MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Jordon M. Norton,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 1, 2024

Court of Appeals Case No.
23A-CR-2287

Appeal from the Elkhart Circuit Court

The Honorable Michael A. Christofeno, Judge

Trial Court Cause No.
20C01-2008-MR-5

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

[1] Jordan Norton appeals his conviction and sentence for murder, a felony.[1] We affirm.

Issues

[2] Norton raises the following two restated issues on appeal:

I. Whether the trial court abused its discretion when it ruled that a psychologist's testimony and report were inadmissible in support of Norton's claim of self-defense.

II. Whether Norton's sentence for murder is inappropriate given the nature of the offense and his character.

Facts and Procedural History

[3] On the evening of August 22, 2020, Stephanie Artley ("Stephanie") and David Artley ("David") (collectively, "the Artleys") went to dinner at a restaurant in Elkhart. After dinner, they met up with their friends, Mikel Brown and Tabitha Housley, at Phyl's Corner for drinks. Stephanie's son, Collin Tiemann, was bartending at Phyl's Corner. After a "few hours," the Artleys, Brown, Housely,

[1] Ind. Code § 35-42-1-1.

and Teimann left Phyl's Corner and went to Hardy's Bar. Tr. v. III at 113. They arrived at Hardy's Bar at approximately 11:00. No one in the group was armed.

[4] At Hardy's Bar, Brooke Pixley was tending bar, along with Brooke Valdovinos. Ron McAtee was one of three security guards working that night. McAtee was friends with David, who was a regular patron at Hardy's Bar and sometimes assisted McAtee at closing time. McAtee knew David to be "real easy going," and McAtee never saw David with a gun. *Id*. at 63.

[5] Norton and his wife, Rachel, were also at Hardy's Bar that night. Before arriving at Hardy's Bar, Norton and Rachel had been at My Dad's Place, a bar in Elkhart, where they had had "quite a few drinks." Tr. v. V at 19. An acquaintance had invited Norton and Rachel to go to Hardy's Bar. Norton had never been to Hardy's Bar but had heard it was "a rougher place." *Id*. at 20. Norton and Rachel had left My Dad's Place at approximately 1:30 a.m. on August 23 and had stopped at their home to use the bathroom. At that time, Norton had retrieved his gun and taken it with him to Hardy's Bar. Norton had decided to take the gun for protection because he believed Hardy's Bar was in a "rougher area" and he had a condition called Idiopathic Thrombocytopenic Purpura ("ITP"), which is a blood disorder related to low platelet levels that leads to easy or excessive bleeding. *Id*. at 21.

[6] Anthony Hirsch, a relative of Norton's, was working at Hardy's Bar as a cook on the night of August 22. After Hirsch finished his shift at approximately

11:00 p.m., he left the Hardy's Bar kitchen to shoot pool in the pool area. At some point, Hirsch spoke with Norton near the pool tables. It seemed to Hirsch that Norton was agitated. Norton told Hirsch that, earlier in the evening, Norton had been "escorted out or kicked out" of My Dad's Place. *Id*. at 116. Norton told Hirsch that "he was having a rough night, and nobody in there should be messing with him, or he was gonna mess somebody up." *Id*.

[7] Pixley was serving Norton and Rachel drinks that night. At around 2:30 a.m., Norton refused to tell Pixley whether he was closing his tab or keeping it open, so she placed his card in a card holder to keep it safe and walked away. Norton appeared to be aggressive and intoxicated. Pixley told Valdovinos that she would no longer serve Norton and Rachel because they had called her "a bitch," and at that point Valdovinos took over the job of serving Norton and Rachel. Tr. v. III at 29.

[8] When the last call to order alcohol was announced, Housely, Brown, and the Artleys went up to the bar to get drinks. Norton was seated at the bar next to them. The chair next to Norton was empty because Rachel had gone to the restroom. Norton stated to Housely and Stephanie that they were taking his wife's chair and being disrespectful. Housely and Stephanie told Norton that they were just picking up drinks and that his wife could have the chair back when she returned. However, Norton remained loud and aggressive, so Brown took Stephanie's place at the bar and informed Norton that Brown and his group would be moving after they got their drinks from the bar. As Brown

spoke to Norton, Brown placed his hand on Norton's shoulder in an attempt to "reassure" Norton. *Id*. at 249. Brown was not armed.

