MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Scott Allan Eubanks,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 20, 2024

Court of Appeals Case No.
23A-CR-1063

Appeal from the Morgan Superior Court

The Honorable Brian H. Williams, Judge

Trial Court Cause No.
55D02-2204-F1-459

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

[1] Following a bench trial, Scott Allan Eubanks ("Eubanks") was convicted of five counts, the most serious of which was Level 1 felony attempted murder.[1] He now challenges the attempted murder conviction, raising two issues, which we consolidate and restate as follows: Whether the State presented sufficient evidence to convict Eubanks of attempted murder, negating any evidence that Eubanks committed only attempted voluntary manslaughter because he acted under sudden heat. Because we identify sufficient evidence supporting the attempted murder conviction, we affirm. However, because our review disclosed that the Abstract of Judgment omitted one of the five counts for which the trial court found Eubanks guilty, we remand for correction of the Abstract of Judgment.

Facts and Procedural History

[2] The State initially charged Eubanks with four counts: Level 1 felony attempted murder; Level 5 felony criminal recklessness;[2] Level 5 felony domestic battery,[3] and Class A misdemeanor interference with the reporting of a crime.[4] *See* Appellant's App. Vol. 2 pp. 21–22. The State later added a fifth count: Level 3

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[1] Ind. Code §§ 35-42-1-1, 35-41-5-1.

[2] I.C. § 35-42-2-2.

[3] I.C. § 35-42-2-1.3.

[4] I.C. § 35-45-2-5.

felony aggravated battery.[5] *See id.* at 120–21; Tr. Vol. 2 pp. 10–13. Eubanks waived his right to a jury trial, and a bench trial was held in December 2022.

[3] At the bench trial, there was evidence presented that, on April 16, 2022, an argument arose between Eubanks and his wife, Michelle Eubanks ("Michelle"). The argument progressed toward violence. Eventually, Michelle sustained gunshot wounds to her cheek and shoulder. Both Eubanks and Michelle testified, giving somewhat differing accounts of the events. However, it is undisputed that Michelle called 911 at some point during the altercation. Michelle testified that, when she called 911, Eubanks was present. She said that his demeanor changed during the call, with Eubanks suddenly seeming "very calm." Tr. Vol. 2 p. 93. She recounted that Eubanks proceeded to walk "very slowly" toward the garage, "like a completely different person." *Id.*

[4] A recording of the 911 call was admitted into evidence, as was a transcript of the call. Michelle told the dispatcher: "[H]e keeps hitting me." Ex. Vol. p. 6. When asked where Eubanks was, Michelle responded: "He just went out to the truck." *Id.* at 7. Michelle began to report the extent of her injuries. She then exclaimed: "Oh my God." *Id.* at 8. The dispatcher asked what was happening, and Michelle said: "He shot me. Oh my God." *Id.* She pleaded with Eubanks, saying: "[N]o, no[,] no. Scott, no. No, please don't." *Id.* Michelle told the dispatcher that Eubanks went outside, and she "locked all of the doors." *Id.* at

[5] I.C. § 35-42-2-1.5.

11. Before long, Michelle said Eubanks was "shooting in the garage." *Id.* at 12. She said: "He's coming in." *Id.* at 15. The dispatcher asked if Michelle could go anywhere, and she replied: "I'm walking outside." *Id.*

[5] At trial, Michelle testified that, when Eubanks came into the house with a gun, he was "standing in front of her with the gun pointed at [her] face." Tr. Vol. 2 p. 96. She testified that she turned her face away, then felt a "horrible heat" in her body, "like [she] was on fire." *Id.* Michelle said that a bullet "grazed [her] cheek," entered her shoulder, passed "through [her] trapezius muscle," and exited "out the back." *Id.* at 99. She described how blood "was gushing" from her body. *Id.* She testified that she went outside to the front porch area, where Eubanks again approached her with the gun. Michelle said that he "had the gun pointed at [her] again, at [her] head[.]" *Id.* at 98. She described hearing a "click," but the gun did not fire. *Id.* Eubanks began "banging" on the gun. *Id.* at 97. He was also "sliding" something "on top." *Id.* at 98. Soon, the police arrived. The police recovered the gun. The police also recovered an unfired bullet from the porch. There was expert testimony that the gun jammed during police testing, and a jam could cause an unfired bullet to clear from the gun.

