MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Cole R. Galloway
Valparaiso, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney Staton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

David H. Lane, Jr.,
Appellant-Plaintiff

v.

State of Indiana,
Appellee-Respondent.

April 11, 2023

Court of Appeals Case No. 21A-PC-152

Appeal from the LaPorte Superior Court

The Honorable Michael Bergerson, Senior Judge

Trial Court Cause No. 46D01-2005-PC-2

Memorandum Decision by Judge Pyle

Judges Robb and Weissmann concur.

Pyle, Judge.

Statement of the Case

[1] After being convicted of Level 2 felony burglary while armed with a deadly weapon,[1] Level 3 felony aggravated battery,[2] and Level 5 felony domestic battery,[3] as well as being adjudicated to be an habitual offender,[4] David H. Lane ("Lane"), pro se, then filed a direct appeal. Lane suspended his direct appeal, pursuant to the *Davis/Hatton* procedure,[5] and filed a petition for post-conviction relief. During his evidentiary hearing, Lane testified but did not ask the post-conviction court to admit any evidence. The post-conviction court denied post-conviction relief.

[2] Lane now raises three direct appeal issues and one post-conviction appeal issue. Specifically, he argues that: (1) the trial court abused its discretion by admitting evidence; (2) the trial court denied him a fair hearing when it commented on

---

[1] IND. CODE § 35-43-2-1.

[2] I.C. § 35-42-2-1.5.

[3] I.C. § 35-42-2-1.3.

[4] I.C. § 35-50-2-8.

[5] As our Court has explained:

> The *Davis-Hatton* procedure results in the termination or suspension of an already initiated direct appeal to allow the appellant to pursue a petition for post-conviction relief. Where, as here, the petition for post-conviction relief is denied, the direct appeal may be reinstated. This procedure permits an appellant to simultaneously raise his direct-appeal issues as well as issues on appeal from the denial of his petition for post-conviction relief. In other words, the direct appeal and the appeal of the denial of post-conviction relief are consolidated.

Hinkle v. State, 97 N.E.3d 654, 658 n.1(Ind. Ct. App. 2018) (internal citations and quotation marks omitted).

whether he would testify; (3) there was insufficient evidence to support his conviction; and (4) the post-conviction court denied Lane a fair hearing. Finding no error with the trial or post-conviction courts, we affirm the challenged judgments.

[3] We affirm.

Issues

1. Whether the trial court abused its discretion when it admitted evidence.

2. Whether the trial court denied Lane a fair hearing by commenting on whether he would testify.

3. Whether there was sufficient evidence to support Lane's convictions.

4. Whether the post-conviction court gave Lane a fair hearing.

Facts

[4] The facts most favorable to the judgments reveal that Lane and K.P. ("K.P.") began dating in August 2009 and got married in May 2010. They have one child together, B.L. ("B.L."). Lane and K.P. had a tumultuous marriage, and by the spring of 2016, K.P. wanted a divorce. Lane was "very ir[]ate" and "very upset" with K.P. because she wanted a divorce. (DA Tr. Vol. 3 at 99).[6] However, Lane and K.P. had just moved back to Indiana from Michigan in

[6] We refer to Lane's trial court transcripts and appendices as DA Tr. and DA App. Respectively. We refer to Lane's post-conviction court transcripts and appendices as PC Tr. and PC App. Respectively.

2016, and K.P. could not file for divorce until she had been a resident in the state for six months. In the meantime, Lane and K.P. lived separately and had joint custody of their son, B.L.

[5] In November 2016, after K.P. had lived in Rolling Prairie, Indiana for six months, she filed for divorce from Lane. K.P. hired attorney Martin Ulferts ("Ulferts") to represent her in her divorce. Lane did not hire an attorney. In February 2017, Ulferts' office called Lane in order to set up a hearing date to finalize the divorce. Ulferts' office and Lane agreed to have a final dissolution hearing on March 6, 2017, and Ulferts' office filed a motion asking for this date. The next day, February 22, Lane spoke with K.P., and K.P. recorded the conversation ("February 22 recording"). During this conversation, Lane made veiled and explicit threats on K.P.'s life. K.P. sent the recording to Ulferts' office, and attorney Katherine Sall-Matthews ("Attorney Sall-Matthews") downloaded and transcribed a copy of the recording in preparation of the March 6 dissolution hearing.

[6] On March 3, 2017, Lane and K.P. had dinner together. After this dinner, K.P. went to Lane's mother's house to pick up B.L. Lane and K.P. got into an argument at Lane's mother's house, and Lane followed K.P. and B.L. back to their house. After K.P. had put B.L. to bed, she and Lane headed out to the garage to smoke cigarettes and talk. The argument escalated quickly, and K.P. used her phone to record the conversation ("March 3 recording"). In this argument, Lane threatened to kill K.P. unless she withdrew the divorce petition. Specifically, Lane had told K.P. that she was "done for" if she did not

"drop the divorce" and that she would not see B.L.'s birthday, her own birthday, or Easter. (DA Tr. Vol. 3 at 106). After finishing the cigarettes, Lane and K.P. headed into the house where they continued to argue. Lane told K.P. that B.L. was "going to grow up without a mother or father if [K.P.] didn't drop the divorce." (DA Tr. Vol. 3 at 107). K.P. pushed Lane out of her house. K.P. later gave the March 3 recording to Ulferts' office.

[7] On March 4, after Lane had picked up B.L. at K.P.'s house, K.P. called the police and turned over the March 3 recording. During that weekend, K.P. visited a friend in South Bend. After returning home on Sunday, K.P. also spent time with two friends that Sunday afternoon. On Sunday evening, Lane dropped B.L. off at K.P.'s house and became angry when he learned that K.P. was not home. Lane repeatedly called and texted K.P. throughout Sunday evening, demanding that K.P. tell him who she had been with that weekend. Specifically, Lane texted K.P. that he "kn[e]w [that K.P.] fucked someone last night[,] that [wa]s all [that he] need[ed] to know[.]" (DA Tr. Vol. 3 at 115).

[8] On the morning of March 6, K.P. dropped B.L. off at school. K.P. then went to the trial court and requested a protective order against Lane. The trial court granted the protective order. Later that same day, Lane traveled to a local pawn shop where he purchased a flare gun and a taser. Just before the final dissolution hearing, Lane received notice of the protective order. Afterward, Lane attended the hearing. At this hearing, Lane requested a continuance so that he could hire an attorney, and the trial court granted his motion.

[9] On the evening of March 6, K.P. planned to meet Michael Grabarek ("Grabarek") to sell him a bag of marijuana. At approximately 7:30 p.m., K.P. took her pistol, cigarettes, and the bag of marijuana to her garage and waited for Grabarek to arrive. K.P. placed her pistol and the marijuana on a bucket next to her and lit a cigarette.

[10] As K.P. placed the lighter down on the bucket, Lane entered the garage wielding the flare gun. Lane pointed the flare gun at K.P. and told her that she "had taken everything away from him and that he was going to take everything away from [her]," and that she was "done for." (DA Tr. Vol. 3 at 152). Lane further stated that "nobody else was going to have [K.P.]" and that he was going to kill her. (DA Tr. Vol. 3 at 152). K.P. attempted to grab Lane's flare gun, but Lane grabbed K.P.'s wrist and bent it backwards. K.P. backed up to where she had been sitting and attempted to reach for her phone to call for help, but Lane pulled K.P. away by her upper arm. Lane also grabbed K.P.'s pistol and phone from the bucket. Lane put K.P.'s pistol and phone in his pocket and pulled out the taser he had purchased earlier that day.

[11] Lane struck K.P. on the left side of her neck with the taser before activating the device. Lane, using his left arm, grabbed K.P. by the arm and neck. He then activated the taser, tased K.P., and tried to force her to the ground. When K.P. resisted, Lane picked K.P. up before body slamming her into the concrete floor of the garage. Lane then sat on top of K.P., who was lying on the ground on her back, and continued to tase her. After tasing K.P. five or six times, Lane pocketed the taser. Lane then grabbed K.P. by her head and began slamming

her head against the concrete floor. K.P. screamed and tried to stop Lane, but he continued to slam her head against the concrete floor while telling her to "go out go out." (DA Tr. Vol. 3 at 158).

[12] Lane stood up then instructed K.P. to get up. K.P. touched the back of her head and felt blood. K.P. grabbed a towel and placed it on the back of her head. Lane told K.P. that she just had to "drop the divorce." (DA Tr. Vol 3 at 159). Lane put the taser back in his pocket and drew K.P.'s pistol and pointed it at her. In response, K.P. kissed Lane in order to distract him. After a second kiss, Lane asked K.P. if she wanted to have sex. K.P. said yes, and Lane began to unbuckle his pants. K.P. then ran out of the garage, and Lane chased after her.

[13] Lane grabbed K.P. a few feet outside of the garage and slammed her onto the ground. He then straddled her and pointed the pistol at her head. K.P. and Lane fought for control of the pistol. During this fight, Grabarek drove his car into the driveway. Grabarek exited his car and was about six feet away from Lane and K.P., who were still fighting on the ground. Lane told Grabarek that this was his wife and that it was none of Grabarek's business. K.P. shouted that Lane had a gun and to call 911. Grabarek returned to his car and drove away. Meanwhile, K.P., after biting Lane's leg and getting hit with the butt end of the pistol, was able to break free from Lane. K.P. ran into the house and locked the door behind her. She then ran to the room where B.L. was sleeping. Lane chased after K.P., kicked in the front door, and approached K.P. and B.L.

Once Lane saw that B.L. was awake, he told K.P. that she had "fucked up" before leaving through the broken front door. (DA Tr. Vol. 3 at 173).

[14] K.P., after hearing Lane's car drive away, took B.L. with her to her truck. K.P. drove to a local gas station where she was able to ask Michelle Osting ("Osting"), a worker at the gas station, to call the police. Osting helped K.P. clean up some of the blood on her body while another customer watched B.L. Detective Jennifer Rhine-Walker ("Detective Rhine-Walker") arrived at the gas station to take K.P.'s statement. However, Detective Rhine-Walker, after seeing K.P.'s injuries, recommended that K.P. seek medical attention.

[15] Detective Rhine-Walker and K.P. went to the hospital because K.P.'s pain began to worsen. At the hospital, Nurse Practitioner Tori Claybaugh ("NP Claybaugh") examined K.P.'s injuries. K.P. had five lacerations on the side of her head, along with a large three-inch wound on the back of her head that required a dozen staples to close. K.P. also had bruising on her scalp, neck, and arms. NP Claybaugh ordered a CAT scan of K.P.'s head to "check for internal or intracranial bleeding or swelling." (DA Tr. Vol. 4 at 108).

[16] Officers also went to K.P.'s house while K.P. was receiving medical treatment. Officers searched K.P.'s house and the surrounding area for Lane but did not find him. The next day, the State charged Lane with Level 2 felony burglary

and Level 5 felony domestic battery.[7] The State also alleged that Lane was an habitual offender. In June 2018, the State amended the charging information and added an additional Level 3 felony aggravated battery charge.

[17] Two days after the incident, on March 8, Officers were able to find Lane and arrested him. Lane voluntarily waived his rights and agreed to speak with the detectives, including Detective Rhine-Walker. The interview lasted three hours and was recorded.

[18] In February and March of 2019, the trial court held a jury trial, during which Lane appeared pro se with standby counsel. The jury heard the facts as set forth above. Additionally, Attorney Sall-Matthews testified that she had worked at Ulferts' firm, had worked on K.P.'s dissolution, and had spoken with K.P. and Lane on multiple occasions. Attorney Sall-Matthews further testified that she had received the February 22 and March 3 recordings from K.P. Attorney Sall-Matthews testified that she had listened to the recordings multiple times, clearly recognized Lane and K.P.'s voices, and made transcripts of the recordings for use in the dissolution case. Attorney Sall-Matthews also testified that she had made copies of the recordings on a CD that she had turned over to Detective Jacob Koch ("Detective Koch").

---

[7] The State also charged Lane with Level 1 felony attempted murder and Level 3 felony robbery. In a different cause number, the State also charged Lane with Level 6 felony intimidation. The State moved to join the intimidation charge with this case in August 2017. The jury found Lane not guilty of these charges, and the State dismissed them at sentencing. Thus, they are not relevant to his appeal.

[19] During Detective Koch's testimony, the State moved to admit the February 22 recording into evidence as State's Exhibit 2. Lane, after listening to the recording outside the presence of the jury, objected. Specifically, Lane objected to the February 22 recording's admission, arguing that it violated Rule 1002 and also had not been authenticated with a "voice analyzer or spectrum." (DA Tr. Vol. 2 at 248). The trial court admitted the February 22 recording over Lane's objection.

[20] During the testimony of Deputy Robert Greer ("Deputy Greer"), the State moved to admit the March 3 recording into evidence as State's Exhibit 3. Lane, after listening to the recording outside the presence of the jury, objected to its admission, arguing that it was inadmissible because he had been drunk and because it was an incomplete recording. The trial court admitted the March 3 recording over Lane's objection.

[21] Osting testified that K.P., when she first arrived at the gas station, was "very frantic" and "very scared[.]" (DA Tr. Vol. 3 at 78). Osting also testified that K.P.'s "head was completely covered in blood" and "her hair was all knotted up." (DA Tr. Vol. 3 at 80). Osting testified that K.P. had blood on her sleeves and that K.P. had told her that Lane had tried to kill K.P. Osting also testified that she had sat K.P. down, had given K.P. napkins to clean up the blood, and had called the police a few minutes after K.P. had arrived.

[22] K.P. testified that after she first asked for a divorce, Lane, initially, had tried to "woo" her back to him. (DA Tr. Vol. 3 at 100). K.P. further testified that Lane

"was escalating" his reactions in response to the divorce. (DA Tr. Vol. 3 at 100). K.P. testified that most of the time, Lane "was screaming at [her,] yelling at [her,] [and] telling [her] what . . . to do." (DA Tr. Vol. 3 at 100). K.P. further testified that Lane, leading up to the March 6 dissolution hearing, would make comments and remarks about doing harmful things to her, her family, and her property. Specifically, K.P. testified that in the February 22 recording, Lane had demanded that she drop the divorce, get back together with him, and work on the relationship with him. K.P. also explained that in the March 3 recording in her garage, Lane had threatened her life.

[23] K.P. also testified that after Lane had slammed her head against the concrete floor of her garage, the "room was spinning" and she "couldn't see straight." (DA Tr. Vol. 3 at 159). K.P. also testified that she had felt a tingling and that when she touched her head, her entire hand up to her wrist was "just covered in blood." (DA Tr. Vol. 3 at 58-59). K.P. also testified that her pain was a six or a seven out of ten.

[24] Lane cross-examined K.P. During his cross-examination, Lane attempted to admit into evidence a drawing of the garage that he had created. The following exchange occurred:

> THE COURT: Mr. Lane? That hasn't been admitted - -
>
> MR. LANE: I want to admit this into evidence!!
>
> THE COURT: What?

MR. LANE: I am going to admit this into evidence.

THE COURT: When you get up and testify if you do -

MR. LANE: What, I have to wait?

THE COURT: If you do, you can explain how this garage was set up. You don't have to testify. You are under no obligation to do that.

MR. LANE: That's fine that's fine.

(DA Tr. Vol. 3 at 235).

[25] Later during Lane's cross-examination of K.P., Lane said the following:

Q. When I tased you though, you said stop?

A. Through it all.

Q. I only heard you say it once.

THE COURT: Is that a statement sir? Are you going to testify? You can't just make random statements Mr. Lane. Unless you want to get up on the witness stand.

[26] (DA Tr. Vol. 4 at 3). Later during the same cross-examination, the following exchange occurred when the State raised a relevancy objection after Lane had asked K.P. if they had spent the night together on February 11, 2017:

THE COURT: What does that have to do with March 6 of 2017?

> MR. LANE: Because [K.P.] is trying to say I was an estranged husband that I couldn't take no for an answer when I know it's BS Your Honor. I am saying that [K.P.] is lying that we were working on our marriage, up until [K.P.] found out I wasn't getting my social security. That is what I am getting at. I am trying to show [K.P.'s] statements are bogus. That [K.P.] is a plain liar. Your Honor, [K.P.] did these things, how [is K.P.] going to s[i]t there and say [that she] [is] afraid of me -
>
> [STATE]: Objection Judge. Making this monologue in front of the jury?
>
> THE COURT: Please refrain from just making statements Mr. Lane without being placed under oath.

(DA Tr. Vol. 4 at 27-28).

[27] A few minutes later, during the same cross-examination, Lane asked K.P. the following question:

> Would it surprise you that I have an idea of where my flare gun fell out of my pocket at in them [sic] woods, that if I told one of the detectives in here and they went out and found it, that they would verify what I am saying that I never made it to my truck and I never drove off and you never heard, would you that surprise you?

(DA Tr. Vol. 4 at 36). The State immediately objected to the compound line of questioning. The trial court instructed Lane with the following:

> [I]f you want to get up and testify Mr. Lane, certainly that is your right, your opportunity and you also have the right to remain silent, but you can't just make statements. You have to be held

> to the same standard that any other attorney or person representing themselves would be held to.

(DA Tr. Vol. 4 at 37). The trial court prompted Lane to continue his cross-examination.

[28] NP Claybaugh testified that, upon K.P.'s arrival to the hospital, K.P. had measured her pain to be a two out of ten. NP Claybaugh further testified that later that evening, K.P. had recorded her pain to be worse and that K.P. had "gotten worse as she was [at the hospital]." (DA Tr. Vol. 4 at 107). NP Claybaugh also testified that seeking medical treatment was "pretty significant" because the injuries to K.P.'s head could "cause internal hemorrhage or swelling." (DA Tr. Vol. 4 at 113). NP Claybaugh also testified that K.P.'s injuries could have "been an enclosed head injury" that could have possibly led to death. (DA Tr. Vol. 4 at 109). NP Claybaugh further testified that the CAT scan was negative for an internal hemorrhage.

[29] During Detective Rhine-Walker's testimony, the State moved to admit a redacted recording of Lane's police interview. Lane did not object to the admission of this recording. Lane cross-examined Detective Rhine-Walker and asked the detective if they had ever met in 2015. Detective Rhine-Walker did not recall, and Lane began to ask about where the detective lived and what car she drove. The State objected to the relevancy of Lane's questions, and the following exchange occurred:

> THE COURT: Again, what's the . . . relevance of that?

> [MR. LANE]: Because the fact that I, I knew her.
>
> THE COURT: If you want to testify to that, [Detective Rhine-Walker] says no, [Detective Rhine-Walker] has no recollection of that.

(DA Tr. Vol. 5 at 190).

[30] Also during Detective Rhine-Walker's cross-examination, Lane brought up the redacted video of the police interview and asked "when I passed out and had to be yelled at to be awoken, why wasn't that on there as well?" (DA Tr. Vol. 5 at 212). Detective Rhine-Walker responded, "[b]ecause that didn't happen." (DA Tr. Vol. 5 at 212). Later during the cross-examination, Lane moved to admit the entire video recording of his police interview. The State objected on the grounds that the redacted portions were more prejudicial than probative. The trial court explained that it would reserve its ruling on the issue until after Lane had testified.

[31] Lane chose to testify in his own defense. During his testimony, Lane testified that he had fallen asleep during the police interview. Lane also attempted to admit the unredacted police interview. The State objected again, arguing that the redacted portions were "irrelevant, that they [we]re prejudicial[,] . . . [and] ha[d] no probative value toward the elements of these crimes." (DA Tr. Vol. 6 at 190). The trial court excluded the unredacted police interview because, under Evidence Rule 403, the redacted portions were more prejudicial than probative, confusing, and misleading to the jury.

[32] At the conclusion of the jury trial, the jury found Lane guilty of Level 2 felony burglary, Level 3 felony aggravated battery, and Level 5 felony domestic battery. Additionally, the trial court found that Lane was an habitual offender. In April 2019, the trial court held a sentencing hearing and imposed an aggregate fifty-year sentence. Lane then filed his notice of appeal and commenced a direct appeal. While the appeal was pending, Lane filed a *Davis/Hatton* petition, seeking to stay his appeal and to file a petition for post-conviction relief. Our Court granted his request to utilize the *Davis/Hatton* procedure.

[33] In May 2020, Lane, pro se, filed a post-conviction petition. In his petition, Lane listed twenty-one claims, alleging, in part, that the trial court had committed various evidentiary and sentencing errors and challenging the credibility of some trial witnesses. The post-conviction court held a hearing in December 2020, and Lane appeared via Zoom. During the hearing, Lane gave testimony for nearly an hour. However, Lane never attempted to admit any documents he referenced in his testimony into the record. The State explained that Lane had "provided [the State] stuff for discovery, but [Lane] ha[d] to submit the evidence to the [c]ourt[.]" (PC Tr. at 38). Lane then asked for a continuance so that he could "send every bit of this [evidence] per certified mail" to the post-conviction court. (PC Tr. at 38). The post-conviction court denied Lane's oral motion to continue. The post-conviction court told Lane, "Today's the day for . . . the [evidentiary] hearing[.]" (PC Tr. at 38). Lane, at the end of his testimony, stated that he would be happy to "just put everything

in front of the camera to show [the post-conviction court][.]" (PC Tr. at 42). However, Lane never actually placed any documents in front of the camera or identified any specific documents that he wanted admitted into evidence for the post-conviction hearing.

[34] Following the hearing, the post-conviction court issued an order denying Lane's petition for post-conviction relief. In its order, the post-conviction court stated that Lane had "failed to present any evidence other than his testimony and failed to meet [the] burden of proof." (PC App. Vol. 5 at 143). The post-conviction court also stated that it was not going to reweigh evidence. Lane now appeals.

Decision

[35] At the outset, we note that Lane had chosen to proceed pro se before the trial court and the post-conviction court. It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Thus, pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. *Id.* "We will not become a party's advocate, nor will we address arguments that are inappropriate, improperly expressed, or too poorly developed to be understood." *Barrett v. State*, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005), *trans. denied*.

[36] Lane appeals, arguing that: (1) the trial court abused its discretion when it admitted evidence; (2) the trial court denied him a fair trial when it commented

on whether he would testify; (3) there was insufficient evidence to support his convictions; and (4) the post-conviction court denied Lane a fair hearing. We will address each argument in turn.

1. Direct Appeal Issue – Admission of Evidence

[37] Lane argues that the trial court abused its discretion when it admitted multiple pieces of evidence. We afford trial courts broad discretion in ruling on the admission of evidence. *Townsend v. State*, 33 N.E.3d 367, 370 (Ind. Ct. App. 2015), *trans. denied*. "Generally, we review the trial court's ruling on the admission of evidence for an abuse of discretion. We reverse only where the decision is clearly against the logic and effect of the facts and circumstances." *Jones v. State*, 982 N.E.2d 417, 421 (Ind. Ct. App. 2013) (internal citation omitted), *trans. denied*. Even if a trial court abuses its discretion by admitting challenged evidence, we will not reverse the judgment if the admission of evidence constituted harmless error. *Sugg v. State*, 991 N.E.2d 601, 607 (Ind. Ct. App. 2013), *trans. denied*.

[38] Lane challenges the admission of the February 22 and March 3 recordings. Specifically, Lane argues that the recordings were "never properly authenticated by the witnesses." (Lane's Br. 25). Assuming without deciding that the February 22 and March 3 recordings were inadmissible, we find any error to be harmless. Error in the admission of evidence is harmless if it does not affect the substantial rights of the defendant. *See McVey v. State*, 863 N.E.2d 434, 440 (Ind. Ct. App. 2007), *reh'g* denied, trans. *denied*. In determining

whether an evidentiary ruling has affected a defendant's substantial rights, we assess the probable impact of the evidence on the factfinder. *Mathis v. State*, 859 N.E.2d 1275, 1280 (Ind. Ct. App. 2007).

[39] Here, the February 22 and March 3 recordings were used by the State to support the Level 6 felony intimidation charge. However, the jury did not find Lane guilty of this charge, and the State dismissed the charge at sentencing. Thus, the admission of these recordings were harmless because they did not affect Lane's substantial rights.[8]

2. Direct Appeal Issue – Fair Trial

[40] Lane also argues that the trial court was biased and denied him a fair trial by commenting on whether or not he would testify. Specifically, Lane argues that the trial court "placed . . . Lane in jeopardy by repeatedly referencing whether he would testify, setting up an expectation that he needed to testify in order to clarify issues." (Lane's Br. 28). We disagree.

[41] Indiana law presumes that a judge is unbiased and unprejudiced. *See Garland v. State*, 788 N.E.2d 425, 433 (Ind. 2003); *See also* Ind. Judicial Conduct Canon

---

[8] Lane also argues that the trial court abused its discretion when it did not admit Lane's unredacted police interview because it was impossible for Lane to argue for the inclusion of the entire interview without knowing which parts of the interview were redacted and why. However, Lane provides no cogent argument pointing to any cases or authorities that support this claim. Thus, he has waived the argument on appeal. *See* Ind. Appellate Rule 46(A)(8). Waiver notwithstanding, Lane did not make an offer to prove why the unredacted police interview should be admitted. To reverse a trial court's decision to exclude evidence, there must have been error by the court that affected the defendant's substantial rights and the defendant must have made an offer of proof or the evidence must have been clear from the context. *Stroud v. State*, 809 N.E.2d 274, 283 (Ind. 2004).

2.2. To rebut this presumption, a defendant must establish from the judge's conduct actual bias or prejudice that places the defendant in jeopardy. *Smith v. State*, 770 N.E.2d 818, 823 (Ind. 2002). In assessing a trial judge's partiality, we examine the judge's actions and demeanor while recognizing the need for latitude to run the courtroom and maintain discipline and control of the trial. *Timberlake v. State*, 690 N.E.2d 243, 256 (Ind. 1997). Even where the court's remarks display a degree of impatience, if in the context of a particular trial they do not impart an appearance of partiality, they may be permissible or promote an orderly progression of events at trial. *Id.* (internal quotation marks and citations omitted).

[42] Our review of the record reveals that the trial court's comments were made to ensure that Lane was complying with the rules of evidence. Specifically, the trial court continued to remind Lane that he could not admit evidence into the record that he had drawn himself during cross-examination and explained to Lane that he could not make statements about what had happened while cross-examining witnesses. The trial court informed Lane that if he wanted to admit evidence that he had drawn himself or wanted to make comments about what had happened, he could do so during his own testimony after he was sworn in. We hold that the trial court's statements were made to maintain discipline and control over the trial and did not place Lane in jeopardy or deny him a fair trial. *See Stellwag v. State*, 854 N.E.2d 64, 66 (Ind. Ct. App. 2006) ("[A] trial judge must be given latitude to run the courtroom and maintain discipline and control of the trial.").

3. Direct Appeal Issue – Sufficiency of the Evidence

[43] Lane next argues that there was insufficient evidence to support his convictions. Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[44] Lane first argues that there was insufficient evidence that the injuries to K.P. "created [a] substantial risk of death" to support his Level 3 felony aggravated battery conviction. (Lane's Br. 31). We disagree.

[45] INDIANA CODE § 35-42-2-1.5 provides that "[a] person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death . . . commits aggravated battery, a Level 3 felony." Thus, to convict Lane of Level 3 felony aggravated battery, the State was required to prove beyond a reasonable doubt that Lane knowingly or intentionally inflicted an injury on K.P. that created a substantial risk of death. In reviewing a sufficiency claim concerning whether the injuries created a substantial risk of death, we look to the observable facts, including the nature and location of the injury, and the treatment provided. *Alexander v. State*, 13 N.E.3d 917, 922 (Ind. Ct. App. 2014). Whether a risk of death is substantial enough to meet the statutory definition is

largely a matter of degree "and therefore a question reserved for the factfinder." *See Young v. State*, 725 N.E.2d 78, 82 (Ind. 2000) (explaining that "[w]hether a bodily injury is 'serious' has been held to be a matter of degree and therefore a question reserved for the factfinder").

[46] Our review of the record reveals that Lane had body slammed K.P. onto a concrete floor at least twice, struck and tased K.P.'s neck with a taser multiple times, grabbed K.P. by the hair and slammed her head against a concrete floor about six times, and struck K.P. with a pistol. Also, K.P. testified that when she had touched the wound on her head, her hand had been covered in blood up to her wrist. K.P. further testified that the room had been spinning and she could not see straight. NP Claybaugh testified that K.P. had multiple lacerations on the side of her head, a three-inch wound on the back of her head that required a dozen staples, bruising on her head, bruising on her neck, and bruising on her arms. NP Claybaugh also testified that K.P.'s injuries were serious enough to merit a CAT scan in case of an enclosed head injury or an internal hemorrhage. Further, Osting had testified that when K.P. had entered the gas station, she had blood covering her head, her neck, her shoulders, her shirt, and her sleeves. We hold that there is sufficient evidence for the jury to find that Lane's attack on K.P. created a substantial risk of death.

[47] Lane also challenges the sufficiency of the evidence supporting his convictions for domestic battery and burglary. However, he does so only by challenging the credibility of K.P.'s testimony over his own. Lane's arguments are a request to reweigh the evidence, which we will not do. *See Drane*, 867 N.E.2d at 146.

4. Post-conviction Issue – Fair Hearing

[48] Lane does not challenge the post-conviction court's denial of post-conviction relief. Instead, Lane argues that the post-conviction court did not give him a fair hearing when it: (1) did not admit his evidence; and (2) denied his oral motion to continue. We will address Lane's arguments in turn.

[49] Lane first argues that the post-conviction court erred by not allowing him to admit documents into evidence. However, our review of the record reveals that Lane never moved to admit any of his documents into evidence. Instead, Lane gave testimony for nearly an hour about his innocence without specifically identifying or moving to admit any documents into the record. We cannot say that the post-conviction court has erred by excluding evidence that Lane never moved to admit in the first place.

[50] Lane also argues that the trial court abused its discretion when it denied his oral motion to continue at the December 2020 evidentiary hearing. However, Lane provides no cogent argument pointing to any cases or authorities that support this claim. Thus, he has waived the argument on appeal. *See* Ind. Appellate Rule 46(A)(8).[9]

[51] Waiver notwithstanding, we find no abuse of discretion by the post-conviction court. We review a post-conviction court's grant or denial of a continuance for

---

[9] Lane also does not cite to a standard of review for a post-conviction court's denial of a motion to continue as required by Indiana Appellate Rule 46(A)(8)(b).

an abuse of discretion. *Tapia v. State*, 753 N.E.2d 581, 586 (Ind. 2001). An abuse of discretion occurs when the court's judgment is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id* at 585. Continuances to allow time for additional preparation are generally disfavored and require a showing of "good cause" and how "it is in the interests of justice." *Williams v. State*, 681 N.E.2d 195, 202 (Ind. 1997). Furthermore, "[a] continuance requested for the first time on the morning of trial is not favored." *Lewis v. State*, 512 N.E.2d 1092, 1094 (Ind. 1987). Here, Lane requested a motion to continue during his evidentiary hearing in order to submit documents to the post-conviction court as evidence. However, during his testimony, Lane never specifically identified the documents he wanted to admit into evidence, never attempted to admit any documents into evidence, and never stated to the post-conviction court specifically what documents he wanted to mail to the post-conviction court. As a result, the post-conviction court did not abuse its discretion by denying Lane's oral motion to continue during his evidentiary hearing.

[52] Affirmed.

Robb, J., and Weissmann, J., concur.