IN THE

Indiana Supreme Court

Supreme Court Case No. 20S-LW-430

Ryan Ramirez,
Appellant (Defendant)

–v–

State of Indiana,
Appellee (Plaintiff)

Argued: May 27, 2021 | Decided: September 23, 2021

Appeal from the Madison Circuit Court
No. 48C04-1808-MR-1964
The Honorable David A. Happe, Judge

On Direct Appeal

Opinion by Chief Justice Rush

Justices David, Massa, Slaughter, and Goff concur.

Rush, Chief Justice.

A jury convicted Ryan Ramirez of murdering twenty-three-month-old P.H. and neglecting three-year-old R.H., resulting in serious bodily injury. After finding two statutory aggravators beyond a reasonable doubt, the jury recommended life imprisonment without the possibility of parole for the murder conviction; and the trial court adopted that recommendation. In this direct appeal, Ramirez now argues multiple trial-court errors in admitting certain evidence, excluding other evidence, and giving a supplemental jury instruction. He also challenges his life without parole sentence. We conclude that none of the alleged errors warrant reversal and affirm in all respects.

Facts and Procedural History

Kayla Hudson met and began dating Ryan Ramirez in January of 2018. Two months later, Hudson and her toddlers, R.H. and P.H., moved with Ramirez into a room at the Red Roof Inn.

Klarissa Manuel babysat for Hudson's toddlers every day and, as Hudson and Ramirez's relationship progressed, noticed the children coming to her with injuries. R.H. would be covered in bruises on his arms, legs, back, and the back of his neck where it looked like he had either been hit or grabbed. And R.H. became very protective of P.H., getting in front of her whenever anyone tried to pick her up. On one occasion, Manuel watched Ramirez hit R.H. in the head with a wiffle ball bat. She also saw that the children were afraid of Ramirez and worried Ramirez was abusing them.

Around June, Ramirez quit working due to an injury and took over watching R.H. and P.H. while Hudson worked, spending a lot of time alone with the toddlers. He often took them over to his parents' house where he spent the days and some nights.

That summer, Hudson observed her children's physical condition deteriorating and saw they were scared of Ramirez. She noticed R.H. had bruising and black eyes, while P.H. had bruising on her stomach and arms

and bruises that looked like fingerprints covering her leg. Hudson confronted Ramirez and suggested finding another babysitter to watch the toddlers; but he just accused her of not trusting him, so Hudson didn't press further.

On July 27, in the early evening, Ramirez dropped Hudson off at work. P.H. was alert and told Hudson, "I love you." Ramirez then took the children to his parents' home. When Hudson got off work at 10:46 p.m. and called Ramirez to pick her up, he told her he was changing P.H.'s diaper. When Ramirez showed up fifteen minutes later, P.H. appeared to be asleep in her car seat. Ramirez carried her into the hotel and placed her in her Pack 'n Play while Hudson brought R.H. inside.

Hudson noticed that R.H. had new bruises on his arms and leg and a black eye. So, she went to Walmart to purchase bruise cream and tea bags to cover the bruises and reduce the swelling. When Hudson returned, she applied the cream and a tea bag, put R.H. to bed, and left again—without checking on P.H.—to pick up fast food and cigarettes. And when she returned again, she ate, smoked a cigarette, and watched Netflix with Ramirez on his phone before going to sleep.

When Hudson finally checked on her toddler daughter at 6:00 a.m., P.H. was cold and stiff. Hudson started screaming, and Ramirez told her to be quiet and "that it was okay." Hudson took P.H. to the bathroom, where she tried to wake her by splashing water on her. Hudson and Ramirez next tried to give CPR to P.H. When that didn't revive her, Hudson told Ramirez she was going to take P.H. to the hospital. But Ramirez cautioned her that they needed to get their "story straight." Hudson felt like Ramirez "had done something" and wanted her "to back him up." Neither Ramirez nor Hudson called 911. Ramirez took R.H. to his parents' house, while Hudson drove P.H. to the hospital.

Dr. Soper examined P.H. in the emergency room after Hudson carried her in. He was unable to resuscitate her and couldn't place a breathing tube down her throat because rigor mortis had set in. Dr. Soper also observed livor mortis—blood and fluids settling from P.H. having been laid on her back shortly before or after she died and remaining in that position for some time.

Dr. Smith, a pathologist, conducted P.H.'s autopsy. He testified that P.H. exhibited a skull fracture, a large scalp hemorrhage, and bleeding due to trauma in her brain. Her body was covered with numerous bruises; her liver was torn in two places due to a severe impact to the front of her abdomen; and almost half the blood in her body was found in her abdominal cavity. Dr. Smith said that a person would die within hours from that kind of internal bleeding, and he determined that P.H.'s ultimate cause of death was "multiple blunt force injuries" with liver lacerations and intra-abdominal hemorrhage. The Madison County Deputy Coroner concluded that the manner of P.H.'s death was homicide.

R.H. was later taken from Ramirez's parents' house to the hospital, where Dr. Pugh, an E.R. physician, examined him. R.H. had raccoon eyes, meaning bruising to his eye sockets; bleeding in the white of his left eye; bruises of different ages; and a distended abdomen that, along with elevated liver enzymes, raised a concern about possible internal injuries. Dr. Pugh found that R.H.'s distended abdomen and elevated enzymes were caused by injuries that occurred less than a week earlier. He concluded R.H.'s injuries were caused by child abuse and transferred him to Riley Children's Hospital.

At Riley, Jamie Haddix, a forensic medical examiner, evaluated R.H. and found abrasions on his genitals, which she testified were consistent with trauma. Dr. Thompson, a child abuse pediatrician at Riley, also evaluated R.H. after receiving a call from his Department of Child Services (DCS) caseworker requesting an evaluation. Dr. Thompson determined that R.H. had extra fluid in his abdominal cavity and a cyst on his liver, along with a broken arm and a broken rib. In total, he had four fractures in different stages of healing. She further observed bruising on R.H.'s genital area, places on R.H.'s head where it looked like his hair had been pulled out, and injuries inside his ear. Like Dr. Pugh, Dr. Thompson concluded that R.H.'s injuries were consistent with child abuse—not self-inflicted.

