MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Warren A. Beals,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

April 29, 2024

Court of Appeals Case No.
22A-CR-1023

Appeal from the
Crawford Circuit Court

The Honorable
Sabrina R. Bell, Judge

Trial Court Cause No.
13C01-2104-F4-3

Memorandum Decision by Senior Judge Baker
Judges Vaidik and Foley concur.

Baker, Senior Judge.

Statement of the Case

[1] Police officers arrested Warren Beals after a scuffle at a fire station. On the way to jail, Beals opened the door to the police vehicle and attempted to get out, but the transporting officer restrained Beals until he could stop the car. A jury convicted Beals of Level 4 felony attempted escape causing bodily injury and Class A misdemeanor resisting law enforcement. The jury further determined Beals was an habitual offender.

[2] Beals challenges his convictions and his sentence of twenty-six years, with two years suspended to probation. Concluding that there is no reversible error and that Beals has not shown grounds for sentence revision, we affirm.

Facts and Procedural History

[3] On the evening of April 27, 2021, several members of the Marengo Volunteer Fire Department were at the fire station, discussing a training exercise they had just completed. Among other attendees, Fire Chief Derick Goldman was present. He was also a paramedic and a reserve police officer with the Marengo Police Department. That night, Goldman was not in his police uniform, but he

wore his service weapon in a holster on his hip. His unmarked police vehicle was parked at the fire station.

[4] The firefighters heard yelling outside. They went outside and saw a person later identified as Beals walking down the street, cursing loudly. Goldman called for police assistance, concerned that Beals was endangering himself by walking in the street. Beals approached the group, and one of the firefighters noted he was "mumbling, carrying on, [and] talking to hisself [sic]." Tr. Vol. II, p. 40. Beals explained he was walking to his grandparents' house after arguing with his girlfriend and further said he was "having a bad f*****g day." *Id.* at 156.

[5] Goldman recognized Beals from a prior encounter, as we detail below. Beals also recognized Goldman and asked him "if that was his gun on his side." *Id.* at 119. After further conversation, Beals asked to shake Goldman's hand. Goldman declined, asking Beals not to touch him.

[6] At that point, according to Goldman, Beals poked him with a finger. Goldman again told Beals not to touch him. Beals then poked Goldman again, and Goldman pushed Beals away with both hands. Next, Beals grabbed Goldman's gun but could not remove it from its holster. Goldman and another firefighter grabbed Beals and pushed him up against a garage door. They intended to put Beals on the ground in a deliberate manner, but their legs became tangled, and they all fell. Beals sustained a cut to his forehead in the process. Once Beals was on the ground, a third firefighter grabbed Beals' legs. Beals struggled against being restrained.

[7] Beals later described a different version of events. He denied touching Goldman and claimed the firefighters grabbed him without physical provocation. They then pushed him up against the door, before they fell to the ground. Beals further claimed he did not struggle once he was on the ground.

[8] In any event, several police officers and medics arrived at the firehouse. Beals declined the medics' offer to take him to the hospital. The officers handcuffed Beals, restraining his hands behind his back, and put him in Deputy Justin Froman's vehicle. The vehicle did not have a secure (caged) back seat, so they put Beals in the front passenger seat and buckled him in. He appeared to have calmed down.

[9] Deputy Froman drove away, intending to take Beals to the Crawford County Jail. But as they left Marengo traveling fifty-five to sixty miles per hour, Beals, who was still handcuffed, unbuckled his seatbelt, opened his door, and started to slide out. Deputy Froman grabbed Beals' arm with his right hand as he pressed on the brake. Beals struggled with him and slid onto the ground, on his knees, as the vehicle stopped. In the process, Beals dragged Deputy Froman over the vehicle's center console and laptop onto the passenger seat. The deputy felt pain in his right wrist and left hip.

[10] Next, Deputy Froman put the vehicle in park and, while still holding onto Beals, ordered him to get back inside. Beals stood up and leaned against the passenger seat. He told the officer he "wanted to die." Tr. Vol. III, p. 82. When the deputy briefly released Beals to exit the vehicle, Beals attempted to

flee, despite still being handcuffed. Deputy Froman pushed Beals onto the ground, causing him to fall into a ditch. The deputy drew his taser and ordered Beals to remain in the ditch.

