jurors whom the trial court refuses to strike for cause or show that they had already exhausted [their] allotment of peremptories at the time they request for-cause removal." *Oswalt v. State*, 19 N.E.3d 241, 246 (Ind. 2014). Here, the record does not show that Bright requested removal for cause, or that he ran out of peremptory challenges. His claim fails on this ground as well.

[15] As a final matter, we address Bright's argument supported by references to *Hurt v. State*, 553 N.E.2d 1243 (Ind. Ct. App. 1990), *overruled on other grounds y Ham v. State*, 826 N.E.2d 640 (Ind. 2005). In *Hurt*, the defendant claimed fundamental error in the trial court's decision to release a juror and replace that juror with an alternate. A panel of this Court disagreed that there was fundamental error, observing that it was within the trial court's discretion to replace the juror, whose service could have led to the appearance of impropriety. The juror who was released "was the trial judge's brother-in-law, a friend of one of the testifying police officers, and the uncle by marriage of one of the other witnesses." 553 N.E.2d at 1248. By contrast, Bright has not established such a close relationship between the individual in question and Perales' family. Consequently, he has not established error, let alone fundamental error.

2. Inappropriate Sentence

[16] Bright was convicted of Level 5 battery while armed with a deadly weapon and received an aggregate sentence of five years with three and one-half years executed in the Department of Correction and one and one-half years to be served on formal probation. He claims on appeal that because "the nature of the offense is unremarkable" and that "there is substantial evidence in the record" showing that Bright was "a responsible, dependable person who was a reliable and caring father," "the imposition of such an elevated sentence with only one and one-half (1 ½) years suspended to probation, is particularly severe." Appellant's Br. p. 11. We agree with the trial court's sentencing choice for reasons we explain now.

[17] We may review and revise criminal sentences pursuant to the authority derived from Article 7, Section 6 of the Indiana Constitution. Indiana Appellate Rule 7(B) empowers us to revise a sentence "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." Because a trial court's judgment "should receive considerable deference[,]" our principal role is to "leaven the outliers." *Cardwell v. State*, 895 N.E.2d 1219, 1222-25 (Ind. 2008). "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). Bright bears the burden to persuade

this court that his sentence is inappropriate, *see Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may look to any factors appearing in the record for such a determination. *Stokes v. State*, 947 N.E.2d 1033, 1038 (Ind. Ct. App. 2011), *trans. denied*.

[18] As to the nature of the offense, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. The sentencing range for a Level 5 felony offense is a fixed term of between two and eight years with the advisory sentence being four years. Ind. Code §35-59-2-6 (2014). Bright's five-year sentence is slightly elevated above the advisory sentence.

[19] Our consideration of the nature of the offense recognizes the range of conduct that can support a given charge and the fact that the particulars of a given case may render one defendant more culpable than another charged with the same offense. *See, e.g.*, *Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011) (in the context of child molesting, the victim's age "suggests a sliding scale in sentencing" because "[t]he younger the victim, the more culpable the defendant's conduct").

[20] The statutory definition of the offense requires the State to prove beyond a reasonable doubt that Bright knowingly or intentionally touched Perales in a rude, insolent, or angry manner and that the offense was committed with a deadly weapon. *See* Ind. Code §35-42-4-1(g)(2). Here, the evidence shows that Bright had been following Perales and ambushed him when he was alone.

Bright's vehicle "barely missed" Perales' Jeep, and Perales "slammed on [his] brakes." Tr. Vol. 2, p. 99. Bright exited his vehicle, banged on the window of Perales' vehicle, shouting that he was going to kill Perales. Bright repeated the threat, rushed toward Perales after he had exited his vehicle, and reached behind his back to pull out a weapon.

[21] We cannot agree with Bright's argument that his offense was "unexceptional." Appellant's Br. p. 19. Perales escaped more serious injury due to his own self-defense skills. To be sure, Bright has not provided us with "compelling evidence portraying in a positive light. . .[his] restraint, regard, and lack of brutality." *See Stephenson*, 29 N.E.3d at 122. To the contrary, after Perales avoided a confrontation with Bright at The Frog Tavern, Bright persisted in provoking the dispute at the Time Out Inn. There is nothing about the nature of the offense that suggests a downward revision of his sentence is warranted.

[22] As for the character of the offender, Bright tenders references from his prior employers and argues that he is a good parent. Appellant's Br. p. 18. Bright, however, also has a record of criminal activity. "When considering the character of the offender, one relevant fact is the defendant's criminal history." *McFarland v. State*, 153 N.E.3d 369, 374 (Ind. Ct. App. 2020), *trans. denied.* Bright's criminal history began in 1996 when he was a juvenile placed on informal adjustment for an allegation of battery resulting in bodily injury. As an adult, Bright was convicted of Class D felony of possession of methamphetamine in 2011, Class A misdemeanor operating a vehicle with an ACE of .15 or more in 2014, Level 6 felony battery with moderate bodily injury

in 2017, Class A misdemeanor driving while intoxicated in 2018, and Class A misdemeanor driving while suspended in 2019. Bright also had previously violated probation, and at the time of his sentencing hearing had pending charges for Level 6 felony leaving the scene of an accident with moderate or serious bodily injury and Level 6 felony criminal mischief. "While a record of arrests does not establish the historical fact of prior criminal behavior, such a record does reveal to the court that subsequent antisocial behavior on the part of the defendant has not been deterred even after having been subject to the police authority of the State and made aware of its oversight activities of its citizens." *Pickens v. State*, 767 N.E.2d 530, 534 (Ind. 2002).

[23] Bright has not provided us with compelling evidence of "substantial virtuous traits or persistent examples of good character." *Stephenson*, 29 N.E.3d at 122. There is nothing about Bright's character that suggests a downward revision of his slightly enhanced sentence is warranted.

Conclusion

[24] In light of the foregoing, we affirm the trial court's judgment.

[25] Judgment affirmed.

Riley, J., and Altice, J., concur.