[6] Eubanks admitted that he shot Michelle, but claimed "[i]t was an accident[.]" Tr. Vol. 3 p. 9. He denied pointing the gun at Michelle. Rather, Eubanks claimed that he was aiming at the house. The admitted evidence included videos Michelle recorded with her phone at various points before she called 911. The recordings capture Michelle and Eubanks arguing and exchanging insults. As Eubanks put it at trial: "[W]hat happens is . . . [Michelle] starts

talking about my family, I start talking about her family, she starts talking about my mom, and it just goes back and forth to where it just spins out of control." *Id.* at 18. Eubanks admitted that he eventually grabbed Michelle's phone, at which point the arguments escalated to violence, with Eubanks striking Michelle "in the head" with his fist. *Id.* at 24. When asked whether he was claiming self-defense, Eubanks said: "No." *Id.* at 25. Eubanks described his state of mind at that point, stating: "I would call it enraged to the point where I'm madder than I've ever been." *Id.* at 26. He testified that he went outside "[t]o get away from [Michelle]," and retrieved the handgun from his truck. *Id.* He asserted that he wanted Michelle to stop "[p]rovoking [him], or whatever you want to call it." *Id.* at 39. Eubanks admitted that he retrieved the handgun, and proceeded to shoot into areas of the house when he was "out of [his] mind upset." *Id.* at 29. Eubanks then "kicked in the back door." *Id.* He said he briefly conversed with Michelle, who was on the porch. According to Eubanks, he walked past Michelle, turned to "shoot[] at the front picture window," and accidentally "shot [Michelle]." *Id.* at 31. He claimed that he "saw her sitting" on the porch, but "was not aiming for her." *Id.* Eubanks asserted that he was about "ten, fifteen feet" away when he turned around to fire at the window. *Id.* During his closing argument, Eubanks focused on whether the State proved that he had the specific intent to kill Michelle, arguing: "Wanting her to shut up, isn't sufficient. Wanting her to stop, is not sufficient." *Id.* at 50.

[7] The trial court took the matter under advisement and later issued a written order. In the order, the court provided "[g]eneral observations as to the

evidence[.]" Appellant's App. Vol. 2 p. 146. At one point, the trial court referred to the recorded 911 call. The court remarked that, "after careful examination" of the recording, before Eubanks went outside to get the handgun, he "can be heard . . . saying 'you are getting it now, bitch[.]'" *Id.* at 147 (citing to the 1:09 mark in Exhibit 1). The court also referred to evidence that both Eubanks and Michelle "had been drinking vodka to excess" on the day of the shooting. *Id.* at 146. Additionally, the court referred to statements that Michelle made to Eubanks in her phone recordings, noting that there was "provocation [that had] culminated in a . . . physical altercation" before Michelle called 911. *Id.* at 147. The court also referred to evidence indicating that, by that point, both Michelle and Eubanks had sustained physical injuries. The court stated that, before Michelle called 911, "she . . . provoked" Eubanks. *Id.* The trial court generally adopted Michelle's account of the gun violence, determining that Eubanks shot her inside the house and, "[o]nce outside," he "attempted to shoot her again, [but] the gun failed to fire[.]" *Id.* at 148.

[8] The trial court found Eubanks guilty as charged. *See id.*; Tr. Vol. 2 p. 60 (referring to its order at a later hearing, noting it found Eubanks "guilty of counts 1 through 5"). The court also determined that all of the counts should merge so that Eubanks would be sentenced only for attempted murder. *See* Tr. Vol. 2 p. 60. A sentencing hearing was held in January 2023. The trial court ultimately imposed a sentence of thirty years, with twenty years executed and ten years suspended. In imposing the sentence, the court stated that Michelle had "induced or facilitated the offense," because of the way she argued with

Eubanks. *Id.* at 77. The court characterized Michelle's conduct as "classic button pushing." *Id.* at 76. The court also stated that "the victim's behavior in this [case] [was] a very significant mitigating circumstance." *Id.* at 77–78.