[11] Other officers arrived, having been summoned by Deputy Froman during the fracas, and helped to take Beals into custody. The officers put Beals in a police vehicle with a cage and secured his feet with shackles. Once Beals was delivered to the jail, Deputy Froman noticed further pain in the muscles of his right wrist, left shoulder blade, and left hip. The pain resolved after three days.

[12] The State ultimately charged Beals with Level 4 felony escape causing bodily injury (involving Officer Froman), Level 4 felony attempted escape causing bodily injury (involving Officer Froman), Level 6 felony battery against a public safety official (involving Goldman), Class A misdemeanor resisting law enforcement (involving Officer Froman), Class B misdemeanor public intoxication (involving Goldman and the other firefighters), and Class B misdemeanor disorderly conduct. The State further alleged Beals was an habitual offender.

[13] The jury determined Beals was guilty of attempted escape causing bodily injury and resisting law enforcement, but not guilty of escape, battery against a public safety official, public intoxication, or disorderly conduct. Next, the jury determined Beals was an habitual offender. The trial court sentenced Beals to

twenty-six years, with two years suspended to probation, and this appeal followed.[1]

Issues

[14] Beals raises three issues, which we restate as:

I. Whether the trial court fundamentally erred when it allowed the jury to hear evidence of a prior encounter between Goldman and Beals.

II. Whether there is sufficient evidence to sustain Beals' conviction of Level 4 felony attempted escape resulting in bodily injury.

III. Whether Beals' sentence is inappropriate in light of the nature of the offenses and the character of the offender.

Discussion and Decision

I. Admission of Evidence

[15] Beals argues the trial court erred in allowing testimony about an encounter he had with Goldman before the incident at the fire station; however, he did not object to the testimony at trial. Absent a timely objection, our "review is limited to determining if fundamental error occurred." *Garber v. State*, 152 N.E.3d 642, 646 (Ind. Ct. App. 2020). "Fundamental error is an extremely narrow exception to the waiver rule where the defendant faces the heavy

[1] The sentencing hearing was not properly recorded, and the court reporter could not prepare a transcript of that hearing. Beals obtained a certified statement of evidence under Indiana Appellate Rule 31.

burden of showing that the alleged errors are so prejudicial to the defendant's rights as to make a fair trial impossible." *Shields v. State*, 131 N.E.3d 708, 714 (Ind. Ct. App. 2019), *trans. denied*. The *Shields* court further explained, "[i]n evaluating the issue of fundamental error, we look at the alleged error in the context of all that happened and all relevant information given to the jury, including evidence admitted at trial, closing argument, and jury instructions[.]" *Id.* at 715.

[16] The State argues we need not address fundamental error because Beals invited any error in the admission of evidence. "The invited-error doctrine generally precludes a party from obtaining appellate relief for his own errors, even if those errors were fundamental." *Miller v. State*, 188 N.E.3d 871, 874-75 (Ind. 2022). But "there must be some evidence that the error resulted from the appellant's affirmative actions as part of a deliberate, well-informed trial strategy." *Batchelor v. State*, 119 N.E.3d 550, 558 (Ind. 2019) (internal quotation omitted).

[17] In this case, Beals, by counsel, began his opening statement to the jury by saying the case was about "a normal emotional man broke up [sic] and a hand shake that didn't happen." Tr. Vol. II, p. 30. Beals referred to the handshake again later in the opening statement.

[18] During Goldman's testimony on direct examination, Goldman said he had previously met Beals when he was working as a paramedic. He added that he had rejected Beals' request to shake hands at the firehouse because, during the prior encounter, Beals had not wanted to let go of his hand during a handshake.

[19] On cross-examination, Beals asked Goldman whether, during the prior encounter, he had "slammed [Beals] against the ambulance." *Id.* at 191. The State objected, and the trial court struck the question, instructing the jury to disregard it and any answer. On the morning of the next day of the trial, the State asked the court to allow it to recall Goldman so that he could discuss the prior encounter in more detail. The trial court denied the State's request, concluding that its instruction sufficiently addressed the matter.

[20] Later, Beals testified in his own defense, and the following discussion occurred:

> [Beals:] I asked if he could just shake my hand and I'll be out of his hair. You know, I was like I'm not—I'm not on any kind of bullshit or nothing, you know.
>
> [Attorney:] And what do you mean 'on' something?
>
> [Beals:] Well, I think he was offended in some type of manner because something was brought up in the past, I guess he didn't like me for it, but I didn't know anything about that, I thought we were cool.

