MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Alexandra L. Gales,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 11, 2024

Court of Appeals Case No.
23A-CR-598

Appeal from the Clark Circuit Court

The Honorable Nicholas A. Karaffa, Judge

Trial Court Cause No.
10C01-2108-MR-6

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Alexandra L. Gales appeals her conviction for murder and her ensuing sixty-five-year sentence. Gales raises five issues for our review, which we restate as the following three issues:

> 1. Whether the trial court abused its discretion in the admission of certain evidence.
>
> 2. Whether the State presented sufficient evidence to show that Gales did not kill her victim in sudden heat or in self-defense.
>
> 3. Whether her sixty-five-year sentence is inappropriate in light of the nature of the offense and her character.

[2] We affirm.

Facts and Procedural History

[3] On August 27, 2021, Yolanda Fisher was working as the on-site attendant at a laundromat in Jeffersonville. Fisher had been instructed by the laundromat's owners to allow only persons who are at the laundromat for laundromat business to use the restroom there. If someone not using the laundromat attempted to use the restroom, Fisher was to ask them to leave.

[4] Around 6:00 p.m. that day, Gales, who was homeless, entered the laundromat and used the restroom. Fisher knocked on the restroom door several times and spoke to Gales in a raised voice. After Gales exited the restroom, she and Fisher exchanged words near a counter. Gales then turned her back on Fisher

and walked toward another counter, but the two continued to speak at each other.

[5] Fisher picked up a hand-held phone and walked toward Gales while gesturing toward the exit. As she neared Gales, Gales pulled out a knife and raised it at Fisher, who then backed away. Fisher attempted to place objects between her and Gales, and Fisher called 9-1-1. However, Gales continued in Fisher's direction and then chased Fisher around the laundromat. Fisher ran outside, and Gales pursued her, saying, "you better run, b*tch." Tr. Vol. 2, p. 108.

[6] Outside, Gales got on top of Fisher and repeatedly stabbed her. A nearby witness, Katherine Frantz, heard Fisher scream, ran at the two women, and put Gales in a hold that secured Gales and the knife. Fisher, meanwhile, managed to go back into the laundromat and hide under a counter. There, she again called 9-1-1, and law enforcement officers were dispatched to the scene.

[7] When law enforcement arrived, they secured and arrested Gales. Another witness, Jessica Burgess, attempted to help Fisher stop her bleeding; however, Fisher died of her wounds shortly after the attack. Unprompted, Gales told officers outside the laundromat that Fisher was "not going to make it," and Gales had "stabbed that woman right through . . . her chest and . . . she's glad she did it" because of "how disrespectful" Fisher had been. *Id.* at 70. Later, after having been read her *Miranda* rights, Gales again admitted to officers that she had killed Fisher and that she did not "regret [her] actions." Appellee's Br. at 13 (quoting Ex. 49 at 6:40 to 7:25).

[8] The State charged Gales with murder. While awaiting her trial, Gales spoke with her mother in a recorded jailhouse phone call. In that conversation, Gales again admitted to killing Fisher "because I cannot be disrespected like that." Tr. Vol. 3, p. 14. Gales added that Fisher "had it f*cking coming," and Gales was "glad I killed her." *Id.* at 15.

[9] During her ensuing jury trial, the State sought to have Fisher's two 9-1-1 calls admitted into evidence. The court granted the State's request over Gales's objections. The State also sought to have surveillance video from the laundromat on the date in question admitted into evidence, which the court also granted over Gales's objection. Frantz, Burgess, and several law enforcement officers also testified for the State.

[10] Gales testified in her own defense. She did not deny that she had killed Fisher. Nor did Gales deny that she and Fisher had "exchanged words" prior to the attack. *Id.* at 25. According to Gales, she has poor eyesight, and when Fisher approached her with the hand-held phone after their heated verbal exchange, Gales felt "a little bit threatened" and "just reacted." *Id.* at 26. Gales recalled her mindset as being, "if you want to fight then we can . . . fight." *Id.* at 27. Based on her own testimony, Gales sought and received jury instructions on self-defense and voluntary manslaughter.

[11] The jury found Gales guilty of murder. After a sentencing hearing, the court sentenced Gales as follows:

> I'm going to find that the mitigating circumstances that [defense] counsel has alluded to, namely[,] . . . the crime was a result of circumstances unlikely to re[cur], I'm unconvinced that that's true. I don't believe that Ms. Fisher induced or facilitated this offense and I don't believe, ma'am, that you acted under strong provocation whatsoever and I can find no grounds to excuse or justify this crime whatsoever. . . . I'm going to find that you do have a history of criminal and delinquent behavior and that you did recently violate the conditions of . . . probation . . . , and . . . I'm going to show that the aggravators far outweigh any mitigating circumstances.