Police later obtained a search warrant to photograph/videotape Ramirez's parents' property. While executing the warrant, Detective Stanton with the Anderson Police Department noticed a security camera

on the outside of the front of the house. Then, as the officers passed through the living room, Detective Stanton noticed a computer monitor underneath a table. On the monitor, the detective saw live video of the house's driveway with a police vehicle parked on it, though the date and time stamps were off. After noticing the monitor was attached to a recording device, Detective Stanton seized the recorder but obtained a search warrant before examining its contents.

The surveillance system footage showed Ramirez's van pulling up to his parents' driveway, where he's then seen twice making a punching motion into the side of the vehicle R.H. later emerges from. Ramirez then pulls P.H. from the other side of the van, and P.H. rubs her head while she and R.H. follow Ramirez up the driveway. Later, at 10:07 p.m., the video shows Ramirez carrying what appears to be P.H. to the van and then returning to the house. Two minutes later, he walks R.H. to the van, circles it, reaches back to where P.H. was seated, gets in, and drives away.

In the days following P.H.'s death, Ramirez was charged with both murder and neglect of a dependent resulting in serious bodily injury. After the recorder was seized, he claimed that its seizure was unconstitutional and moved to suppress the security system footage, which the trial court denied. He later raised a continuing objection to the video's admission at trial. Ramirez also sought to introduce evidence under Rule 404(b) of Hudson's prior bad acts involving her children, suggesting that her actions had caused their injuries. The trial court denied this request.

During deliberations, the trial court issued a supplemental jury instruction over Ramirez's objection in response to a question from the jury. Fifteen minutes later, the jury found Ramirez guilty on both counts. And it recommended a sentence of life without parole (LWOP) for the murder conviction, finding that the State showed beyond a reasonable doubt that the torture and murder-of-a-child statutory aggravating circumstances were satisfied. Ramirez was sentenced to LWOP for P.H.'s murder along with a consecutive, fourteen-year sentence for neglect of R.H. resulting in serious bodily injury.

Ramirez filed this direct appeal.

Discussion and Decision

Ramirez raises multiple issues on appeal. Regarding admission of the surveillance system footage, we hold that seizing the recorder did not violate the federal or state constitutions. And we conclude the trial court did not abuse its discretion by excluding evidence of Hudson's prior bad acts involving her children, nor were Ramirez's substantial rights affected.

As to the supplemental jury instruction the trial court gave during deliberations, we emphasize that the decision to give a supplemental instruction should be made with great caution. But consistent with Indiana Code section 34-36-1-6, we no longer require an error or legal lacuna—a gap—for a trial court to supplement final instructions in response to a jury's question on a point of law. Thus, the instruction's flawed wording is not reversible error. And Ramirez waived any argument about how the instruction was given.

Finally, we conclude that the statutory LWOP aggravators were sufficiently supported; the sentence did not violate Article 1, Section 16 of the Indiana Constitution; and revision is not warranted under Indiana Appellate Rule 7(B).

I. The trial court properly admitted the security camera footage.

Ramirez first argues the trial court abused its discretion by admitting into evidence footage obtained from the home-security-system recorder detectives seized while executing a warrant to "photograph and/or videotape" his parents' home. While we assess claims relating to admitting or excluding evidence for abuse of discretion, to the extent those claims implicate constitutional issues, we review them de novo. *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). Here, Ramirez claims the evidence shouldn't have been admitted at trial because the recorder's warrantless seizure violated the Fourth Amendment to the United States

Constitution and was unreasonable under Article 1, Section 11 of the Indiana Constitution.[1]

We conclude the exigent-circumstances exception justified the warrantless seizure of the recorder under the Fourth Amendment, and that under the Indiana Constitution, the seizure was likewise reasonable under the totality of the circumstances. And even if the trial court had abused its discretion, admitting the footage was harmless beyond a reasonable doubt, given the strength and quality of other, independent evidence of Ramirez's guilt.

A. Exigent circumstances justified the recorder's seizure under the Fourth Amendment.

Ramirez argues that exigent circumstances did not justify the recorder's seizure under the Fourth Amendment because nothing indicated the recorder's contents were in danger of being destroyed, given that he was already in custody when the recorder was seized.[2]

The Fourth Amendment to the U.S. Constitution generally prohibits warrantless searches and seizures of personal property "subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). One of those exceptions is when exigent circumstances make law enforcement needs so compelling that a warrantless search or seizure is objectively reasonable, *Carpenter v. United*

[1] Importantly, Ramirez never challenged the search of the recorder's contents, which was conducted pursuant to a warrant from a neutral magistrate.

[2] In denying Ramirez's suppression motion, the trial court considered the "portable and easily destroyed nature of digital storage media," but it ultimately rested its conclusion on the plain-view doctrine. And the State, on appeal, does not argue that the exigent-circumstances exception applied. We nonetheless consider the exception because we may affirm the trial court's ruling on any basis the record supports, even if that theory was not relied upon by the court below. *Benham v. State*, 637 N.E.2d 133, 138 (Ind. 1994).

States, 138 S. Ct. 2206, 2222 (2018)—such as the "imminent destruction of evidence," *Peters v. State*, 888 N.E.2d 274, 278 (Ind. 2008), *trans. denied*.

In determining whether the exigent-circumstances exception applies, courts look to the totality of the circumstances to decide whether police "faced an emergency that justified acting without a warrant." *Missouri v. McNeely*, 569 U.S. 141, 149 (2013). Because a seizure affects only a defendant's possessory interests, whereas a search impacts privacy interests as well, courts have also concluded that a certain exigency may justify a warrantless seizure of a container but not a warrantless search of its contents. *See, e.g.*, *United States v. David*, 756 F. Supp. 1385, 1392–93 (D. Nev. 1991) (concluding that exigent circumstances justified the seizure but not the search of a computer).