Tr. Vol. III, p. 200.

[21] After further questioning by both parties, questions from the jury, and questions by the parties in response to the jury's questions, the State requested a sidebar. Following the sidebar, which has not been included in the transcript, the State cross-examined Beals about the prior encounter with Goldman. Beals agreed that Goldman "would be lying" if Goldman said he found several knives on Beals during the prior encounter or that Beals refused to let go of Goldman's hand. Tr. Vol. IV, p. 11. Beals then agreed that Goldman had arrived at Beals'

residence in his capacity as a paramedic to investigate a report of an intoxicated person having a seizure. Beals admitted he was the intoxicated person, but he again denied having any knives and further stated Goldman had slammed him against an ambulance, not a car.

[22] After the State ended its examination of Beals, Beals called Goldman back to the stand and questioned him about the prior encounter. During cross-examination by the State, Goldman explained he had been dispatched to Beals' residence as a paramedic to check on a report of an intoxicated person having a seizure. When Goldman and his partner arrived, Beals, who was intoxicated, walked up to them angrily and refused to take his hands out of his pockets. As a result, Goldman and his partner pushed Beals up against a car and searched him, finding and seizing several knives before releasing him. Later during the encounter, Goldman and Beals shook hands, but Beals refused to let go of Goldman's hand. Goldman stated the encounter ended when Beals refused treatment. During closing arguments to the jury, Beals again referred to his request for a handshake.

[23] In sum, after Goldman testified on direct examination about why he did not want to shake hands with Beals, Beals chose to cross-examine Goldman about his prior use of force against Beals. But the trial court closed the door to further evidence related to the prior encounter by: (1) instructing the jury to disregard Beals' question to Goldman; and (2) rejecting the State's request to present more evidence.

[24] During Beals' testimony, he apparently reopened the matter in response to his counsel's question, leading to the testimony about which Beals now complains. But Beals' response was not directly responsive to the question and does not appear to have been prompted by counsel. We cannot conclude Beals' remark resulted from strategic maneuvering, and he did not invite any error as to further evidence related to the prior encounter. *See, e.g., Batchelor*, 119 N.E.3d at 554, 559 (counsel did not invite error as to jury instructions by saying "Yeah" when the trial court asked if the parties were "good" with the jury instructions; the one-word statement did not reveal a deliberate trial strategy).

[25] Even so, we are left with our original question: did the trial court fundamentally err by admitting testimony related to Beals and Goldman's prior encounter? Beals argues the evidence was irrelevant under Indiana Evidence Rule 402, amounted to improper character evidence in violation of Indiana Evidence Rule 404(a), and was inappropriate evidence of a prior crime, wrong, or other act under Indiana Evidence Rule 404(b). He also claims the probative value of the testimony, if any, was substantially outweighed by the danger of unfair prejudice, in violation of Indiana Evidence Rule 403.

[26] Looking at all that happened at trial, the testimony about the prior encounter was most pertinent to the charges that Beals battered Goldman at the firehouse, was publicly intoxicated in the firefighters' presence, and was disorderly in public. But the jury found Beals not guilty of those charges.

[27] Next, as to the two charges for which the jury returned guilty verdicts (attempted escape and resisting law enforcement), the State presented substantial supporting evidence. And Beals did not deny that he tried to get out of the police vehicle despite the deputy's attempts to keep him in his seat. In addition, this was a two-day jury trial, in which most of the evidence consisted of testimony about the firehouse incident rather than Beals and Goldman's prior encounter.

[28] Considering the totality of the evidence presented and the not guilty verdicts, it is difficult to see how any errors in the admission of evidence had "such an undeniable and substantial effect on the jury's decision that a fair trial was impossible." *Shields*, 131 N.E.3d at 714. Any error in the trial court's admission of testimony about the prior encounter was not fundamental. *See Southward v. State*, 957 N.E.2d 975, 978-79 (Ind. Ct. App. 2011) (no fundamental error in admission of evidence related to prior wrongdoing by Southward; the evidence supporting the charges was substantial and separate from the prior incident).

II. Sufficiency of the Evidence – Attempted Escape

[29] Beals claims the State failed to prove beyond a reasonable doubt that he committed attempted escape causing bodily injury. In particular, he argues the State failed to prove he caused injury to Officer Froman.