[9] David then came over to stand next to Norton. Because of his height, David often had to lean over when speaking with someone. When David was speaking with another person or assisting McAtee at closing time, he often employed a move that Stephanie called the "chicken wing," in which he would place his hands behind his back in a non-threatening manner. *Id*. at 129. That was how David approached Norton—that is, with his hands behind his back, David leaned over to speak to Norton. David was not armed and did not touch Norton. Norton rose from his seat, and Housely believed he was going to leave because he was facing the door.

[10] Valdovinos, who was behind the bar at that time, heard no yelling or threats, and nothing drew her attention to the exchanges involving Norton and the others. Norton did not ask for help from the bar tenders or security, and he did not indicate that he was having problems with another patron. Pixley did not believe the conversation between Norton and the others was a cause for concern. Similarly, McAtee saw no physical contact between David and Norton, and McAtee had no reason to believe there would be violence.

[11] After David and his group obtained their drinks, they began to walk back to their seats. At that point, Norton turned around, removed a gun, aimed it at David, and fired it multiple times. David lunged toward Norton and fell to the floor near the pool table. Norton then stood over David and shot him in the

back while he was face down on the floor. Stephanie, who had been trained as an EMT, heard the first two shots and ran to David, telling him not to roll over. Valdovinos shouted "gun gun gun" and dropped to the floor; she heard six or seven gunshots and then ran to the basement. *Id*. at 39.

[12] McAtee had been outside behind the bar addressing an argument between two other patrons and, as he returned inside, he heard gunshots. McAtee ran towards the scene of the shooting. Another patron had struck Norton, causing him to drop his gun. When McAtee arrived on the scene, he saw Norton's gun on the floor and placed his foot on it, refusing to let anyone clear it from the area and refusing to let Norton regain control of it. Housely called 9-1-1. David was taken to the hospital, where he died from multiple gunshot wounds.

[13] The police recovered from the scene seven spent shell casings and three spent bullet projectiles, all fired from Norton's gun, a Raven Arms .25 caliber handgun, which they also collected. Three more projectiles were found inside David's body during a subsequent autopsy. The officers reviewed the surveillance film from Hardy's Bar and interviewed over thirty witnesses.

[14] The State charged Norton with Count I, murder; Count II, battery by means of a deadly weapon, as a Level 5 felony;[2] and Count III, criminal recklessness, as a

[2] I.C. § 35-42-2-1.

Level 6 felony.[3] The State later amended the murder charge by adding a sentencing enhancement penalty for use of a firearm.[4]

[15] Norton's first jury trial took place on June 6, 2022, through June 11, 2022. The jury found Norton guilty of Counts II and III but was unable to reach a verdict regarding the murder charge. The trial court entered judgments of conviction on Counts II and III, for which Norton received an aggregate sentence of seven years.

[16] The court held a new trial on the murder charge on August 7, 2023. Before and during his murder trial, Norton sought to admit testimony and reports through Dr. Jeff Burnett, who has a Ph.D. in psychology. The trial court ruled the evidence inadmissible on the ground that evidence of mental disease or defect is only admissible in Indiana in cases involving the insanity defense or effects-of-battery statute, neither of which were raised by Norton. However, Norton testified in his own defense regarding his mental health disorders and his actual belief that he was in danger of being killed by David.

[17] The jury found Norton guilty of murder. Following a sentencing hearing on September 17, 2023, the trial court sentenced Norton to sixty-three years for murder, plus twelve years for the firearm penalty enhancement, to be served consecutively to the aggregate seven-year sentence for Counts II and III. In

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[3] I.C. § 35-42-2-2.

[4] I.C. § 35-50-2-11.

enhancing the sentence for murder from the advisory fifty-five years to sixty-three years, the trial court cited the following aggravating factors: (1) Norton's prior criminal history, consisting of one misdemeanor conviction, three felony convictions, and four juvenile adjudications; (2) Norton was on probation in two other causes when he committed the murder; (3) Norton was on supervision in the United States District Court when he committed the murder; (4) Norton failed to appear for two court proceedings; (5) Norton's substance use and abuse; (6) Norton's high-risk to reoffend; (7) the failure of past sanctions and Norton's failure to take advantage of programs offered through alternative sanctions in the past; (8) Norton "attempted to flee the scene after killing David;" (9) Norton's lack of remorse; and (10) the nature and circumstances of the crime, including the facts that David was unarmed, Norton fired seven shots, Norton stood over his victim and shot him in the back, and Norton possessed his gun illegally. Appealed Order at 9. This appeal ensued.