Here, under the totality of the circumstances, the detective's belief that the recorder's contents were in danger of being imminently destroyed was objectively reasonable. When the recorder was seized, law enforcement officers were still establishing a timeline of events leading up to P.H.'s death and had reason to believe Ramirez brought P.H. to his parents' house the night before she died. Detective Stanton, who installs security systems, was familiar with the recorder's brand and model. And he testified at trial that, when officers notice a surveillance system that they believe contains evidence, they "try to secure that video as soon as possible to keep somebody from writing over it or erasing it." Officers feared such destruction of evidence could happen here. While executing a warrant to photograph and videotape Ramirez's parents' home, Detective Stanton noticed the surveillance system, which was displaying live video of the home's driveway. Believing the recorder contained "potentially fleeting evidence" that was "clearly critical" to the investigation, the detective secured it while he applied for a search warrant to prevent its contents from being tampered with or destroyed.

The officers did not know at the time that the surveillance system belonged to Ramirez—who was already in custody—and not his parents. Ramirez's parents were present when the officers executed the initial warrant in their home and were asked about the surveillance system once officers realized that it could be valuable to their investigation. Detective

Stanton said at the suppression hearing that Ramirez's parents had told him they "didn't know anything about" the recorder and "didn't really know how to use it." But Detective Stanton was not required to take them at their word. He testified that he seized the recorder because he believed it to be "fleeting evidence." He said that, had the officers left Ramirez's parents' house to obtain a warrant for it, they may have returned to discover that "the recorder's no longer there."

If the recorder had been left in the home, Ramirez's parents or anyone else with access to the device—either in person or remotely—could have tampered with it, altering the footage it contained or perhaps even destroying the recorder itself. *See United States v. Turner*, 650 F.2d 526, 528 (4th Cir. 1981) (listing the "ready destructibility" of evidence as a helpful factor in determining whether exigent circumstances existed). So, to prevent the recorder from being "destroyed, taken, [or made] unavailable," the detective decided to seize it until he "could get a search warrant to view" its contents. *See State v. Carroll*, 778 N.W.2d 1, 11–12 (Wis. 2010) (concluding that exigent circumstances justified a detective's continued possession of the defendant's cellphone while he sought a warrant because the incriminating information the phone contained otherwise could have been deleted).

Importantly, Ramirez had already left the recorder in his parents' care, so the intrusion into his possessory interests here was slight. *See United States v. Place*, 462 U.S. 696, 705 (1983) (noting that the "intrusion on possessory interests occasioned by a seizure of one's personal effects can vary both in its nature and extent," such as when a seizure is "made after the owner has relinquished control of the property to a third party"). And Ramirez's privacy interests were not adversely affected, as law enforcement obtained a search warrant before reviewing the recorder's footage. In sum, the State has shown that law enforcement had a compelling need to secure the recorder before obtaining a warrant to search it—making the seizure objectively reasonable and thus justified under the exigent-circumstances exception. *See Carpenter*, 138 S. Ct. at 2222.

We now move on to Ramirez's state constitutional claim.

B. The recorder's seizure did not violate Article 1, Section 11 of the Indiana Constitution.

Although Article 1, Section 11 of our state's constitution is worded nearly identically to its federal counterpart, we interpret it independently and ask whether the State has shown that a particular search or seizure was reasonable based on the totality of the circumstances. *Hardin v. State*, 148 N.E.3d 932, 942 (Ind. 2020). In doing so, we employ the framework provided in *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). We evaluate the reasonableness of a law enforcement officer's search or seizure by balancing three factors: "1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." *Id.* at 361.

We begin with the degree of suspicion; and when evaluating this factor, we consider all the information available to the officer at the time of the search or seizure. *Hardin*, 148 N.E.3d at 943. Here, law enforcement had information that Ramirez took the children to his parents' house after dropping Hudson off at work, hours before P.H.'s death. While executing the initial warrant at the property, the officers were still trying to establish a timeline of events leading up to P.H.'s death; and Detective Stanton saw the recorder connected to a monitor displaying live surveillance system footage with a clear view of the home's driveway. He believed the footage to be "clearly critical" to the investigation "to show that Mr. Ramirez might have showed up with the children" and "potentially corroborate that somebody showed up or somebody left at a certain time" by playing back the video recording. Although the system was not actively displaying recorded footage of Ramirez with the children when the recorder was seized, the officers reasonably thought the footage may show the last time P.H. was seen alive. So, the degree of suspicion here was high.

We next consider the "degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities." *Litchfield*, 824 N.E.2d at 361. And we evaluate this factor from the defendant's perspective. *Hardin*, 148 N.E.3d at 944. In doing so, courts consider the intrusion into

both a defendant's physical movements and privacy, focusing on how officers conducted the search or seizure. *Id.* at 944–45. Ramirez was already incarcerated when the recorder was seized, so his physical movements weren't further curtailed. *Id.* at 946; *see also Hobbs v. State*, 933 N.E.2d 1281, 1287 (Ind. 2010). And as we discussed above, Ramirez's privacy interests were not impacted because the officers obtained a search warrant before viewing the recorder's footage. All in all, the degree of intrusion was low.

Finally, we consider the extent of law enforcement needs. *See Litchfield*, 824 N.E.2d at 361. Courts examine not only the needs of officers "to act in a general way," but also officers' needs "to act in the particular way and at the particular time they did." *Hardin*, 148 N.E.3d at 946–47. Detective Stanton believed the footage to be "fleeting evidence" and was concerned that it would be compromised if the officers left Ramirez's parents' house to obtain a warrant. Given that Ramirez's parents were not detained and that the electronically stored footage could have been easily destroyed, the detective's concern was reasonable and law enforcement needs were high.

All three *Litchfield* factors weigh in the State's favor. We thus conclude that seizing the recorder was reasonable under the totality of the circumstances and did not violate Article 1, Section 11 of the Indiana Constitution.