[30] We note the State did not respond to Beals' sufficiency claim in its Appellee's Brief. "An appellee's failure to respond to an issue raised by an appellant is

akin to failure to file a brief." *Newman v. State*, 719 N.E.2d 832, 838 (Ind. Ct. App. 1999), *trans. denied*. The State's failure does not "relieve us of our obligation to decide the law as applied to the facts in the record in order to determine whether reversal is required." *Id.* But "[c]ontroverting arguments advanced for reversal is still an obligation which properly remains with counsel for the appellee." *Id.* As a result, Beals "need only establish that the lower court committed prima facie error to win reversal on this issue. Prima facie means at first sight, on first appearance, or on the face of it." *Id.*

[31] When we review a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Toles v. State*, 151 N.E.3d 805, 808 (Ind. Ct. App. 2020), *trans. denied*. Instead, we consider only the evidence supporting the verdict and any reasonable inferences that can be drawn from the evidence. *Id.*

[32] To obtain a conviction of Level 4 felony attempted escape causing bodily injury as charged, the State was required to prove beyond a reasonable doubt that: (1) Beals (2) intentionally (3) engaged in conduct that constituted a substantial step toward (4) flight from lawful detention (5) which inflicted bodily injury (6) on Deputy Froman. Ind. Code §§ 35-44.1-3-4 (2013); 35-41-5-1 (2014); Appellant's App. Vol. II, pp. 108-109. The General Assembly has defined "bodily injury," for purposes of the offense of attempted escape, as "any impairment of physical condition, including physical pain." Ind. Code § 35-31.5-2-29 (2012).

[33] Here, Officer Froman felt pain in his right wrist, left shoulder blade, and left hip for three days after Beals dragged him out of his seat while trying to slide out of the vehicle. Even under the prima facie error standard applicable here, the State presented sufficient evidence of bodily injury to sustain the conviction. *See, e.g., Johnson v. State*, 409 N.E.2d 699, 701 (Ind. Ct. App. 1980) (affirming conviction for attempted escape resulting in bodily injury; Johnson slashed a prison employee's hands with a pair of scissors). Beals cites several cases that discuss causing injury to officers in the context of the offense of resisting law enforcement, but we decline to apply them to the attempted escape charge at issue.

III. Sentencing Review – Appellate Rule 7(B)

[34] Beals claims his twenty-six-year sentence is unreasonably lengthy and asks the Court to reduce it to fourteen years, with a portion suspended to supervised probation. Article 7, section 6 of the Indiana Constitution authorizes the Court to review and revise sentences. Indiana Appellate Rule 7(B) implements this authority, stating the Court may 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."

[35] When reviewing a sentence under Appellate Rule 7(B), we "must not merely substitute our opinion for that of the trial court." *Clara v. State*, 899 N.E.2d 733, 736 (Ind. Ct. App. 2009). To the contrary, "[s]entence review under Appellate Rule 7(B) is very deferential to the trial court." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). We "may consider any factors appearing in the record."

Clara, 899 N.E.2d at 736. "The defendant bears the burden to persuade this court that his or her sentence is inappropriate." *Prince v. State*, 148 N.E.3d 1171, 1173 (Ind. Ct. App. 2020). Ultimately, sentence revision is reserved "for exceptional cases[.]" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020).

[36] At the time Beals committed his offenses, the maximum sentence for a Level 4 felony was twelve years, the minimum sentence was two years, and the advisory sentence was six years. Ind. Code § 35-50-2-5.5 (2014). The maximum sentence for a misdemeanor was one year. Ind. Code § 35-50-3-2 (1977). And, if a jury determined a person who is guilty of a Level 4 felony was also an habitual offender, the trial court could have added an additional fixed term of between six and twenty years. Ind. Code § 35-50-2-8(i) (2017).

[37] The trial court sentenced Beals to six years for the Level 4 felony, plus an habitual offender sentencing enhancement of twenty years, with two years suspended to probation. The trial court further sentenced Beals to one year for the Class A misdemeanor, to be served concurrently with the Level 4 felony sentence. As a result, Beals' total executed sentence is twenty-four years, well short of the maximum sentence of thirty-three years.