[9] On February 24, 2023, Eubanks filed a pro se motion, which was deemed to be a motion to correct error. Eubanks asserted that his conviction could not stand because, in the trial court's written order finding him guilty, the court "clearly state[d] that [Eubanks] was provoked and intoxicated." *Id.* at 187. The trial court directed the State to respond. After the State responded, the trial court held a hearing and denied the motion on May 5, 2023. Eubanks now appeals.

Discussion and Decision

[10] On appeal, Eubanks directs us to the trial court's "[g]eneral observations as to the evidence[.]" Appellant's App. Vol. 2 p. 146. He essentially argues that the trial court erred in its deliberative process. For example, he claims that the court misheard portions of the 911 call, resulting in improper speculation. *See, e.g.*, Appellant's Br. p. 14 (asserting that the "[t]he audio is incomprehensible"); *id.* at 15 ("[T]he judge wrenched nonsensible audio on a 911 call . . . into sensical words necessary to convict [Eubanks] of attempted murder.").

[11] As the Indiana Supreme Court has explained, when a criminal case culminates in a bench trial, the trial court is not obligated to enter findings and conclusions supporting its determination of guilt. *Nation v. State*, 445 N.E.2d 565, 570 (Ind. 1983). Moreover, if the trial court nevertheless elects to provide remarks about the evidence, we do not regard those remarks as special findings if the remarks

amount to "merely a partial explanation of the mental process in which the trial court engaged" to determine whether the defendant was guilty. *Dozier v. State*, 709 N.E.2d 27, 30 (Ind. Ct. App. 1999) (declining to treat a remark as a special finding even where the trial court "characterized [the remark] as a 'finding'"); *see also Wolf v. State*, 76 N.E.3d 911, 917 (Ind. Ct. App. 2017). Indeed, as we explained in *Dozier*, "the focus of our inquiry is not upon the remarks the trial court makes in a bench trial after having reached the conclusion that a defendant is guilty. Rather[,] the question is whether the evidence presented to the trial court as fact-finder was sufficient to sustain the conviction." *Dozier*, 709 N.E.2d at 30. Put differently, remarks about the deliberative process "are not a basis for reversal." *Wolf*, 76 N.E.3d at 917 (applying *Dozier*). That is, we "focus . . . on whether the evidence was sufficient to sustain [the] conviction, not whether the trial court's remarks supported [the] conviction." *Id.*

[12] Here, the trial court's "[g]eneral observations as to the evidence" are best described as partial insights into the deliberative process. Appellant's App. Vol. 2 p. 146. Thus, these remarks do not provide a basis for reversal. *See Wolf*, 76 N.E.3d at 917. Under the circumstances, our task is to focus on whether there was sufficient evidence presented to support the challenged conviction. *See id.*

[13] In reviewing the sufficiency of the evidence, "we neither reweigh the evidence nor assess the credibility of witnesses." *Fix v. State*, 186 N.E.3d 1134, 1138 (Ind. 2022). We consider "only the probative evidence and the reasonable inferences" supporting the conviction. *Id.* We reverse only if "no reasonable

fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quoting *Jackson v. State*, 50 N.E.3d 767, 770 (Ind. 2016)).

[14] Eubanks was convicted of attempted murder. In general, "[a] person who . . . knowingly or intentionally kills another human being" commits murder. Ind. Code § 35-42-1-1. "A person attempts to commit a crime when, acting with the culpability required for commission of the crime, the person engages in conduct that constitutes a substantial step toward commission of the crime." I.C. § 35-41-5-1(a). "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." I.C. § 35-41-2-2(a). "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." I.C. § 35-41-2-2(b).