Id. at 118. The court then ordered Gales to serve sixty-five years executed in the Department of Correction. This appeal ensued.

1. The trial court did not abuse its discretion in the admission of evidence.

[12] On appeal, Gales first challenges the trial court's admission of the second 9-1-1 call (made by Fisher after Gales had stabbed her) and the video-surveillance evidence. A trial court has broad discretion regarding the admission of evidence, and its decisions are reviewed only for abuse of discretion. *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021). We will reverse only if the trial court's ruling was clearly against the logic and effect of the facts and circumstances before it and the error affects a party's substantial rights. *Id.* We address each of Gales's evidentiary challenges in turn.

1.1. The trial court did not abuse its discretion when it admitted the 9-1-1 call into evidence.

[13] Gales asserts that the trial court erred under Indiana Evidence Rule 403 in the admission of the 9-1-1 call. Evidence Rule 403 states that a trial court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." Our Supreme Court has emphasized that trial courts have "wide discretion" under Rule 403, that their application of that rule can often "be resolved either way," and that "we won't meddle with that decision on appeal." *Snow v. State*, 77 N.E.3d 173, 177 (Ind. 2017).

[14] Specifically, Gales argues that, because she admitted to killing Fisher, the 9-1-1 call had no probative value, and, thus, its admission was substantially outweighed by the danger of unfair prejudice. We cannot agree. Fisher made her second 9-1-1 call immediately after she had been stabbed by Gales. In that call, Fisher said that Gales had stabbed her, that she could not breathe, and that she needed help. That call was probative to the State's theory—and against Gales's defense—that Gales was the aggressor. We therefore cannot say that any risk of unfair prejudice was so great that it requires us to second-guess the trial court's judgment on the admission of this evidence under Rule 403. *See id.* at 179.

1.2. The trial court did not abuse its discretion when it admitted the video-surveillance recording into evidence.

[15] Gales also contends that the State's foundation for the video-surveillance evidence was insufficient. To establish a proper foundation where, as here, the State offers video-surveillance evidence as substantive (rather than demonstrative) evidence, the State must present a witness who gives "identifying testimony of the scene that appears" in the video, which testimony also must be "sufficient to persuade the trial court of [the video's] competency and authenticity to a relative certainty." *Knapp v. State*, 9 N.E.3d 1274, 1282 (Ind. 2014) (cleaned up).

[16] The State established a sufficient foundation for the admission of the video-surveillance evidence. Emily Hall, the regional manager for the laundromat company, testified that she was familiar with the video surveillance system at the Jeffersonville location. She testified to the surveillance system's method of recording and storing those recordings and how the system and its recordings can be accessed. She testified that the system provides an automatic time and date stamp to the recordings, and she has never known those stamps to be inaccurate.

[17] She also testified that she viewed and then downloaded the surveillance video from the Jeffersonville location shortly after Fisher was killed, and she submitted that downloaded video to law enforcement. She confirmed that she reviewed the video shortly before the jury trial to "make sure that everything on that was correct," and it accurately displayed the Jeffersonville location and

was in all other ways "correct" and the "same video that [she had] provided to the police." Tr. Vol. 2, pp. 84, 86. She also stated that she did not alter the recording in any way.

[18] Hall's testimony readily established a sufficient foundation for the admission of the video-surveillance evidence. Gales's argument that more was needed to show that that evidence had not been altered is not consistent with Indiana law, and we reject it.

2. The State presented sufficient evidence to show that Gales did not kill Fisher in sudden heat or in self-defense.

[19] Gales next asserts that the State failed to present sufficient evidence to show that she did not kill Fisher either in sudden heat or in self-defense. For sufficiency of the evidence challenges, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact. *Hall*, 177 N.E.3d at 1191. We will neither reweigh the evidence nor judge witness credibility. *Id.* We will affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* As in Issue 1, Gales's argument here is two-fold, and we address each argument in turn.