C. Admitting the footage was harmless beyond a reasonable doubt because Ramirez's convictions are independently supported by overwhelming evidence.

Ramirez further argues that, if the recorder was improperly seized, the footage's admission was reversible error because "the footage was key to the State's case." The State responds that, even if the recorder's seizure were unconstitutional, any error in the admission of the recorder's footage was harmless beyond a reasonable doubt. The State claims that, because Ramirez's convictions were supported by "strong independent evidence," the surveillance footage was "merely cumulative of the other properly admitted evidence of Ramirez's guilt." We agree—even if the recorder

had been improperly seized, the admission of its footage was harmless beyond a reasonable doubt.

"We will conclude that a constitutional error resulted in prejudice unless we are 'able to declare a belief that it was harmless beyond a reasonable doubt.'" *Zanders v. State*, 118 N.E.3d 736, 741 (Ind. 2019) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). When determining whether the admission of evidence was harmless, we "first identify the allegedly improper evidence, then evaluate its significance in view of all the other evidence that was properly presented." *Id.* at 743–44.

Though the jury was specifically told it could not consider the footage as evidence of Ramirez's murder charge, it was allowed to consider the video as evidence of his neglect of a dependent charge. And the State claimed that the footage was probative of that offense. During opening argument, the prosecutor told the jury it would see Ramirez "[o]n camera, twice, savagely beating a child" and that the video was "direct evidence" of that crime; during closing argument, the State again referenced the video, saying Ramirez was "punching R.[H.] who we know is in that car seat."

But the surveillance footage, while disturbing, was far from the only evidence supporting Ramirez's convictions. Klarissa Manuel, the children's babysitter, testified that their physical and emotional state changed significantly after Ramirez's arrival. They started showing up with unusual bruises, which became progressively worse. And Manuel said the toddlers were afraid of Ramirez, who she once saw hit R.H. in the head with a wiffle ball bat. That summer, Hudson also noticed that her children feared Ramirez and observed a negative change in their condition. P.H. had bruises that looked like fingerprints, "like somebody had grabbed her leg." And R.H. "would always have black eyes" or bruising on an arm or leg.

As the children's primary caregiver, Ramirez was solely charged with watching them while Hudson worked; and Ramirez—not Hudson—watched them during the hours surrounding P.H.'s death. The State's evidence showed that P.H. was alive and alert before Hudson left for work, and Hudson did not check on her daughter after she returned.

Detective Carroll testified that he was able to independently verify Hudson's timeline and whereabouts that evening. The following morning, when Hudson found P.H. dead, she panicked and told Ramirez she was taking her unresponsive daughter to the hospital. But Ramirez told Hudson to be quiet, "that it was okay," and that they needed to get their "story straight."

The State also presented expert testimony that R.H. could not have caused P.H.'s extensive injuries, as Ramirez initially suggested; and R.H.'s injuries were caused by a "[s]ignificant amount of force" and not self-inflicted. By the time P.H. arrived at the emergency room, rigor mortis had already set in firmly enough that a breathing tube could not be inserted down her throat. Livor mortis was also already visible on P.H.'s back, meaning that she had lain on her back for some time after she died. And P.H.'s entire body was covered with various stages of bruising, including bruises consistent with blunt force trauma to her chest. P.H. also suffered blunt force impacts to her extremities; her skull was fractured with a deep scalp hemorrhage. Patches of hair were missing from her head, and she also had injuries all over her face, including hemorrhages in both eyes. Her liver was lacerated in two places, causing her to internally bleed to death within hours.

When R.H. was taken to the hospital, he presented with bruising across his entire body, raccoon eyes, elevated liver enzymes, muscle damage from blunt force trauma, and a distended abdomen. R.H. had petechiae in both eyes, indicating he had undergone significant head trauma or had been strangled. He also had lacerations on his lip and right eyebrow, injuries on the inside of his ear, and abrasions caused by trauma to his testicles and scrotum. X-rays showed R.H. had four fractures in various stages of healing. And, like P.H., he was missing patches of hair. Multiple doctors concluded R.H.'s injuries were caused by child abuse.

Given the strength and overwhelming quantity of other, independent evidence supporting Ramirez's guilt, we conclude that, even if the recorder's seizure had been improper, the footage's admission was harmless beyond a reasonable doubt.

We now address Ramirez's assertion that the court improperly excluded certain evidence at trial.

II. Any error from the trial court excluding evidence of Hudson's prior bad acts did not prejudice Ramirez's substantial rights.

Ramirez argues that the trial court abused its discretion when it barred him from introducing evidence of Hudson's prior bad acts involving her children, depriving him of a meaningful opportunity to present a complete defense. We conclude there was no abuse of discretion in excluding the evidence, and any error would have been harmless.

Evidence of an individual's prior bad acts is generally inadmissible "to prove a person's character in order to show that on a particular occasion the person acted in accordance with" that character. Ind. Evidence Rule 404(b)(1). But in a criminal case, this evidence "may be admissible for another purpose" under Rule 404(b)(2), such as proving the identity of the person who committed the alleged offense by showing, for example, they had some sort of unique modus operandi. Evid. R. 404(b)(2); *Garland v. State*, 788 N.E.2d 425, 430 (Ind. 2003).

Before trial, Ramirez asked the trial court to allow him to present three pieces of evidence: (1) evidence of three interactions with DCS; (2) "bruising, poor appearance, and injuries" the children showed before he began dating Hudson; and (3) the fact that Hudson made conflicting statements explaining these injuries. One such injury was a buckle fracture P.H. suffered in 2017—a year before her death. Ramirez specifically argued that this evidence tended to negate his guilt because R.H. had suffered the same type of fracture here. The court preliminarily ruled that the evidence was inadmissible under Evidence Rule 404(b) because no evidence "establishes these are signature crimes or other bad acts that really establish identity in the way that's important." It also concluded that there was not "enough evidence of another appropriate purpose" under the Rule.

We first note that much of the evidence Ramirez wanted to introduce was in fact admitted at trial. Manuel testified that she called DCS three times in the past with concerns about Hudson's parenting. And she described seeing some bruises on the children before Ramirez entered their lives. Ramirez also cross-examined Hudson about her statements to the police explaining her children's injuries, and she admitted to telling a detective that she had "spank[ed] them so hard to leave a mark" and had spanked R.H. "excessively."

But Ramirez was not allowed to present evidence at trial about P.H.'s 2017 buckle fracture, which the trial court deemed "too remote"—and it did not abuse its discretion by excluding this evidence. A defendant may introduce evidence of other persons' prior bad acts to show identity under Rule 404(b) if the crimes are so "strikingly similar" that one can say with reasonable certainty that one and the same person committed them. *Garland*, 788 N.E.2d at 431. Here, in seeking to admit the evidence, Ramirez's counsel said "there could be speculation" about whether Hudson caused the injury. At trial, Manuel admitted that she wasn't sure what caused the 2017 fracture. And Hudson testified that the fracture was caused by P.H. and R.H. "wrestling around." The standard for a defendant to introduce evidence of identity spelled out in *Garland* was not satisfied because Ramirez did not demonstrate that the 2017 buckle fracture was evidence of a crime or was caused by Hudson specifically. And the trial court properly concluded that Ramirez failed to show "enough evidence of another appropriate purpose" under Rule 404(b).

We further conclude that, even if this evidence should have been admitted under Rule 404(b), its exclusion was harmless because its probable impact on the jury in light of the other evidence was so minor that Ramirez's substantial rights were not prejudiced. *Rohr v. State*, 866 N.E.2d 242, 246 (Ind. 2007). As discussed earlier, Manuel testified that the children were afraid of Ramirez; their condition deteriorated only after Hudson started dating him; and she worried he was abusing them. The State's evidence also showed that Ramirez alone was responsible for watching P.H. before her death. Given the overwhelming amount of independent evidence showing Ramirez—not Hudson—killed P.H., the jury was unlikely to have appreciably weighed P.H.'s previous buckle

fracture in Ramirez's favor. *See Williams v. State*, 714 N.E.2d 644, 652 (Ind. 1999).

III. The supplemental jury instruction does not warrant reversal.

Ramirez next argues the trial court committed reversible error by supplementing the jury's instructions on what the State had to prove to find him guilty of murder. We review the "trial court's manner of instructing the jury for an abuse of discretion." *Inman v. State*, 4 N.E.3d 190, 201 (Ind. 2014) (citing *Cline v. State*, 726 N.E.2d 1249, 1256 (Ind. 2000)).

Before deliberations, the trial court gave this jury instruction on murder:

> In this case, the State of Indiana has charged the Defendant as follows: Count I, Murder. That charge, omitting formal parts, reads as follows: On or about July 28, 2018, in Madison County, State of Indiana, Ryan Ramirez did knowingly or intentionally kill another human being, to wit: P.H. . . . The crime of Murder is defined as follows: A person who knowingly or intentionally kills another human being commits Murder, a Felony. Before you may convict the defendant of Murder as charged in Count I, the State must have proved each of the following beyond a reasonable doubt: The defendant; knowingly or intentionally, killed, P.H., a human being. If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of Murder, a Felony, as charged in Count I. . . . "Intentionally" is defined by statute as follows: A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so. "Knowingly" is defined by statute as follows: A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

Then, after a few hours of deliberation, the jury sent the trial court a question:

> Is knowingly or intentionally causing harm that results in death constitute [sic] murder, the same as Instruction Number 4, "A person who knowingly or intentionally kills another human being commits murder, a felony[?]"

The State wanted the court to respond in the affirmative, and Ramirez objected. The trial court, unclear on what the jury was asking, requested clarification. The jury responded:

> Is intentionally causing harm, that leads to death, the same as intentionally killing?

The State then argued there was a lacuna in the instructions that required a supplemental instruction. The trial court proposed one:

> The State does not have to prove that a defendant specifically intended to kill another person for that defendant to be guilty of murder. It is enough for the State to show that a defendant knowingly inflicted an injury that resulted in the other person's death, and at the time he inflicted that injury, the defendant was aware of a high probability that said injury could cause the death of the other person.

Ramirez objected, arguing the instruction "watered down the definition of murder" and used the word "could" instead of "would." The court overruled his objection, and Ramirez then agreed that if the instruction were to be given, it should be formatted like the other instructions and simply sent back to the jury. With no objection from Ramirez, the court then numbered it the last instruction and sent it to the jurors.

Ramirez now challenges the supplemental instruction on three grounds: (1) giving it was an abuse of discretion because there was no legal lacuna in the original instructions; (2) its numbering and presentation made it stand out, which improperly influenced the jury; and (3) it misstated the law.

Each argument lacks merit. As the State points out, because the jury asked a question about a relevant point of law, the trial court did not abuse its discretion in providing the supplemental instruction. Ramirez waived any argument about how the instruction was given. And, while the supplemental instruction may not have been carefully crafted, its flaws do not amount to instructional error and do not warrant reversal.

We first address Ramirez's argument that there was no legal lacuna or gap in the final instructions and, thus, the trial court abused its discretion by giving the supplemental instruction.

A. Trial courts are no longer required to find an error or legal lacuna—or gap—to give a supplemental jury instruction.

Despite their inherently prejudicial nature, supplemental jury instructions can avert mistrials; and we've noted their potential to assist a deliberating jury. *See Ronco v. State*, 862 N.E.2d 257, 259–60 (Ind. 2007). To that end, our General Assembly enacted a statute in 1998 that provides,

> If, after the jury retires for deliberation . . . the jury desires to be informed as to any point of law arising in the case; the jury may request the officer to conduct them into court, where the information required shall be given in the presence of, or after notice to, the parties or the attorneys representing the parties.

Ind. Code § 34-36-1-6 (2020).

Since that statute's enactment, our caselaw has evolved to recognize that it empowers trial courts to respond to a greater range of questions from juries.

Our prior precedent required a trial court to identify "an error or legal lacuna in the final instructions" before issuing a supplemental instruction in response to a jury's question. *Jenkins v. State*, 424 N.E.2d 1002, 1003 (Ind. 1981). This Court observed that "[t]he path is extremely hazardous for the court that would depart from the body of final instructions and do other than reread the final instructions in responding to jury questions," and we

noted that "[s]uch a departure will be warranted in only the most extreme circumstances." *Id*. at 1003. And this cautionary language was supported by compelling public policy reasons. Giving a supplemental jury instruction can inadvertently overemphasize an issue, potentially "tell[ing] the jury what it ought to do concerning that issue." *Crowdus v. State*, 431 N.E.2d 796, 798 (Ind. 1982); *see also Wallace v. State*, 426 N.E.2d 34, 36 (Ind. 1981) (citing *Brannum v. State*, 267 Ind. 51, 57, 366 N.E.2d 1180, 1184 (1977)). Supplemental jury instructions also have "a special potential for prejudice" because, by the time they are given—after closing arguments and the initial instructions—a defendant has already chosen one theory of the case and it is too late to change course and adopt another one that would be in line with the new instruction. *State v. Bircher*, 132 A.3d 292, 307 (Md. 2016) (Watts, J., dissenting).

But since enactment of Indiana Code section 34-36-1-6, we have generally recognized the statute's "policy of greater flexibility in jury management," empowering—indeed, requiring—a trial court to respond to a jury's question when it determines, in its discretion, that the question concerns "a point of law involved in the case." *Ronco*, 862 N.E.2d at 260; *see also Henri v. Curto*, 908 N.E.2d 196, 205 (Ind. 2009); *Foster v. State*, 698 N.E.2d 1166, 1170 (Ind. 1998). In *Henri*, this Court tried to reconcile opinions predating the statute with the statutory language by narrowly construing the phrase "any point of law arising in the case"—requiring a court's response "only when the jury question 'points up an error or legal lacuna in the final instructions.'" 908 N.E.2d at 205 (quoting *Foster*, 698 N.E.2d at 1171). In *Inman*, however, we did not require a lacuna; rather, we simply observed that "the trial court was obligated to respond to the jury's inquiry into the definition of 'asportation,' a point of law. And that is exactly what the trial court did." 4 N.E.3d at 201.

Consistent with both *Inman* and the plain language of Indiana Code section 34-36-1-6, we hold that a trial court is no longer required to identify a legal lacuna in the final instructions before responding to a jury's question pertaining to "any point of law arising in the case." The statutory phrase requires only that a jury's question seek information concerning a legal issue before it. *See State v. Hancock*, 65 N.E.3d 585, 587 (Ind. 2016) (noting that, to discern the legislature's intent, "we look to the

statutory language itself and give effect to the plain and ordinary meaning of statutory terms").

Accordingly, regardless of whether there was a legal lacuna, the trial court did not abuse its discretion by giving the supplemental instruction. The jury specifically asked whether "intentionally causing harm, that leads to death [is] the same as intentionally killing?" This question clearly seeks clarification on a "point of law arising in the case." I.C. § 34-36-1-6(2). Murder is a results-based crime; and the lay jury sought guidance on how "intentionally" and "knowingly" apply to a defendant, like Ramirez, who didn't simply shoot his victim in the head but rather inflicted an injury that resulted in death. The jury thus asked the trial court whether it was enough for the State to show Ramirez intentionally injured P.H. or whether it had to prove more, and the trial court was required to answer the question. The court did so by incorporating into its supplemental instruction bracketed language from Indiana's pattern jury instruction on culpability that can be included when a defendant has been charged with causing a result by his conduct. *See* Ind. Pattern Crim. Jury Inst. 9.0120.

While supplemental jury instructions should be given cautiously due to their prejudicial potential, we recognize the greater flexibility trial courts have under Indiana Code section 34-36-1-6(2) when responding to jury questions.

We now discuss Ramirez's claim regarding how the instruction was given.

B. Ramirez waived any claim relating to how the supplemental instruction was given to the jury.

Ramirez asserts that the manner in which the instruction was given was improper. The State counters that Ramirez waived this argument by raising it for the first time on appeal. We agree with the State.

When giving a supplemental instruction, the trial court must reread the entire set of final instructions in the presence of the jury and parties. I.C. § 34-36-1-6; *Dowell v. State*, 973 N.E.2d 58, 60 (Ind. Ct. App. 2012) (citing *Graves v. State*, 714 N.E.2d 724, 726 (Ind. Ct. App. 1999)). And when a new

instruction is added, it should not be inserted first or last, "where it would stand out," but it should rather be assigned "a natural and logical position amongst the other instructions." *Hero v. State*, 765 N.E.2d 599, 603 (Ind. Ct. App. 2002), *trans. denied*. Again, this is because giving a supplemental jury instruction runs the risk of inadvertently emphasizing that particular point of law "as being of primary importance" or telling the jury how it ought to decide the issue. *Wallace*, 426 N.E.2d at 36.

Here, the trial court asked the parties if they had "[a]ny preferences" for how the supplemental instruction would be given. The trial judge offered to either send it back to the jury room as a written instruction, or bring the jury and Ramirez back, read it in open court, and provide it in writing with the other closing instructions. The State indicated its preference that the instruction be put in writing and sent to the jury, and Ramirez's counsel replied, "We would agree." The trial court confirmed this procedure and indicated it would give the supplemental instruction the next consecutive instruction number. Ramirez did not object.

Ramirez asserted at oral argument that he agreed only to put the instruction in writing—not to send it back to the jury by itself. Still, at the very least, Ramirez did not object to this procedure; and so the issue is waived on appeal. *Downs v. State*, 656 N.E.2d 849, 853 (Ind. Ct. App. 1995). Finally, Ramirez also conceded at oral argument that he did not assert a fundamental error argument in his appellate brief.