[38] "The nature of the offenses is found in the details and circumstances of the commission of the offenses and the defendant's participation." *Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011). Beals argues the record shows "nothing so egregious" about his offenses. Appellant's Br. p. 41. We disagree. He attempted to slide out of a vehicle moving at a high rate of speed, causing

Officer Froman to have to grab Beals while stopping the vehicle. Beals could have caused a wreck, posing a severe threat of harm to Officer Froman, himself, and other motorists. Further, Officer Froman had to leave the police vehicle partially parked on a highway at night for several minutes after he had to climb out and prevent Beals from fleeing on foot. While Beals may have been attempting suicide, he placed others in harm's way. Further, Beals' attempt to flee on foot despite being handcuffed displayed a continuing unwillingness to comply with the law.

[39] "The character of the offender is found in what we learn of the offender's life and conduct." *Croy*, 953 N.E.2d at 664. Beals was thirty-two years old at sentencing. He has three prior felony convictions: Class C battery resulting in serious bodily injury; Class D battery resulting in bodily injury to a law enforcement officer; and Class D intimidation. He has four prior misdemeanor convictions: Class A cruelty to an animal; Class B strangulation; Class B reckless driving; and Class B public intoxication. Beals has been placed on probation six times and has violated the terms of probation three times. His lengthy criminal history, including repeated acts of violence, speaks poorly of his character. And Beals' history of probation violations weighs against a lengthy term of probation here.

[40] Beals's employment history is spotty at best. He has two children, but he does not appear to be subject to a court order to pay child support.

[41] Beals points to evidence of his terrible childhood, involving an absent father and a physically abusive mother who died when Beals was a teenager. The State does not dispute this evidence but argues that a difficult childhood is not entitled to substantial mitigating weight. We agree. *See Patterson v. State*, 909 N.E.2d 1058, 1062 (Ind. Ct. App. 2009) (concluding Patterson's childhood, which involved physical and mental abuse, was not a significant mitigating sentencing circumstance).

[42] Beals next argues he has an extensive, well-documented history of mental illness, citing court records showing he has been diagnosed in the past with personality disorder, bipolar affective disorder, mood disorder, anxiety, depression, post-traumatic stress disorder, and polysubstance abuse. He has been hospitalized several times to treat his illnesses and has a history of repeated suicide attempts. Beals argues his mental illnesses caused him to commit the current offenses, and for that reason the Court should revise his sentence.

[43] The Indiana Supreme Court has directed courts to consider the following factors when deciding what mitigating weight should be given to a defendant's mental illness:

> (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime.

Krempetz v. State, 872 N.E.2d 605, 615 (Ind. 2007).

[44] In this case, Beals had argued with his girlfriend and was angry when he approached the firefighters. But he told the jury he did not physically or otherwise provoke Goldman before the fracas. He also denied reaching for Goldman's gun, even though he later claimed he was feeling suicidal. According to Deputy Froman, Beals had calmed down by the time he was put in the vehicle. In fact, Beals stated he had asked the deputy if he could smoke a cigarette before being put in the vehicle. And there is no evidence of mental impairment in the days before or after the offense, such as failing to take prescribed medicines or statements from contemporaneous examinations by mental health professionals. *Cf. Ankney v. State*, 825 N.E.2d 965, 977 (Ind. Ct. App. 2005) (revising sentence due to evidence of a nexus between Ankney's mental illness and commission of the offenses; physicians examined Ankney two days after arrest and concluded he was experiencing psychosis when he committed offenses), *trans. denied*.

[45] Based on the foregoing, we do not conclude that Beals was unable to control his behavior when he tried to get out of the vehicle and then tried to walk away. Considering Beals' history of mental illness in context with his extensive violent criminal record and the nature of the offenses, he has failed to persuade us that his sentence is an outlier needing revision. *See Scott v. State*, 840 N.E.2d 376, 384 (Ind. Ct. App. 2006) (declining to grant mitigating weight to Scott's lengthy history of mental illness and suicide attempts; Scott failed to show he committed the offense, Class A felony robbery, "because his treatment lapsed,

his medication failed, or [] his condition was not controlled by medication"), *trans. denied*.

Conclusion

[46] For the reasons stated above, we affirm the judgment of the trial court.

[47] Affirmed.

Vaidik, J., and Foley, J., concur.

ATTORNEY FOR APPELLANT

Matthew J. McGovern
Fishers, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana