MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Willie A. Owens,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 19, 2021

Court of Appeals Case No. 20A-CR-1511

Appeal from the Madison Circuit Court

The Honorable David A. Happe, Judge

Trial Court Cause No. 48C04-1901-MR-278

Najam, Judge.

Statement of the Case

[1] Willie A. Owens appeals his convictions for murder, a felony; two counts of unlawful possession of a firearm by a serious violent felon, each as a Level 4 felony; and false informing, as a Class A misdemeanor. Owens also appeals his aggregate ninety-year sentence in the Department of Correction. Owens raises six issues for our review, which we restate as follows:

1. Whether Owens was entitled to have one of his firearm charges severed as a matter of right.

2. Whether the trial court committed fundamental error when it did not issue a limiting instruction to the jury after it had considered a piece of evidence.

3. Whether the trial court committed fundamental error when it permitted the State to introduce certain evidence.

4. Whether the trial court abused its discretion when it admitted evidence under Indiana Evidence Rule 403.

5. Whether the trial court abused its discretion when it sentenced Owens.

6. Whether Owens' sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] In 2018 and 2019, Filimon Adhanom rented a house in Anderson and held frequent, early-morning parties there. In December of 2018, Owens was dating Brittany Bucci. On December 30, Owens and Bucci attended one of Adhanom's parties, where Owens met Tommie Griffin, a former sexual partner of Bucci's. As he was leaving, Griffin shook Bucci's hand goodbye. This "upset" Owens, who felt it was "disrespectful" to him. Tr. Vol. VI at 20. That same month, Owens purchased .40-caliber ammunition from James Streeter at one of Adhanom's parties.

[4] On December 31, Adhanom had another party, and Owens went to the party with Keonte Matthews, who observed Owens carry a .40-caliber silver handgun "on his hip" into the party. Tr. Vol. IV at 150, 157. Griffin and his girlfriend, Ashley McClelland, also attended. McClelland and Owens were former sexual partners. At one point during the party, Owens grabbed McClelland's arm. McClelland pulled her arm free, moved closer to Griffin, and she told Owens that she "don't f*** with [him] . . . any longer." *Id.* at 7. Owens left the room upset.

[5] Later, a fight broke out between unknown persons at the party, and Griffin, Owens, and Matthews left the party at the same time. Griffin invited Owens and Matthews back to his place. Owens asked for a ride, and Griffin drove Owens and Matthews down the street. Matthews, who was in the back seat, asked to be let out there, and Griffin complied.

[6] As Matthews was walking away from Griffin's vehicle and toward his own, he heard "pow, pow, pow, pow, pow." *Id.* at 162. Matthews then ran to his car and "about five to ten seconds later" Owens "jumped" into the car with him. *Id.* Matthews heard Owens say, "head shots, n***a." *Id.* Jenna Wolfe and Bucci were also at the car, also heard the gunshots, also observed Owens excitedly enter the car, and also heard Owens say some version of "head shots." *Id.* at 75; Tr. Vol. VI at 25. Matthews asked Owens, "you just did that stupid a** sh**?" Owens responded, "Yeah, . . . the n***a disrespected me." Tr. Vol. IV at 162.

[7] A citizen discovered Griffin's body inside Griffin's vehicle the next morning. Officers found three fired .40-caliber bullet casings near the vehicle, at least two of which had been fired from the same weapon, along with two unfired .40-caliber bullets. An autopsy revealed that two bullets had entered the right side of Griffin's neck and exited the left side; either of those shots would have been fatal, though not instantly. A third bullet grazed Griffin's face. The autopsy excluded the gunshots from being closer than three feet in range.

[8] On January 2, 2019, Owens and Bucci began to hear "rumors" that Owens "was involved" in Griffin's death. Tr. Vol. VI at 27. Owens then "packed up and left" for Chicago, where he traded vehicles with a family member before driving on to Wisconsin. *Id.* at 27-28. Owens told Bucci to tell people that she "wasn't there" and she "kn[e]w nothing" about the shooting. *Id.* at 29. Bucci also found her cell phone missing after Owens had talked about disposing of it.

And Owens instructed Matthews to not "say sh**" and asked Matthews if they could trust Wolfe to not talk. Tr. Vol. IV at 165-70.

[9] In late January, the State found and arrested Owens outside of a bowling alley in Anderson while he was in a car with his sister and his sister's partner. Under Owens' seat, officers found a double-barreled shotgun. Neither Owens' sister nor her partner had any knowledge of the shotgun. Officers also found a backpack with clothing inside it.

[10] The State charged Owens with the murder of Griffin; unlawful possession of a firearm by a serious violent felon, as a Level 4 felony, for his possession of the .40-caliber silver handgun; unlawful possession of a firearm by a serious violent felon, as a Level 4 felony, for his possession of the double-barreled shotgun; and with aiding, inducing, or causing false informing, as a Class A misdemeanor. Owens would later move to sever the firearm charges as of right under Indiana Code Section 35-34-1-11. The trial court denied that motion.

[11] While incarcerated, Owens wrote a letter, which would later become State's Exhibit 175, that was to be delivered to a person named Whitney Terry in Anderson but was ultimately intended for Owens' brother, Arthur Williams.[1] In that letter, Owens stated that Matthews and Wolfe were "the only ones that matter[] in the case" and that "[n]obody else has any merit and can't do any

[1] Officers obtained a search warrant for Owens' outgoing mail after he discussed the letter in a monitored phone call. *See* Tr. Vol. VI at 209.

harm." Ex. Vol. I at 186.[2] Owens included marked-up notes from interviews Matthews and Wolfe had had with investigators. He then wrote that Matthews needed to "change his way of speaking" to investigators and that both Matthews and Wolfe "better think about what they saying [sic] and doing." *Id.* Owens concluded the letter: "I say this in these words for your understanding[:] Make sure you talk to them!" *Id.*

[12] At Owens' ensuing trial, Matthews, Wolfe, and Bucci each testified about their observations the night of Griffin's murder. Matthews also testified to having observed Owens with a .40-caliber silver handgun at the party shortly before the murder. Bucci also testified about Owens fleeing to Wisconsin and the disappearance of her cell phone. And, among other witnesses, an arresting officer testified to having found the shotgun under Owens' seat in his sister's car at the time of the arrest.

[13] During another witness's testimony, the State introduced two social media photographs of Owens holding a .40-caliber silver handgun. At the same time, the State also sought to admit a one-minute social media video of Owens holding the handgun. Owens objected to the admission of the video under Indiana Evidence Rule 403 on the ground that, in a portion of the video, Owens

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[2] Our pagination to the Exhibits Volume is based on the .pdf pagination, and it would be helpful if the parties used the same pagination when referring to the exhibits in their briefs.

appeared to be smoking marijuana. The trial court overruled that objection and admitted the video, stating as follows:

> The probative value here the Court would have to characterize as high. It puts the defendant in possession of a weapon . . . consistent with the murder weapon. . . . [T]he risk of unfair prejudice is there. I think a jury could interpret that what's happening . . . is smoking marijuana. . . . [But] the State has attenuated the risk by restricting the portion of the video that's going to be shown to that immediately surrounding the display of the weapon. And I think that has decreased the weight to be given the unfair prejudice. So, on the record I have, the Court would not find that the risk of unfair prejudice substantially outweighs the probative value.

Tr. Vol. III at 215-16.

[14] The State also introduced State's Exhibit 175 over Owens' objection. In particular, Owens objected to that exhibit on the ground that the State had not established a sufficient foundation for its authenticity. The trial court overruled Owens' objection. A few moments later, after the State had already published the exhibit to the jury, Owens' counsel asked to approach the bench. There, he asked the court to have the jury "stop . . . reading it at this point" as he had just noticed that, in the marked-up interview notes included with the letter, Matthews had stated that he would "[w]ithout hesitation" take a stress test to verify that he was not Griffin's murderer. Tr. Vol. VI at 212-14; Ex. Vol. I at 191. The court declined Owens' request, stating that it had been "waived." Tr. Vol. VI at 214.

[15] Owens followed up by then asking the court for a limiting instruction to clarify for the jury that the evidentiary value in the letter "is not for the truth of what's in there but just that it was sent," although the substance of Owens' argument to the trial court appeared at times to be concerned about the admissibility of stress tests in general. *Id.* The trial court declined Owens' request for a limiting instruction as well, noting that Owens' defense to that point had been to challenge the validity of the investigation, and a detective asking a witness about a stress test to see the witness's response, whether any test was actually given, was relevant to that issue. The court further noted that there was no evidence that Matthews had in fact taken any such test, and that Owens was free to point that out and otherwise challenge the detective's questions to Matthews through cross-examination. *See id.* at 218.

[16] Following the parties' closing arguments, the jury found Owens guilty of murder, possessing the firearms as alleged in the Level 4 felony offenses, and the false informing offense. Owens then pleaded guilty to his status as a serious violent felon. Thereafter, the trial court held a sentencing hearing. After hearing further evidence and argument, the trial court sentenced Owens as follows:

> With no provocation, you took Mr. Griffin's life. You armed yourself and you ambushed him. You've taken no responsibility for that. You've expressed no remorse for that. . . . Here there is strong aggravation. [Owens] does have a serious history of both serious juvenile offenses and adult felony offenses. The defendant is being sentenced for multiple serious felony offenses here at the same time, which is a further aggravating factor. The

> Court also considers that here in court [Owens] was disrespectful and argumentative to family members at a time when they . . . are just trying to express their feelings about having lost their loved one. Even if you deny culpability for that, you could've given them the respect of having listened to what they had to say, and you chose not to do that. That speaks to your character . . . . When I look at the aggravating factors together, the Court does find that the aggravation is powerful in this case. . . . I do agree with the defense position that it should be found as a mitigator that [Owens] did plead guilty to [his status as a serious violent felon]. . . . The Court finds that it's entitled to very little weight. The State at that point was prepared to prove [Owens'] status . . . . And, after making that decision . . . , [Owens] has since backtracked . . . . So we have very powerful aggravation weighed against very little mitigation. . . . Based on the abundant aggravation here and the lack of any substantial mitigation, the Court finds that the worst of the worst is an apt description for this case. There's a comparably small number of cases that the Court does impose the maximum sentences in but I think this is an appropriate case. The criminal conduct . . . is egregious. It's caused tremendous pain to so many people. It was so senseless and avoidable. The Court finds that anything other than the maximum sentence in this case would tend to denigrate the seriousness of the offense.