2.1. The State presented sufficient evidence to show that Gales did not kill Fisher in sudden heat.

[20] We first address Gales's argument that the State failed to show that she did not kill Fisher in sudden heat. As our Supreme Court has explained:

> one commits murder if she "knowingly or intentionally" kills another human. I.C. § 35-42-1-1. . . . [I]f one "knowingly or intentionally kills another human being while acting under sudden heat," she commits voluntary manslaughter—a Level 2 felony. I.C. § 35-42-1-3(a). The existence of sudden heat is a "mitigating factor"—not an affirmative defense—and it "reduces what otherwise would be murder to voluntary manslaughter." I.C. § 35-42-1-3(b); *Isom v. State*, 651 N.E.2d 1151, 1152 (Ind. 1995). Once sudden heat has been "injected" into the heart of the case, "the burden is on the State to negate its existence." *Bane v. State*, 587 N.E.2d 97, 100 (Ind. 1992), *reh'g denied*. When injecting the issue, the defendant must point to some evidence in the record supporting sudden heat. *Watts v. State*, 885 N.E.2d 1228, 1234 n.2 (Ind. 2008). Because sudden heat functions as an "evidentiary predicate," *Bane*, 587 N.E.2d at 100, it requires the jury to decide whether the record evidence supports it. *Id.*
>
> Sudden heat exists when a defendant is "provoked by anger, rage, resentment, or terror, to a degree sufficient to obscure the reason of an ordinary person, prevent deliberation and premeditation, and render the defendant incapable of cool reflection." *Brantley[v. State]*, 91 N.E.3d [566,] 572 [(Ind. 2018)] (quoting *Isom v. State*, 31 N.E.3d 469, 486 (Ind. 2015)). The issue of whether adequate provocation legally exists is an objective—not a subjective—measure. *See Stevens v. State*, 691 N.E.2d 412, 426 (Ind. 1997); *Suprenant v. State*, 925 N.E.2d 1280, 1282-83 (Ind. Ct. App. 2010). Indeed, "[e]vidence of sudden heat may be found in either the State's case or the defendant's." *Brantley*, 91 N.E.3d at 572. And because juries are in the unique position to assess the veracity of evidence, they must decide whether the evidence contained in the record "constitute[s] sudden heat sufficient to warrant a conviction for voluntary manslaughter." *Id.* (internal quotations omitted).

Carmack v. State, 200 N.E.3d 452, 459-60 (Ind. 2023).

[21] The evidence before the jury negated Gales's assertion that she killed Fisher in sudden heat. Gales's own testimony shows that she and Fisher had exchanged some unkind words with each other over a period of minutes, followed by Gales arming herself with a knife. When Fisher then backed away and placed objects between her and Gales, Gales continued to pursue Fisher, ultimately chasing Fisher outside and then stabbing her. Gales herself admitted that her mindset at the time was simply, "if you want to fight then we can . . . fight." Tr. Vol. 3, p. 27.

[22] The jury, which was instructed on both murder and voluntary manslaughter, was free to conclude that that evidence did not support a finding of sudden heat. *See, e.g.*, *Isom*, 31 N.E.3d at 486 ("Words alone are not sufficient provocation to reduce murder to manslaughter.") (quoting *Perigo v. State*, 541 N.E.2d 936, 939 (Ind. 1989)); *Evans v. State*, 727 N.E.2d 1072, 1078 (Ind. 2000) (holding that, where a man came home and realized that his wife was in their upstairs bedroom with another man, went back downstairs to obtain a knife, and then stabbed the man to death with it, there was "ample evidence to show" that he had "acted with premeditation and deliberation sufficient to support the jury's verdict of murder").

[23] The jury's verdict was easily within the evidence before it. Gales's argument on this issue simply seeks to have this Court reweigh the evidence, which we will not do.

2.2. The State presented sufficient evidence to show that Gales did not kill Fisher in self-defense.

[24] So too with Gales's argument that the State failed to show that she did not kill Fisher in self-defense. As our Supreme Court has explained:

> defendant can raise self-defense as a justification for an otherwise criminal act. I.C. § 35-41-3-2; *Miller[v. State]*, 720 N.E.2d [696,] 699 [(Ind. 1999)]. When self-defense is asserted, the defendant must prove he was in a place where he had a right to be, "acted without fault," and reasonably feared or apprehended death or great bodily harm. *Miller*, 720 N.E.2d at 699-700. The State must then negate at least one element beyond a reasonable doubt "by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief." *Lilly v. State*, 506 N.E.2d 23, 24 (Ind. 1987). We will reverse a conviction only if no reasonable person could say the State overcame the self-defense claim beyond a reasonable doubt. *Id.*

Larkin v. State, 173 N.E.3d 662, 670 (Ind. 2021).

[25] Gales's argument on this issue is premised on accepting her own testimony as true, which of course the jury had no obligation to do. Again, the evidence shows that Fisher and Gales exchanged words, to which Gales responded by drawing a knife, chasing Fisher as Fisher retreated, and then continuing the pursuit outside the laundromat before stabbing Fisher multiple times. After her arrest, Gales repeatedly stated that she had killed Fisher not because Fisher had presented some threat to her but because Fisher had acted disrespectfully toward her.

