MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Marcus Anthony Ross,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 29, 2024

Court of Appeals Case No.
23A-CR-1710

Appeal from the Lake Superior Court

The Honorable Gina L. Jones, Judge

Trial Court Cause No.
45G03-2204-MR-000015

Memorandum Decision by Judge Felix
Judges Bailey and May concur.

Felix, Judge.

Statement of the Case

[1] A jury convicted Marcus Ross of voluntary manslaughter in connection with the shooting death of Zackery Smith, and Ross subsequently pled guilty to a use of a firearm enhancement. Ross now appeals his voluntary manslaughter conviction and raises two issues for our review:

1. Whether the trial court erred by admitting body camera footage into evidence; and
2. Whether the trial court abused its discretion by giving two jury instructions regarding "sudden heat."

[2] We affirm.

Facts and Procedural History

[3] At 1:31:58 pm[1] on April 1, 2022, Smith parked at the Oasis Smoke Shop located on State Line Avenue in Hammond, Indiana.[2] At 1:32:37 pm, as Smith was walking into the store, Ross and Mychael Thomas pulled into the parking space on the driver side of Smith's vehicle. Both Ross and Thomas were wearing yellow green high visibility tops. At 1:35:04 pm, Smith walked out of the store back toward his vehicle. As Smith neared his driver door, he noticed

[1] The accuracy of the timing is due to the entire offense being recorded on multiple cameras located near the scene of the crime.

[2] The center line of State Line Road is the state line between Indiana and Illinois.

Ross and Thomas sitting, possibly arguing,[3] in their vehicle. Smith then pulled out a handgun from the right side of his clothing. Smith stood at his driver door with the gun pointed down for several seconds before opening the door and tossing something inside his vehicle. With the gun still in his right hand, Smith closed his driver door, took a few small steps toward Ross and Thomas's vehicle. Seeing Smith approach, Ross turned in his seat, and then Smith pulled a second handgun from the left side of his clothing. Now with a handgun in both hands, Smith leaned his head toward the front passenger window of Ross and Thomas's vehicle.

[4] At 1:35:35 pm, after an apparent exchange of words, Smith pointed the gun in his right hand directly at Ross and Thomas's vehicle, with the muzzle of the gun directly against the front passenger window. Smith kept the gun in that position for approximately four seconds before turning the gun sideways. Two seconds later, Smith removed the gun from the window and pointed it at the ground before moving to get in his vehicle. As Smith opened the driver door of his vehicle, Ross slightly opened the front passenger door of the vehicle he was in. At 01:35:50 pm, after another apparent exchange of words, Smith, standing behind his car door, pointed the gun in his right hand at Ross. Smith quickly retracted the weapon behind his vehicle door. Smith and Ross continued to exchange words for a few more seconds before Smith shut his driver door.

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[3] Once again, due to cameras recording the entire incident, it is clear that Ross and Thomas were in the midst of an argument or a scuffle. Ross was pulling on Thomas's hand, and Thomas was pulling away from Ross. It is reasonable to conclude that their actions are what caught Smith's attention.

Sherry Fullerton, an acquaintance of Smith's, then walked up behind the two vehicles and spoke to Ross. At 1:36:06, Smith backed out of his parking space, but stopped to speak with Fullerton through the window of his vehicle. While Smith and Fullerton spoke, Ross and Thomas left the Oasis Smoke Shop parking lot in their vehicle.

[5] Just about four minutes later, at 1:39:45 pm, Smith exited the driver's seat of his vehicle and walked around to the driver side of Fullerton's vehicle, which was parked on the passenger side of Smith's vehicle. Smith stood and spoke with Fullerton through the front driver side window of her vehicle. Less than a minute later—and only five minutes since Ross left the scene—Ross, alone this time, returned to the scene, walking along the front of the Oasis Smoke Shop building heading south. Smith and Fullerton were talking to each other, and it does not appear that either one noticed that Ross had returned to the scene. At 1:40:52 pm, Ross fired several shots at Smith's back. Ross then ran southbound and turned around to shoot several more times in Smith's direction. After the initial shots, Smith took cover behind the concrete base of a nearby light pole. Once Ross stopped shooting, Smith entered the passenger side of his vehicle, crawled into the driver's seat, and drove northbound, the opposite direction of the way Ross had run, on State Line Road. As Smith drove away from Oasis Smoke Shop, he rear-ended another vehicle, causing his own vehicle to flip over.

[6] After the initial shots, Fullerton immediately attempted to leave the scene, but her car stalled after she backed out of her parking spot. A person at the Oasis

Smoke Shop helped Fullerton get her car back into a parking spot, which happened to be the same spot Smith had vacated minutes before. In total, Ross fired at least nine rounds at Smith, wounding him five times, two of which were in Smith's back. One of the rounds Ross fired hit Fullerton's vehicle.

[7] At approximately 1:41 pm, Aaron Martinez, a patrolman with the Calumet City Police Department, was dispatched to 774 State Line Road in Calumet City, Illinois—which is across the street from the Oasis Smoke Shop—based on a ShotSpotter activation. ShotSpotter is a program that uses microphones placed throughout a city to accurately pinpoint gunfire. While enroute to the dispatch location, Officer Martinez learned that the ShotSpotter activation was actually for shots fired across the street in Hammond, Indiana, near the Oasis Smoke Shop. As Officer Martinez was traveling southbound on State Line Road heading toward the ShotSpotter activation location, he came upon a two-vehicle accident on the east side of the road just a few blocks north of Oasis Smoke Shop. Smith's vehicle was upside down and another man's vehicle was sitting on the east side of the road. When Officer Martinez exited his vehicle, he observed Smith lying on the ground and bleeding from his front and back. A woman drove by the scene of the traffic accident and informed Officer Martinez that a man in a green shirt was shooting and had run southbound. Officer Martinez broadcasted that information over the radio. Smith was transported to a nearby hospital where he later died from his injuries.

[8] Enrique Bustos, a patrolman with the Calumet City Police Department, also responded to the ShotSpotter activation. Because Officer Martinez and others

were already at the site of the traffic accident, Officer Bustos continued to the ShotSpotter activation location. On his way to that location, Officer Bustos learned that the possible shooter had not yet been apprehended and was fleeing southbound in a green shirt. At 01:48:00, Fullerton spotted Officer Bustos's vehicle heading toward the Oasis Smoke Shop, and she immediately approached him, waving her arm to get his attention. As Fullerton walked up to Officer Bustos's vehicle, Officer Bustos asked her "Where's he at? . . . Is he on foot?" Ex. 3A at 01:24–01:26. Fullerton responded with a description that matched the vehicle Ross had been in during the initial confrontation. Officer Bustos then relayed that description over the radio. After a brief survey of the area from his vehicle, Officer Bustos confirmed over the radio that there was no victim at the ShotSpotter activation location.

[9] Approximately a minute after arriving on scene, Officer Bustos parked and exited his vehicle to speak with Fullerton. Upon exiting his vehicle, Officer Bustos immediately asked Fullerton, "What happened? What happened exactly? Was he standing right here?" Ex. 3A at 02:32–02:36. Fullerton started to describe the shooting but stopped herself to explain the initial confrontation between Smith and Ross. Fullerton told Officer Bustos that after the initial confrontation, she heard Ross say "I'm gonna kill that n[*****]. I'm gonna kill that n[*****]." Ex. 3A at 02:58–03:05. Fullerton stated she had warned Smith to leave because she feared Ross would kill him. Fullerton then showed Officer Bustos where Smith and Smith's vehicle were located during the shooting. She interrupted her walkthrough of the shooting to ask if Smith

was okay. Fullerton did not know that Smith had been hit by any of the bullets until Officer Bustos told her. Fullerton then continued describing the shooting and indicated that she thought Ross had run south after the shooting. She also told Officer Bustos that her car had been hit during the shooting and showed him the bullet hole. This entire conversation took approximately two minutes.

[10] The State charged Ross with murder;[4] criminal recklessness as a Level 6 felony;[5] and use of a firearm enhancement[6]. The State later dropped the criminal recklessness charge because it was based on Ross firing a shot into Fullerton's vehicle and Fullerton refused to cooperate. At trial, the State offered into evidence security camera footage of the confrontation and shooting, as well as body camera footage, including State's Exhibit 3A, which is an approximately four-minute segment of Officer Bustos's body camera video that includes footage of Officer Bustos arriving at the scene of the shooting and speaking with Fullerton. Ross objected to the admission of Exhibit 3A, claiming it contained inadmissible hearsay and violated his rights under the Confrontation Clause. The trial court overruled Ross's objections and admitted Exhibit 3A during Officer Bustos's testimony.

[11] At the close of the evidence, Ross and the State submitted proposed jury instructions. Ross proposed that the trial court instruct the jury about self-

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[4] Ind. Code § 35-42-1-1(1).

[5] *Id.* § 35-42-2-2(b)(1)(A).

[6] *Id.* § 35-50-2-11(d).

defense and about voluntary manslaughter as a lesser included offense of murder. The trial court instructed the jury on both voluntary manslaughter and self-defense, but it refused Ross's proposed instructions on both concepts. Instead, the trial court gave the State's proposed instructions concerning sudden heat. Ross objected to two of those instructions, and the trial court overruled both objections.

[12] The jury found Ross guilty of voluntary manslaughter, a Level 2 felony,[7] as a lesser included offense of murder. Ross then admitted to the underlying facts of the use of a firearm enhancement. The trial court imposed a total aggregate sentence of 32 years executed at the Indiana Department of Correction. This appeal ensued.[8]

Discussion and Decision

1. The Trial Court Did Not Err by Admitting Exhibit 3A

a. The Trial Court Did Not Abuse Its Discretion by Admitting Exhibit 3A under the Excited Utterance Exception to the Rule Against Hearsay

[13] Ross first argues that the trial court abused its discretion when it admitted State's Exhibit 3A because, according to Ross, Fullerton's statements contained

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[7] I.C. § 35-42-1-3.

[8] Ross fails to include relevant facts in his Statement of Facts, which is a violation of Indiana Appellate Rule 46(a)(6). However, because Ross's noncompliance with Appellate Rule 46(A)(6) does not substantially impede our review of his claims, we choose to address the merits thereof. *See Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015).

in Exhibit 3A are inadmissible hearsay. Our standard of review on such an issue is well settled. "The trial court has broad discretion to rule on the admissibility of evidence." *Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017). We review evidentiary rulings for an abuse of discretion, which occurs when the ruling is "clearly against the logic and effect of the facts and circumstances." *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014) (citing *Turner v. State*, 953 N.E.2d 1039, 1045 (Ind. 2011)). Moreover, we may affirm an evidentiary ruling on any theory supported by the evidence. *Satterfield v. State*, 33 N.E.3d 344, 352 (Ind. 2015).

[14] Hearsay is an out-of-court statement used "to prove the truth of the matter asserted." Ind. Evidence Rule 801(c). Hearsay is inadmissible unless it falls under any of the several well-delineated exceptions. *Id.* 802; *see id.* 803–06. Ross contends, and the State agrees, that Fullerton's statements were hearsay. However, the State argues that the trial court properly admitted those statements, and thus Exhibit 3A, because they fall into the excited utterance exception to the rule against hearsay.

> "A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused" is not excluded by the hearsay rule, even if the declarant is available as a witness. Ind. Evidence Rule 803(2). A hearsay statement may be admitted as an excited utterance where: (1) a startling event has occurred; (2) a statement was made by a declarant while under the stress of excitement caused by the event; and (3) the statement relates to the event. *Boatner v. State*, 934 N.E.2d 184, 186-87 (Ind. Ct. App. 2010). "This is not a mechanical test, and the admissibility of an allegedly excited

> utterance turns on whether the statement was inherently reliable because the witness was under the stress of the event and unlikely to make deliberate falsifications." *Id.* at 186. "The heart of the inquiry is whether the declarant was incapable of thoughtful reflection." *Id.* While the amount of time that has passed is not dispositive, "a statement that is made long after the startling event is usually less likely to be an excited utterance." *Id.*

Hurt v. State, 151 N.E.3d 809, 813-14 (Ind. Ct. App. 2020).

[15] Here, the trial court watched Exhibit 3A outside of the presence of the jury and determined that Fullerton's statements were admissible; the trial court did not change its decision when the State offered Exhibit 3A during Officer Bustos's testimony. Video evidence admitted at trial is "a necessary part of the record on appeal, just like any other type of evidence." *Robinson v. State*, 5 N.E.3d 362, 366 (Ind. 2014) (citing *Nava v. Kan. Dep't of Revenue*, 281 P.3d 597, 2012 WL 3135902 at *3–4 (Kan. Ct. App. 2012)). Even when video evidence is part of the record on appeal, we may review that evidence, but "the appellate standard of review remains constant." *Love v. State*, 73 N.E.3d 693, 698 (Ind. 2017) (quoting *Robinson*, 5 N.E.3d at 365). Thus, we will affirm the trial court's decision unless the video evidence "indisputably contradicts the trial court's findings"—that is, "no reasonable person could view the video and conclude otherwise." *Id.* at 699.

[16] In requesting the trial court to admit Exhibit 3A into evidence, the State argued in part that Fullerton's statements qualified as an excited utterance. Ross objected, arguing in part that Fullerton's conduct in Exhibit 3A "does not

demonstrate that she was . . . under the stress of what just happened." Tr. Vol. III at 162. The trial court disagreed and found that based on Fullerton's body language and "the way she was speaking," Fullerton "did not appear to be calm in that video." *Id.* at 163. The trial court subsequently overruled Ross's objection.

[17] Exhibit 3A does not indisputably contradict the trial court's findings. Following the shooting, Officer Bustos responded to the scene and spoke to Fullerton within less than eight minutes of the shooting. Fullerton flagged down Officer Bustos as he approached the scene. In addition, Fullerton made her statement to Officer Bustos after she had been involved in an extremely startling event—a shooting that wounded Smith; jeopardized Fullerton's personal safety as she was mere yards away from the shooter and in the direct line of fire; and damaged Fullerton's vehicle, preventing her attempted escape and leaving her exposed to continued gun fire. Further, Fullerton was speaking quickly, constantly moving, and appeared agitated when she spoke with Officer Bustos. The statements Fullerton made to Officer Bustos directly related to the shooting. It was not unreasonable for the trial court to believe, based upon what happened, Fullerton's proximity to the incident, and her behavior that Fullerton was still under the stress of the shooting at the time she spoke with Officer Bustos. *See Jones v. State*, 800 N.E.2d 624, 628 (Ind. Ct. App. 2003). Accordingly, we hold that Fullerton's statements as contained in Exhibit 3A fall into the excited utterance exception to the rule against hearsay and, as such, the trial court did not abuse its discretion when it admitted Exhibit 3A.

b. The Trial Court Did Not Err by Admitting Exhibit 3A Because Fullerton's Statements were Nontestimonial under the Confrontation Clause

[18] Ross next contends that the trial court violated his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution by admitting Exhibit 3A because Fullerton's statements were testimonial hearsay. As noted above, we typically review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *Dycus v. State*, 108 N.E.3d 301, 303 (Ind. 2018) (quoting *Turner v. State*, 953 N.E.2d 1039, 1045 (Ind. 2011)). However, where, as here, a constitutional violation is alleged, we review the trial court's ruling de novo. *Id.* at 304 (citing *Speers v. State*, 999 N.E.2d 850, 852 (Ind. 2013), *cert. denied*).

[19] The Confrontation Clause, which is made applicable to the States by the Fourteenth Amendment, provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." U.S. Const. amend. VI. "The Confrontation Clause applies to an out-of-court statement if it is testimonial in nature, the declarant is not unavailable, and the defendant has had no opportunity to cross-examine the declarant." *Speers*, 999 N.E.2d at 852 (citing *Crawford v. Washington*, 541 U.S. 36, 42 (2004)). A statement is testimonial under the Confrontation Clause if "in light of all the circumstances, viewed objectively, the primary purpose of the conversation was to create an out-of-court substitute for trial testimony." *Ward*, 50 N.E.3d 752, 759 (Ind. 2016) (internal quotation marks and alteration omitted) (quoting *Ohio v. Clark*, 576 U.S. 237, 245 (2015)).

In other words, hearsay does not violate the Confrontation Clause so long as the primary purpose of the hearsay is nontestimonial. *Id.*

[20] To determine whether a statement is testimonial in nature, we consider

> (1) whether the declarant is describing present or past events; (2) whether there is an ongoing emergency at the time that the statements are made; (3) whether the nature of the questions asked and the responses given were made in an effort to resolve a present emergency; and (4) the degree of formality during the course of the police questioning.

Isom v. State, 31 N.E.3d 469, 483 (Ind. 2015) (citing *Davis*, 547 U.S. at 827). "Determining whether an emergency exists and is ongoing is a 'highly context-dependent inquiry.'" *Young v. State*, 980 N.E.2d 412, 419 (Ind. 2012) (quoting *Michigan v. Bryant*, 562 U.S. 344, 363 (2011)). We look at whether the questioning "is targeted at responding to a call for help where a threat to people is ongoing as compared to" questioning "targeted at establishing past events." *Id.* (citing *Davis*, 547 U.S. at 827). For instance, questions regarding the identity of the shooter and the location of the shooting are "perfectly reasonable inquir[ies] designed to aid" law enforcement in locating the alleged perpetrator. *Collins v. State*, 873 N.E.2d 149, 154 (Ind. Ct. App. 2007).

[21] In Exhibit 3A, Fullerton is describing past events, but those past events occurred just before she spoke with Officer Bustos. As Officer Bustos pulled up to the scene, he received notification that the shooter had not yet been apprehended. Officer Bustos was the first on scene and the first to speak with Fullerton; his questions demonstrate that he was attempting to figure out what

happened, including Fullerton's involvement, and how many victims there were; that is, there was an ongoing emergency that Officer Bustos was attempting to address. The conversation between Fullerton and Officer Bustos was informal and occurred at the scene with Fullerton pointing out specific areas to Officer Bustos as she described the sequence of events and showed him the damage to her vehicle. On these facts, Fullerton's statements as contained in Exhibit 3A were nontestimonial hearsay. Therefore, the trial court did not violate Ross's rights under the Confrontation Clause when it admitted Exhibit 3A.

2. The Trial Court Did Not Abuse Its Discretion by Giving Two Jury Instructions Concerning Sudden Heat

[22] Ross next argues that the trial court abused its discretion by giving Final Instructions 13 and 14 concerning sudden heat. "Ordinarily, 'instructing the jury is a matter within the discretion of the trial court, and we'll reverse only if there's an abuse of that discretion.'" *Gammons v. State*, 148 N.E.3d 301, 303 (Ind. 2020) (alteration omitted) (quoting *Cardosi v. State*, 128 N.E.3d 1277, 1284 (Ind. 2019)). On appeal, we must determine (1) "whether the instruction states the law correctly," (2) "whether it is supported by record evidence," and (3) "whether its substance is covered by other instructions." *Pattison v. State*, 54 N.E.3d 361, 365 (Ind. 2016) (citing *Washington v. State*, 997 N.E.2d 342, 345–46 (Ind. 2013)). We consider jury instructions "as a whole and in reference to each other." *Id.* (quoting *Whitney v. State*, 750 N.E.2d 342, 344 (Ind. 2001)).

[23] Here, the State charged Ross with murder, and Ross requested the jury be instructed on the lesser included offense of voluntary manslaughter. Sudden heat "is a mitigating factor that reduces what otherwise would be murder . . . to voluntary manslaughter." I.C. § 35-42-1-3(b). Thus, for the jury to find Ross guilty of voluntary manslaughter, it had to determine that Ross "knowingly or intentionally" killed Smith but that he did so "while acting under sudden heat." *Id.* § 35-42-1-3(a). The trial court instructed the jury on the statutory definition of voluntary manslaughter. It also gave Final Instructions 12, 13, and 14 concerning "sudden heat."

[24] Final Instruction 12 provided:

> The term "sudden heat" means a mental state which results from provocation sufficient to excite in the mind of the Defendant such emotions as anger, rage, sudden resentment, jealousy, or terror sufficient to obscure the reason of an ordinary person, and as such prevents deliberation and premeditation, excludes malice, and renders the Defendant incapable of cool reflection prior to acting.

Appellant's App. Vol. II at 217. Final Instruction 13 stated:

> Premeditation, unlike sudden heat, is the deliberate formation of an intent to perform a future act, where a defendant has conceivably mulled over in the mind prior to the act. Yet, premeditation may be as instantaneous as successive thoughts, as the precise duration between the inception of intent and killing need not be appreciable to constitute premeditation. Thus, whether premeditation exists is a question whose answer may be reasonably inferred from the particular circumstances of a crime.

Id. at 218. Final Instruction 14 explained:

> If there was any identifiable break in the factual sequence between the onset of the provocation and the commission of the homicide, a jury can reasonably find evidence of deliberation and cool reflection, which together would defeat any claim of sudden heat.

Id. at 219.

[25] Ross challenges only Final Instructions 13 and 14, and he does not argue that they are incorrect statements of law, that they are unsupported by the evidence, or that their substance was covered by other instructions. Instead, Ross contends that Final Instructions 13 and 14 were erroneous because they misled the jury by emphasizing certain facts.

[26] Under the Indiana Constitution, "it [is] the province of the jury to determine the weight to be given . . . each item placed in evidence." *Keller v. State*, 47 N.E.3d 1205, 1208 (Ind. 2016) (alterations in original) (quoting *Woodson v. State*, 542 N.E.2d 1331, 1334 (Ind. 1989)). A jury instruction that "unnecessarily emphasize[s] one particular evidentiary fact, witness, or phase of the case" invades the province of the jury and is therefore erroneous. *Ludy v. State*, 784 N.E.2d 459, 461 (Ind. 2003) (citing *Dill v. State*, 741 N.E.2d 1230, 1232 (Ind. 2001)). For instance, in *Ludy v. State*, the trial court gave the following jury instruction: "A conviction may be based solely on the uncorroborated testimony of the alleged victim if such testimony establishes each element of any crime charged beyond a reasonable doubt." 784 N.E.2d at

460. The Indiana Supreme Court determined that this instruction was misleading to the jury because it "unfairly focuse[d] the jury's attention on and highlight[ed] a single witness's testimony"; expressly directed the jury that it could find the defendant guilty without considering all the evidence, which is a "concept used in appellate review that is irrelevant to a jury's function as fact-finder"; and "us[ed] the technical term 'uncorroborated.'" *Id.* at 461–62. Despite the instruction in *Ludy* being erroneous, the error did not require reversal because it "did not affect the defendant's substantial rights." *Id.* at 463.

[27] Ross specifically claims that Final Instructions 13 and 14 are erroneous because they "unnecessarily highlighted the gap in time between the initial altercation and the shooting." Appellant's Br. at 23. Final Instruction 13 is a general, definitional instruction that did not focus the jury's attention on or otherwise highlight a particular fact, witness, or phase of the case. There was no error in giving Final Instruction 13. By contrast, Final Instruction 14 highlights the period of time between the initial confrontation and the shooting. This instruction also tells the jury that evidence of such a break in time necessarily defeats the sudden heat argument; it does not allow the jury to make this determination for itself. Consequently, Final Instruction 14 invaded the province of the jury and was improper. While there may be a set of facts where this instruction could be appropriate, in this situation with this record, it was not. We stop short of disfavoring this instruction in all situations.

[28] Although the trial court erred by giving Final Instruction 14, that error is harmless.

> Errors in the giving or refusing of instructions are harmless where a conviction is clearly sustained by the evidence and the jury could not properly have found otherwise. *Crawford v. State*, 550 N.E.2d 759, 762 (Ind. 1990); *Stout v. State*, 479 N.E.2d 563, 565 (Ind. 1985); *Battle v. State*, 275 Ind. 70, 77, 415 N.E.2d 39, 43 (Ind. 1981); *Grey v. State*, 273 Ind. 439, 448, 404 N.E.2d 1348, 1353 (Ind. 1980); *Pinkerton v. State*, 258 Ind. 610, 622, 283 N.E.2d 376, 383 (Ind. 1972). An instruction error will result in reversal when the reviewing court "cannot say with complete confidence" that a reasonable jury would have rendered a guilty verdict had the instruction not been given. *White v. State*, 675 N.E.2d 345, 349 (Ind. Ct. App. 1996).

Dill, 741 N.E.2d at 1233.

[29] The jury here found Ross guilty of voluntary manslaughter, so the jury must have determined that the break in time between the confrontation and the shooting did not defeat Ross's claim of sudden heat. Moreover, the evidence in this case, including video footage of the confrontation and shooting, clearly supports the voluntary manslaughter conviction. In the absence of Final Instruction 14, a reasonable jury would have found Ross guilty of at least voluntary manslaughter. Consequently, the trial court's error in giving Final Instruction 14 was harmless.

[30] Ross also asserts that Final Instructions 13 and 14 "create[d] confusion" when read in conjunction with the self-defense instructions "because there is no prohibition against pre-meditated self-defense." Appellant's Br. at 23. In support of this argument, Ross points to several statements made by the State during closing argument in which the State contended the shooting was "a

premeditated attack" and "retaliation" instead of an act of self-defense. Tr. Vol. V at 181. Notably, the trial court's instructions regarding self-defense did not include the terms "sudden heat," "premeditated," "cool reflection," or "deliberation." Additionally, Final Instructions 13 and 14 were, by their plain language, applicable only to the concept of "sudden heat."

Conclusion

[31] In sum, the trial court neither abused its discretion nor violated Ross's rights under the Confrontation Clause by admitting Exhibit 3A, the trial court also did not abuse its discretion by giving Final Instruction 13, and the trial court's error in giving Final Instruction 14 was harmless. We therefore affirm the trial court on all issues raised.

[32] Affirmed.

Bailey, J., and May, J., concur.

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