Discussion and Decision

Admission of Evidence

[18] Norton challenges the trial court's determination that Dr. Burnett's testimony and report were inadmissible to support his self-defense claim. We review a trial court's decision concerning the exclusion or admission of evidence for an abuse of discretion. *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021). A trial court abuses its discretion when its decision is clearly against the logic and

effects of the facts and circumstances before the court, or the court has misinterpreted the law. *Abbott v. State*, 183 N.E.3d 1074, 1083 (Ind. 2022).

[19] The self-defense statute provides, in relevant part, that a person is justified in using deadly force and does not have a duty to retreat if the person "reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person…." Ind. Code § 35-41-3-2(c).

> To employ self-defense, "a defendant must satisfy both an objective and subjective standard: he must have actually believed deadly force was necessary to protect himself, and his belief must be one that a reasonable person would have held under the circumstances." *Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007) (quoting *Weston v. State*, 682 P.2d 1119, 1121 (Alaska 1984)). The phrase "reasonably believes," as used in the self-defense statute, requires both subjective belief that force was necessary to prevent serious bodily injury and that such actual belief was one that a reasonable person would have under the circumstances. *Littler*, 871 N.E.2d at 279. The second part of this analysis requires the jury to consider "what a reasonable person would believe if standing in the shoes of the defendant." *Washington v. State*, 997 N.E.2d 342, 349 (Ind. 2013).

Parssarelli v. State, 201 N.E.3d 271, 276 (Ind. Ct. App. 2023), *trans. denied*.

[20] In support of his self-defense claim, Norton sought to introduce testimony and a report from a psychologist regarding Norton's mental health. The report also discussed Norton's medical condition of ITP to the extent it affected Norton's psychological condition; specifically, his heightened fear of being assaulted or in a physical fight. However, as Indiana's appellate courts have made clear,

expert evidence of a "mental disease or defect" is only admissible to show either an insanity defense[5] or a defense based upon the "effects-of-battery" statute.[6] *Id.* at 277. In *Marley v. State*, 747 N.E.2d 1123 (Ind. 2001), our Supreme Court stated, "as a general proposition, Indiana has long held that a defendant may not submit expert evidence relating to mental disease or defect except through an insanity defense." 747 N.E.2d at 1128. In *Higginson v. State*, 183 N.E.3d 340 (Ind. Ct. App. 2022), a panel of this Court noted that the legislature has created a limited exception to the general rule discussed in *Marley*; for cases where a self-defense claim is raised under the effects-of-battery statute, the defendant may present expert evidence of his or her psychological condition. 183 N.E.3d at 344.

[21] However, even more recently, in *Passarelli*, a panel of this Court specifically held that expert evidence[7] of a psychological condition is not admissible in support of a self-defense claim other than one brought under the effects-of-battery statute. We noted that "*Higginson* was narrowly tailored to address only effects-of-battery cases, [and] 'evidence which is clearly encompassed by the

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[5] *See* I.C. § 35-41-3-6.

[6] *See* I.C. § 35-41-3-11 (allowing a defendant to submit, within an insanity or self-defense claim, evidence that the defendant was at the time of the alleged crime 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).

[7] We note that only expert evidence regarding a defendant's mental disease or defect is excluded in a standard self-defense claim, not lay testimony such as the defendant's own or other witnesses' statements regarding defendant's mental health. *See Littler*, 871 N.E.2d at 278-79. In the instant case, Norton was permitted to testify about his own mental health and how it affected his actions.

traditional bounds of an insanity defense is still not suitable for a self-defense claim.'" 201 N.E.3d at 278 (quoting *Higginson*, 183 N.E.3d at 345).

[22] Thus, the "reasonable person" standard in self-defense claims other than effects-of-battery cases does not ask what a person with the defendant's specific background, physical health, mental health, etc. would do under the circumstances; rather, it asks only what "an ordinary reasonable person" would do. *Passarelli*, 201 N.E.3d at 278-79. And "the standard of what constitutes an 'ordinary man' does not change on a case-by-case basis." *Id*. at 279. Thus, in *Passerelli*, expert evidence that the defendant suffered from Post-Traumatic Stress Disorder "and react[ed] more harshly to stressful situations than an ordinary person [was] inadmissible to support his claim of self-defense." *Id*. at 278. Norton's proffered expert evidence is similarly inadmissible in his self-defense claim that does not raise the effects-of-battery statute or an insanity defense.

