

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Fatir Muhammad,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*



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April 25, 2024

Court of Appeals Case No.  
23A-CR-1509

Appeal from the Allen Superior Court  
The Honorable David M. Zent, Judge

Trial Court Cause No.  
02D06-2112-F1-27

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**Memorandum Decision by Judge Mathias**  
Judges Bailey and Crone concur.

## **Mathias, Judge.**

[1] A jury found Fatir Muhammad guilty of two counts of Level 1 felony attempted murder. The Allen Superior Court ordered Muhammad to serve an aggregate 100-year sentence. Muhammad appeals his convictions and sentence, raising two issues:

I. Whether the trial court committed fundamental error when it allowed investigating law enforcement officers to testify as to statements made by the victims identifying Muhammad as the shooter, and

II. Whether Muhammad's aggregate 100-year sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

## **Facts and Procedural History**

[3] On December 14, 2021, Melissa Ley, Muhammad's former girlfriend, lived in a trailer in Fort Wayne, Indiana. A few days prior, Muhammad had helped Melissa pick up an entertainment center and move it into her trailer. Muhammad returned to his home and later discovered that he had accidentally left his phone in Melissa's vehicle.

[4] At 4:30 a.m. on December 14, Muhammad sent Melissa a message letting her know that he needed his phone returned to him. Melissa told him she would bring it to him later that day. Instead of waiting, Muhammad went to Melissa's trailer a few hours later, at approximately 8:00 a.m. Muhammad knocked on Melissa's bedroom window and then proceeded to the front door. The door was unlocked and he walked in. Melissa's friend Bruce Brewer was sitting on the

couch. Bruce and Muhammad did not know each other. Melissa was in her kitchen with her friend Bri.<sup>1</sup> Muhammad and Bri were also close friends.

[5] Melissa asked Muhammad what he was doing in her home. Muhammad told her he wanted his phone. The conversation quickly became hostile and tense, and Muhammad pulled out a gun. He stated that he was going to fire a warning shot and “put one in your head.” Tr. Vol. 1, pp. 201-02. Bruce approached Muhammad and tried to diffuse the situation by helping Muhammad find his phone. Muhammad threatened Bruce, and he returned to the couch. As Muhammad continued to demand his phone, Melissa continually asked him to go outside so they could speak about the situation.

[6] Muhammad then shot Bruce, who was still seated on the couch. Next, he shot Bri, who was in the kitchen. He then walked up to Bri and shot her in the knee. As she begged for her life, Muhammad shot Bri a third time near her shoulder. He then turned toward Melissa and Bruce. Melissa ran to the laundry room and shut the door, holding it closed with her leg. Muhammad fired a shot through the laundry room door, but the bullet did not strike Melissa.

[7] Muhammad then fled from the trailer. Melissa called 9-1-1 and reported that her ex-boyfriend had entered her home and shot two people. When Melissa exited the laundry room, Bruce was sitting at the kitchen table with a gunshot

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<sup>1</sup> Bri’s legal name is Letishia Recht, but she was referred to as Bri by herself and multiple witnesses at trial.

wound to his chest. Bri was lying on the kitchen floor surrounded by blood. She was gasping for air and kept asking for help.

[8] The paramedics and law enforcement officers arrived at Melissa's trailer, and Bri and Bruce told the officers that Muhammad had shot them. They were then transported to the hospital.

[9] Bruce suffered from a chest wound. Bri's injuries were much more significant. She suffered gunshot wounds to her torso, shoulder, and leg, which resulted in a broken femur. She also suffered a broken bone in her hand and an injury to her windpipe. As she recovered from her injuries, she required extensive assistance and physical therapy. She had to learn to walk again and still needed another surgery on her knee at the time of Muhammad's trial.

[10] On December 27, the State charged Muhammad with two counts of Level 1 felony attempted murder, Level 4 felony burglary, and it requested an enhancement because a firearm was used in the commission of the offenses. Muhammad's jury trial commenced on April 11, 2023. Muhammad testified in his own defense and attempted to explain the shooting as an accident. The jury found Muhammad guilty of the attempted murder counts but not guilty of burglary. The State also proved that a firearm was used in the commission of the offenses.

[11] At Muhammad's sentencing hearing, the State presented evidence establishing Muhammad's significant criminal history spanning thirty years. Muhammad had thirteen prior felony convictions, four misdemeanor convictions, and

probation violations. His felony criminal history involved violent crimes, drug-related offenses, and illegal use of firearms. The trial court considered Muhammad's criminal history as an aggravating factor. The trial court also considered the nature and circumstances of the crimes as an aggravating factor, and specifically referenced the fact that Muhammad shot Bri, his close friend, while she was already injured, lying on the floor and begging for her life. Tr. Vol. 3, p. 82. The trial court did not find any mitigating factors. The court imposed maximum and consecutive forty-year terms for the two Level 1 felony attempted murder convictions and twenty years for the firearm enhancement, for an aggregate 100-year sentence.

[12] Muhammad now appeals.

## **Hearsay Testimony**

[13] Muhammad argues that the trial court erred when it allowed law enforcement officers to testify that the victims identified Muhammad as the person who shot them.<sup>2</sup> Specifically, after arriving on the scene of the shootings, Officer Robert Geiger testified that both Bri and Bruce stated that Muhammad had shot them. Tr. Vol. 2, pp. 77, 79. Detective Brian Martin spoke to Bruce while he was in the hospital, and the detective testified that Bruce identified Muhammad as the shooter. Tr. Vol. 2, p. 157. But Muhammad waived appellate review of this

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<sup>2</sup> Muhammad argues that the testimony was hearsay. Hearsay is defined as “a statement that (1) is not made by the declarant while testifying at the trial or hearing; and (2) is offered in evidence to prove the truth of the matter asserted.” [Ind. Evidence Rule 801\(c\)](#). [Evidence Rule 802](#) provides that “[h]earsay is not admissible unless these rules or other law provides otherwise.”

issue by failing to object to the officers' testimony at trial. See *Williams v. State*, 211 N.E.3d 547 (Ind. Ct. App. 2023) (“The failure to timely object to the introduction of evidence at trial ordinarily waives appellate review of the issue[.]”), *trans. denied*. Therefore, he argues that the trial court committed fundamental error when it admitted the testimony.

[14] Fundamental error is a “daunting” standard. *Harris v. State*, 76 N.E.3d 137, 140 (Ind. 2017) (quoting *Griffith v. State*, 59 N.E.3d 947, 956 (Ind. 2016)). And “fundamental error in the evidentiary decisions of our trial courts is especially rare.” *Merritt v. State*, 99 N.E.3d 706, 709-10 (Ind. Ct. App. 2018), *trans. denied*. To establish fundamental error, a defendant must “show that the trial court should have raised the issue sua sponte due to a blatant violation of basic and elementary principles, undeniable harm or potential for harm, and prejudice that makes a fair trial impossible.” *Id.* (citing *Shoun v. State*, 67 N.E.3d 635, 640 (Ind. 2017); *Knapp v. State*, 9 N.E.3d 1274, 1281 (Ind. 2014)).

[15] Fundamental error in the erroneous admission of evidence might include a claim that there has been a “fabrication of evidence,” “willful malfeasance on the part of the investigating officers,” or otherwise that “the evidence is not what it appears to be.” *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). But absent an argument along those lines, “the claimed error does not rise to the level of fundamental error.” *Id.* Muhammad merely argues that the investigating law enforcement officers should not have been allowed to testify that the victims identified Muhammad as the shooter. This claimed error is not one that rises to the level of fundamental error. See *Brown*, 929 N.E.2d at 207.

[16] Moreover, all three victims testified that Muhammad shot Bruce and Bri, and then attempted to shoot Melissa, who had locked herself in the laundry room. Tr. Vol. 1, pp. 171, 203, 224-27. Therefore, the law enforcement officers' testimony was cumulative of other testimony admitted at trial. Also, the victims made the statements to the officers shortly after the shootings when the officers arrived on the scene. Bruce and Bri were under the stress of the shooting and their injuries. Melissa was noticeably shaken by witnessing the shootings. The victims' statements to the officers can easily be classified as excited utterances, and, therefore, the statements were admissible under [Evidence Rule 803\(2\)](#). See [Ramsey v. State](#), 122 N.E.3d 1023, 1032 (Ind. Ct. App. 2019) (quoting [Lawrence v. State](#), 959 N.E.2d 385, 389 (Ind. Ct. App. 2012), *trans. denied*) (“To meet the excited utterance exception, three elements must be present: (1) a ‘startling event or condition’ has occurred; (2) the declarant made a statement while ‘under the stress or excitement caused by the event or condition;’ and (3) the statement was ‘related to the event or condition.’”). Finally, Muhammad admitted he was involved in the shootings but he attempted to convince the jury that he accidentally shot the victims.

[17] For all of these reasons, Muhammad has not established that the trial court committed fundamental error when it admitted the law enforcement officers' testimony.

### **Inappropriate Sentence**

[18] Muhammad claims that his 100-year aggregate sentence is inappropriate. 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). Muhammad bears the burden to show that his sentence is inappropriate. *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh’g 875 N.E.2d 218.

[19] 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).

[20] Muhammad was convicted of two counts of Level 1 felony attempted murder, and the trial court imposed maximum and consecutive terms of forty years for each conviction. See *Ind. Code* § 35-50-2-4(b) (stating that a “person who commits a Level 1 felony . . . shall be imprisoned for a fixed term of between



twenty (20) and forty (40) years, with the advisory sentence being thirty (30) years”). The trial court also imposed the maximum sentencing enhancement of twenty years because Muhammad used a firearm while attempting to commit murder. *See Ind. Code § 35-50-2-11(g)*. Therefore, the trial court imposed an aggregate, maximum sentence of 100 years.

[21] Muhammad does not argue that there is any evidence that would cast a positive light on the nature of his offenses. First, Muhammad shot Bruce in the chest from close range. He then shot Bri, who was his friend. He approached Bri and shot her again in the knee. As Bri was lying on the kitchen floor begging for her life, he shot her again near her shoulder. Bri’s recovery from her injuries was difficult and she had to learn to walk again. Muhammad then ran after Melissa, who shut herself in the laundry room. Muhammad fired a shot through the laundry room door, which luckily did not hit Melissa. He then fled the home.

[22] Muhammad’s character demonstrates his inability to lead a law-abiding life. Before committing these offenses, Muhammad had been convicted of thirteen felonies and four misdemeanors, and his probation has been revoked. Muhammad’s felony convictions generally involved illegal substances and/or the illegal use of firearms. The nature and circumstances of the crimes also reflect poorly on his character. Muhammad, who was upset about a missing cell phone, shot two unarmed people at close range. And Bruce and Bri had nothing to do with Muhammad’s missing cellphone. He also shot Bri, whom he described as his close friend, as she was bleeding and begging for her life.

[23] For all of these reasons, Muhammad has not met his burden to establish that his 100-year aggregate sentence is inappropriate in light of the nature of the offenses and his character.

## **Conclusion**

[24] Muhammad has not established any evidentiary error or that his sentence is inappropriate in light of his offenses or his character. We therefore affirm his convictions and sentence.

[25] Affirmed.

Bailey, J., and Crone, J., concur.

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