[26] The jury was free to conclude from that evidence that Gales did not act in self-defense and that she did not even subjectively believe that deadly force was necessary to protect herself from Fisher. *See, e.g.*, *Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007) (to claim self-defense, a defendant must show both that she "actually believed deadly force was necessary to protect" herself and that her belief was reasonable) (quotation marks omitted); *Miller*, 720 N.E.2d at 700 ("Self-defense" is generally "unavailable to a defendant who is the initial aggressor . . . ."); *Birdsong v. State*, 685 N.E.2d 42, 46 (Ind. 1997) (multiple gunshots negates self-defense); *see also Larkin*, 173 N.E.3d at 670 (self-defense must be "proportionate to the urgency of the situation") (quoting *Hollowell v. State*, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999)).

[27] Gales separately argues that Indiana Code sections 35-31.5-2-109 and 35-41-3-11 (2023) should have applied at her trial due to her homelessness. Section 35-41-3-11(b) applies to a criminal defendant who "at the time of the alleged crime [was] suffering from the effects of battery as a result of the past course of conduct of the individual who is the victim of the alleged crime." In such scenarios, the defendant may "produce evidence" in support of a claim of self-defense "from which a trier of fact could find support for the reasonableness of the defendant's belief in the imminence of the use of unlawful force . . . to the defendant . . . ." I.C. § 35-41-3-11(b). And section 35-31.5-2-109 defines the effects of battery as follows:

> "Effects of battery" refers to a psychological condition of an individual who has suffered repeated physical or sexual abuse inflicted by another individual who is the:
>
> > (1) victim of an alleged crime for which the abused individual is charged in a pending prosecution; and
> >
> > (2) abused individual's:
> >
> > > (A) spouse or former spouse;
> > >
> > > (B) parent;
> > >
> > > (C) guardian or former guardian;
> > >
> > > (D) custodian or former custodian; or
> > >
> > > (E) cohabitant or former cohabitant.

[28] Gales's reliance of the effects-of-battery statutes is not well taken. First, she presents this argument for the first time on appeal. Indeed, not only did she not raise it in the trial court, section 35-41-3-11(c) required her to file a timely written notice of her intent to rely on these statutes prior to her trial, which she did not do. Accordingly, Gales's arguments are not properly before us and are waived. Her waiver notwithstanding, we also conclude that her attempt to read homelessness and an attack on an unrelated third-party into the effects-of-battery statutes is not within any reasonable reading of the statutory language. We therefore reject her argument.

3. Gales's sentence is not inappropriate.

[29] Last, Gales argues that her sixty-five-year sentence is inappropriate in light of the nature of her offense and her character. Under Indiana Appellate Rule 7(B), we may modify a sentence that we find is "inappropriate in light of the nature of the offense and the character of the offender." Making this determination "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under Rule 7(B), however, is reserved for "a rare and exceptional case." *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam).

[30] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to "leaven the outliers," not to achieve what may be perceived as the "correct" result. *Id.* Thus, deference to the trial court's sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[31] Gales was convicted of murder. A person convicted of murder may be sentenced to a term between forty-five and sixty-five years, with the advisory

sentence being fifty-five years. I.C. § 35-50-2-3. Here, the trial court imposed the maximum term of sixty-five years executed. Gales argues that her sentence is inappropriate because her "criminal record is not extensive," she had an "apparent mental illness," and she was deemed only a moderate risk to reoffend. Appellant's Br. at 29-31.

[32] Gales's arguments do not meet her burden on appeal to have this Court override the trial court's sentencing judgment. Gales does not present any compelling evidence portraying in a positive light the nature of the offense, such as showing restraint or a lack of brutality, or any such evidence regarding her character, such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson*, 91 N.E.3d at 577; *Stephenson*, 29 N.E.3d at 122.

[33] Indeed, the nature of the offense here was, as the State aptly describes, "callous and brutal." Appellee's Br. at 42. Gales pursued Fisher with a knife because Gales felt that Fisher had spoken disrespectfully toward her. After Fisher attempted to block Gales's path, Gales continued her pursuit, ultimately getting on top of Fisher and then stabbing her repeatedly. Fisher then died slowly over the course of several minutes.

[34] Likewise, Gales's character does not inspire revision of her sentence. She repeatedly demonstrated her lack of remorse for killing Fisher, saying that Fisher "had it . . . coming" and that Gales was "glad she did it." Tr. Vol. 2, p. 70; Tr. Vol. 3, p. 15. Gales also has seven prior misdemeanor convictions, and she was on probation at the time of the instant offense.

[35] We cannot say Gales's sentence is inappropriate in light of the nature of the offense or her character.

Conclusion

[36] For all of the above-stated reasons, we affirm Gales's conviction and sentence.

[37] Affirmed.

Tavitas, J., and Weissmann, J., concur.

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