We now discuss Ramirez's challenges to the supplemental instruction's substance.

C. The supplemental instruction did not misstate the law.

Ramirez identifies three potential problems with how the instruction stated the law. First, he argues that the instruction's definition of "knowingly" improperly used the word "could" instead of "would." He then claims that the court failed to define "intentionally" along with "knowingly." And finally, he asserts that the instruction was incorrectly phrased in terms of what the State did not have to prove. None of these alleged errors require reversal.

Here, the instruction described the level of culpability required for the jury to find Ramirez "knowingly" killed P.H.: his awareness "of a high probability that said injury **could** cause the death of the other person." We acknowledge that the word "could" does not appear in the statutory language or the pattern jury instruction. *See* Ind. Code § 35-41-2-2(b) (2020); Ind. Pattern Crim. Jury Inst. 9.0120. But although a jury instruction on a statute "is presumptively correct" if it tracks "verbatim" the language of a statute, the inverse isn't true. *Campbell v. State*, 19 N.E.3d 271, 277 (Ind. 2014). That is, an instruction cannot be said to misstate the law just because it contains language not included in a statute. *Id.* And while it is "preferred practice" to use pattern jury instructions, we do not require it. *See O'Connell v. State*, 970 N.E.2d 168 (Ind. Ct. App. 2012). As we explained in *Dill v. State*, "The purpose of a jury instruction 'is to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict.'" 741 N.E.2d 1230, 1232 (Ind. 2001). Thus, the instruction here isn't incorrect simply because it doesn't track the statute or the pattern instruction; rather, it must correctly inform the jury of the law. And, as we explain below, the supplemental instruction here did not misstate the law by using "could" instead of "would."

"Could" and "would" do have distinct meanings. "Could" is a past-tense form of the word "can" and is "used to indicate possibility." *Can*, Merriam-Webster's Collegiate Dictionary (11th ed. 2003). On the other hand, "would" is used "to express probability or presumption." *Would*, Merriam-Webster's Collegiate Dictionary (11th ed. 2003)

Although the supplemental jury instruction says "could" instead of "would," that word is prefaced by requiring that the jury must find the defendant aware of "a **high probability** that said injury could cause the death of the other person." In context, the instruction's use of the phrase "high probability" clearly told the jury that a probability—not a possibility—was required. And while language used in an appellate opinion is not necessarily appropriate for a jury instruction, *Thomas v. State*, 774 N.E.2d 33, 36 (Ind. 2002), we also note that appellate courts have used "could" instead of "would" when describing the level of culpability

required to find that a defendant "knowingly" killed a victim. *See, e.g.*, *Jones v. State*, 689 N.E.2d 722, 725 (Ind. 1997).

We now turn to Ramirez's other arguments—that the trial court should have defined "intentionally" along with "knowingly" in the instruction and should not have phrased the instruction in terms of what the State did not have to prove. The supplemental jury instruction did not misstate the law by defining only "knowingly" because the State was required to prove that Ramirez "knowingly" **or** "intentionally" killed P.H. I.C. § 35-42-1-1(1). Likewise, by answering the jury's question in terms of what the State did not have to prove instead of what it did, the instruction did not incorrectly state the law. Rather, the supplemental instruction specifically responded to the jury's question about whether "intentionally causing harm, that leads to death," is "the same as intentionally killing."

Importantly, the full original instruction was already available to the jury. That instruction provided the statutory definitions for both "knowingly" and "intentionally" and stated that "the State must have proved . . . beyond a reasonable doubt" that Ramirez "knowingly or intentionally, killed, P.H." To be sure, the supplemental instruction could have been more carefully crafted. But it did not misinform the jury.

We finally address the State's argument that any flaws in the supplemental instruction, even viewed cumulatively, would not warrant reversal.

D. Any errors in the instruction would not warrant reversal.

At oral argument, Ramirez argued that the issues with the supplemental jury instruction, together, produced "a synergistic effect that worked more substantial prejudice" against his rights. We disagree.

An instructional error will result in reversal when we "cannot say with complete confidence that a reasonable jury would have rendered a guilty verdict had the instruction not been given." *Dill*, 741 N.E.2d at 1233 (cleaned up).

Here, the supplemental jury instruction did not impact Ramirez's substantial rights. Although the State was required to prove that Ramirez possessed the required level of culpability for murder, Ramirez's defense focused on identity—that Hudson or R.H. inflicted P.H.'s injuries—not whether P.H.'s injuries were inflicted with the requisite scienter. And considering all the evidence, including the nature and severity of P.H.'s injuries, a reasonable jury would have found the intent element satisfied. Because we can say with complete confidence that a reasonable jury would have otherwise rendered a guilty verdict, any errors in the supplemental jury instruction would not warrant reversal.

We now address Ramirez's arguments pertaining to his LWOP sentence.

IV. The "torture" LWOP statutory aggravator was supported by sufficient evidence.

The State can seek an LWOP sentence by alleging at least one statutory aggravator under Indiana Code section 35-50-2-9(a). But before that sentence can be imposed, the jury must find that the State has proven beyond a reasonable doubt that the statutory aggravator or aggravators exist and outweigh any mitigators. I.C. § 35-50-2-9(l).

When the jury recommended LWOP, it found the State proved two aggravating circumstances beyond a reasonable doubt: "that P.H. was less than twelve (12) years of age" and that "Ramirez tortured P.H. while P.H. was alive." And the jury also determined that these aggravators outweighed any mitigating circumstances. Ramirez challenges only the sufficiency of the evidence supporting the torture aggravator.