[15] On appeal, Eubanks does not dispute the sufficiency of evidence that he knowingly or intentionally committed acts that would constitute attempted murder. Rather, he asserts that, due to evidence he was provoked, he could only have been convicted of the offense of attempted voluntary manslaughter.

[16] A person commits voluntary manslaughter if he knowingly or intentionally kills another human being "while acting under sudden heat[.]" I.C. § 35-42-1-3(a). "The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder . . . to voluntary manslaughter." I.C. § 35-42-1-3(b). In general, "[t]o obtain a conviction for murder, the State is not required to negate the presence of sudden heat[.]" *Evans v. State*, 727 N.E.2d 1072, 1077 (Ind. 2000). That is "because '[t]here is no implied element of the absence of sudden

heat in the crime of murder.'" *Id.* (quoting *Earl v. State*, 715 N.E.2d 1265, 1267 (Ind. 1999)). "However, once a defendant places sudden heat into issue, the State then bears the burden of negating the presence of sudden heat beyond a reasonable doubt." *Id.* The State meets this burden "by rebutting the defendant's evidence or affirmatively showing in its case-in-chief that the defendant was not acting in sudden heat when the killing occurred." *Id.*

[17] "Sudden heat requires sufficient provocation to engender . . . passion [that] is demonstrated by anger, rage, sudden resentment, or terror that is sufficient to obscure the reason of an ordinary person, prevent deliberation and premeditation, and render the defendant incapable of cool reflection." *Jackson v. State*, 709 N.E.2d 326, 328 (Ind. 1999) (quoting *Horan v. State*, 682 N.E.2d 502, 507 (Ind. 1997)). "Insulting or taunting words alone are not sufficient provocation to reduce murder to manslaughter." *Id.* at 329. Whether the defendant acted under sudden heat "is a classic question of fact" for the fact-finder, so we view the evidence in a light favorable to the judgment. *Jackson*, 709 N.E.2d at 328 (quoting *Fisher v. State*, 671 N.E.2d 119, 121 (Ind. 1996)).

[18] The evidence favorable to the judgment indicates that, although a verbal argument between Michelle and Eubanks had progressed to physical violence, there was a break in the altercation when Michelle called 911. At that point, Eubanks became "very calm." Tr. Vol. 2 p. 93. Eubanks walked "very slowly" toward the garage, "like a completely different person." *Id.* Eubanks then retrieved a handgun, re-entered the house, and shot Michelle. He later

approached Michelle on the porch and again pointed the gun at her. When the gun did not fire, Eubanks began to manipulate the weapon.

[19] The State argues that, "[b]ecause Eubanks shot at Michelle multiple times from different locations, there was sufficient evidence to negate his claim of sudden heat." Appellee's Br. p. 11. The State notes that, although "the evidence presented may show that Eubanks was angry and upset on the night in question due to Michelle's provoking remarks, this does not rise to the level necessary to constitute sudden heat." *Id.* Moreover, as to the evidence of physical violence between Michelle and Eubanks before the 911 call, the States argues that "[n]o objectively reasonable person would collect a gun and shoot another person in the head in response to being insulted and scratched or slapped." *Id.* at 12.

[20] We agree with the State. Furthermore, a fact-finder could conclude beyond a reasonable doubt that—regardless of what transpired before the 911 call—by the time Eubanks calmly went to his vehicle to retrieve the gun, then re-entered the house and approached Michelle, Eubanks was capable of cool reflection.

[21] We conclude that sufficient evidence was presented to negate evidence of sudden heat, and to ultimately support the conviction for attempted murder. We therefore affirm the trial court. Although we affirm, we note that the Abstract of Judgment does not refer to the count of Level 3 aggravated battery. We therefore remand for correction of the Abstract of Judgment, instructing the trial court to include its disposition for the omitted count of aggravated battery.

[22] Affirmed and remanded.

Pyle, J., and Tavitas, J., concur.

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