[23] But Norton asserts that, unlike in *Passerelli*, he does not wish to admit the expert evidence regarding his psychological condition to prove what an objective, reasonable person would do, but only to prove the subjective prong of the self-defense claim, i.e., his actual, subjective belief that deadly force was necessary to protect himself. However, as this court noted in *Higginson*, "[i]n self-defense claims, the ultimate question of whether a specific defendant acted reasonably in responding to a perceived threat of violence still belongs to the factfinder." 183 N.E.3d at 345. Thus, expert evidence of a defendant's psychological condition, when admissible in an effect-of-battery case, is only admissible to

show "the objective component of a person's reasonable belief that they were under threat of imminent harm, given their [mental condition], but *not [their] specific subjective belief*." *Id*. at 345-46 (emphasis added) (citing *Littler*, 871 N.E.2d at 280).

[24] To hold otherwise would allow an expert witness to encroach upon the jury's exclusive province to determine the ultimate facts. *Id*. Thus, in *Higginson*, we held that the expert witness in a self-defense effects-of-battery case was permitted to testify "as to evidence which relates to the general reasonableness of one's apprehension of fear, given the psychological trauma which comes from battery." *Id*. at 345. But the expert was not permitted to testify about the ultimate factual determination that the defendant herself was, "given the psychological trauma she suffered due to her battery, reasonable in using justifiable force." *Id*. Thus, even if this was a self-defense claim raising the effects-of-battery statute where expert evidence regarding a defendant's psychological condition was permissible, such evidence would be permitted only to show what a reasonable person in the same circumstances would believe, not the ultimate fact of Norton's subjective belief.

[25] The trial court did not abuse its discretion when it excluded expert evidence of Norton's mental condition.

Appellate Rule 7(B)

[26] Norton contends that his sentence is inappropriate in light of the nature of the offense and his character. Article 7, Sections 4 and 6 of the Indiana

Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration in original). This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B); *see also Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[27] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to "leaven the outliers." *Id.* at 1225. Whether we regard a sentence as inappropriate at the end of the day 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." *Id.* at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court "prevail[s] 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).

[28] We begin by noting that the sentencing range for murder is imprisonment for a term of between forty-five to sixty-five years, with an advisory sentence of fifty-five years. I.C. § 35-50-2-3. The advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007). Norton was sentenced to sixty-three years, which is above the advisory sentence but still within the sentencing range.

[29] When considering the nature of the offense, we look at the defendant's actions in comparison to the elements of the offense. *Cannon v. State*, 99 N.E.3d 274, 280 (Ind. Ct. App. 2018), *trans. denied*. "The nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation." *Zavala v. State*, 138 N.E.3d 291, 301 (Ind. Ct. App. 2019) (quotation and citation omitted), *trans. denied*. Here, the record discloses that Norton shot a person who had not threatened him, had not touched him, was not in possession of a weapon, and had turned and begun to walk away from Norton. Norton nevertheless shot David repeatedly. And, while David was wounded, unarmed, and laying face-down on the floor, Norton stood over David and shot him again in the back. We cannot say Norton's offense was accompanied by any apparent restraint or regard for others. *See Stephenson*, 29 N.E.3d at 122.

[30] Nor does Norton's character warrant a sentence revision. Norton has a criminal history that includes a combination of juvenile delinquency, misdemeanor, and felony offenses—the latter of which includes violent offenses

and offenses involving a firearm. *See Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citation omitted) (observing that even a minor criminal history reflects poorly on a defendant's character). In addition, Norton was "on supervision" through the federal courts for numerous federal crimes at the time he committed murder. App. v. IV at 47. Yet, Norton showed no remorse for his crime, but rather emphasized that he and his family were also "victims." *Id.* at 49. And there was no evidence that Norton has "substantial virtuous traits or persistent examples of good character." *Stephenson*, 29 N.E.3d at 122. Norton has failed to demonstrate that his sentence is inappropriate in light of his character.

[31] There is no compelling evidence portraying in a positive light the murder Norton committed or his character. Therefore, we cannot say that his sentence for murder is inappropriate in light of the nature of the offense and his character.

Conclusion

[32] The trial court did not abuse its discretion when it excluded Norton's proffered expert testimony regarding his psychological condition. And his sentence for murder is not inappropriate in light of the nature of his offense and his character.

[33] Affirmed.

Crone, J., and Pyle, J., concur.

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