When assessing whether an LWOP statutory aggravator is supported by sufficient evidence, we apply the same standard of review that governs other sufficiency claims. *Washington v. State*, 808 N.E.2d 617, 626 (Ind. 2004). This Court considers only the probative evidence and reasonable inferences supporting the verdict to conclude "whether there is substantial evidence on which a reasonable trier of fact could find the

aggravator beyond a reasonable doubt." *Tate v. State*, 161 N.E.3d 1225, 1232 (Ind. 2021). We will not, however, reweigh the evidence. *Id.*

"Torture" is not defined in the life without parole statute. I.C. § 35-50-2-9(b)(11)(A). But our decisions have defined it as "either the intentional infliction of a prolonged period of pain or punishment for coercive or sadistic purposes; or the gratuitous infliction of an injury substantially greater than that required to commit the underlying crime." *Tate*, 161 N.E.3d at 1232 (citing *Nicholson v. State*, 768 N.E.2d 443, 447 (Ind. 2002)). Ramirez recognizes that, viewed most favorably to the verdict, the evidence shows he "physically abused P.H. over time and beat her to death." But he argues there is no evidence demonstrating that he "abused P.H. for sadistic or coercive reasons."

This Court, however, observed in *Tate* that a jury is not foreclosed from "relying on the number and nature of the victim's injuries" when determining whether a defendant tortured a victim. *Tate*, 161 N.E.3d at 1233. And, as in *Tate*, the evidence of P.H.'s injuries was sufficient for the jury to reasonably infer that Ramirez indulged a sadistic impulse. *See id.* P.H. died from "multiple blunt force injuries"; and a severe impact tore her liver in two places, causing internal bleeding so severe that almost half of the blood in her body was in her abdomen. Trauma to P.H.'s head also caused a skull fracture and internal bleeding along the top left side of her brain.

Ramirez also asserts that the torture aggravator is unsupported because the jury "seemed to find" that he killed P.H. "knowingly" but not "intentionally." But even if that were the case, the torture aggravator—unlike other statutory aggravating circumstances—does not expressly require a defendant to have "intentionally" killed the victim. *Compare* I.C. § 35-50-2-9(b)(11), *with* I.C. § 35-50-2-9(b)(1). Because the jury could, from the evidence of P.H.'s injuries, reasonably infer that Ramirez intentionally inflicted "an appreciable period of pain or punishment" to indulge a sadistic impulse, the torture aggravator was supported by sufficient evidence. *Nicholson*, 768 N.E.2d at 447.

But even if we were to find the torture aggravator unsupported, we would not be required to reverse Ramirez's LWOP sentence. This is

because the jury would have been just as likely to recommend an LWOP sentence based solely on the murder-of-a-child aggravator, which Ramirez does not challenge. *See Tate*, 161 N.E.3d at 1234; *Cardosi v. State*, 128 N.E.3d 1277, 1290 (Ind. 2019). Citing *Ring v. Arizona*, 536 U.S. 584, 588–89 (2002), Ramirez argues that only the jury could determine as a finding of fact whether the murder-of-a-child aggravator outweighed any mitigating evidence. But our Court has already rejected that argument and held that determining whether aggravating factors outweigh any mitigating circumstances "is not a finding of fact" and "does not increase the penalty of the crime." *Covington v. State*, 842 N.E.2d 345, 351 (Ind. 2006) (quoting *Pruitt v. State*, 834 N.E.2d 90, 112 (Ind. 2005)). And we further point out that Ramirez presented little mitigating evidence and does not contend that the mitigation evidence he presented outweighed the murder-of-a-child aggravator. We thus hold that Ramirez's murder of P.H., a toddler, sufficiently supported his LWOP sentence.

V. Ramirez's LWOP sentence is graduated and proportioned to the nature of his offense.

Ramirez next claims that his LWOP sentence violates Article 1, Section 16 of the Indiana Constitution, which requires all penalties to be "proportioned to the nature of the offense." And when, as here, a defendant asserts that a sentence is unconstitutional as applied, our standard for reviewing such challenges depends upon the penalty at issue. *Shoun v. State*, 67 N.E.3d 635, 641 (Ind. 2017). Because Ramirez's LWOP sentence is not based upon prior offenses, we simply ask whether it is graduated and proportioned to the nature of his offense. *Id.*

Here, the nature of Ramirez's offense is so severe that it cannot be said that his LWOP sentence is disproportionate. *Id.* at 642. Ramirez brutally murdered a toddler who was entrusted to his care. P.H. bled to death within hours from multiple severe blunt force injuries. And, even if the jury concluded that Ramirez killed P.H. "knowingly" but not "intentionally," his LWOP sentence was still graduated and proportioned to the nature of his offense.

VI. Ramirez's LWOP sentence is not inappropriate under Indiana Appellate Rule 7(B).

We finally address Ramirez's claim under Indiana Appellate Rule 7(B), which allows us to revise a sentence if it is "inappropriate in light of the nature of the offense and the character of the offender." Our principal task is "to attempt to leaven the outliers"—not to achieve a "correct" result in every case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). And the defendant bears the burden to persuade us that the sentence imposed is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Ramirez asks us to exercise this constitutional power to revise his LWOP sentence but does not argue that we should reduce his sentence for his neglect of a dependent conviction.

Regarding the nature of the offense, Ramirez recognizes that P.H.'s murder was a "severe crime." Yet Ramirez claims the jury found him to have killed P.H. "knowingly" but not "intentionally," and his LWOP sentence is inappropriate in light of that lesser degree of culpability. But even assuming Ramirez did not "intentionally" kill P.H., he has not presented any compelling evidence portraying the nature of the offense in a positive light. *See Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

Ramirez likewise has failed to show that his LWOP sentence is an outlier in light of his character. Although Ramirez had no prior criminal history, he was entrusted with caring for two young and defenseless children; and he violated that position of trust, which paints his character in a negative light. *See Gauvin v. State*, 883 N.E.2d 99, 105 (Ind. 2008). Overall, considering the extent of the pain and suffering Ramirez inflicted on P.H. and R.H., his LWOP sentence is not an outlier in need of leavening.

Conclusion

For all the foregoing reasons, we affirm the trial court.

David, Massa, Slaughter, and Goff, JJ., concur.

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