Tr. Vol. VII at 185-87. The court then ordered Owens to serve an aggregate term of ninety years in the Department of Correction. This appeal ensued.

Discussion and Decision

Issue One: Severance

[17] Owens first argues on appeal that the trial court erred when it denied his motion to sever the firearm count that was based on his possession of the shotgun. As our Supreme Court has made clear:

> The degree of deference owed to a trial court's ruling on a motion for severance depends on the basis for joinder. Where the offenses have been joined solely because they are of the same or similar character, a defendant is entitled to severance as a matter of right. The trial court thus has no discretion to deny such a motion, and we will review its decision *de novo*. But where the offenses have been joined because the defendant's underlying acts are connected together, we review the trial court's decision for an abuse of discretion.

Pierce v. State, 29 N.E.3d 1258, 1264 (Ind. 2015) (cleaned up); *see also* Ind. Code § 35-34-1-11(a) (2020).

[18] Owens' argument here is clear: "The defendant based his motion on being entitled to a severance as a matter of right, not the discretionary section of the statute." Appellant's Br. at 15. In other words, he asserts that he was entitled as a matter of right to have the firearm count based on the shotgun severed because the State joined that offense with the other counts solely based on the same or similar character of the charges.

[19] We cannot agree. The shotgun-based firearm offense was joined not because it was the same or similar in character to the other charges but because the facts the State alleged in support of that offense were connected to the facts underlying the other allegations. Specifically, when officers arrested Owens for the murder of Griffin, they discovered him to be in possession of the shotgun. Accordingly, Owens was not entitled to severance as a matter of right, and we affirm the trial court's denial of his motion to sever.

Issue Two: Limiting Instruction

[20] Owens next asserts that the trial court committed fundamental error by refusing to give a limiting instruction to the jury in its review of State's Exhibit 175.[3] Fundamental error is an error that made "a fair trial impossible." *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). To show fundamental error, the appellant must demonstrate "that the trial court should have raised the issue *sua sponte* . . . ." *Taylor v. State*, 86 N.E.3d 157, 162 (Ind. 2017).

[21] Owens cannot show fundamental error. As we have explained:

> Our case law has long required the parties to request an admonishment from the court—not to have the court act *sua sponte*—if the parties think such an admonishment might be appropriate. . . .
>
> The reason for putting that burden on the parties and not on the trial court is obvious: admonishments are double-edged swords. On the one hand, they can help focus the jury on the proper considerations for admitted evidence. However, on the other hand, they can draw unnecessary attention to unfavorable aspects of the evidence. The risk calculus inherent in a request for an admonishment is an assessment that is nearly always best made by the parties and their attorneys and not *sua sponte* by our trial courts.

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[3] Owens does not dispute that his request for a limiting instruction after the exhibit had already been published to the jury resulted in a failure to preserve this issue for appellate review. Insofar as Owens' argument on this issue is framed around the abuse of discretion standard, Owens' argument is not supported by cogent reasoning. Ind. Appellate Rule 46(A)(8)(a).

Merritt v. State, 99 N.E.3d 706, 710 (Ind. Ct. App. 2018) (citations omitted), *trans. denied*. For those same reasons, Owens cannot show that the trial court's decision to not issue a limiting instruction to the jury with respect to State's Exhibit 175 denied him a fair trial.

Issue Three: State's Exhibit 175

[22] Limiting instruction aside, Owens also asserts that the trial court committed fundamental error when it admitted State's Exhibit 175 into evidence. According to Owens, that exhibit's reference to Matthews being willing to take a stress test made a fair trial impossible. Owens further asserts that the report demonstrates that the investigating detective believed Matthews, which "unfairly bolstered [Matthews'] credibility." Appellant's Br. at 24.

[23] "[F]undamental error in the evidentiary decisions of our trial courts is especially rare." *Id.* at 709. Our Court has held that fundamental error exists when the State's evidence shows that the *defendant* has been offered a stress test and the jury is left to infer "either [that the defendant] took the test and failed it or he refused to take the test because he was being untruthful." *Houchen v. State*, 632 N.E.2d 791, 793-94 (Ind. Ct. App. 1994). However, Owens cites no authority that finds fundamental error in a reference to a *third party's willingness* to take a stress test. To be sure, we remind the State of the importance of making sure the exhibits it introduces do not improperly display material that is unfairly prejudicial to the defendant or irrelevant. But, here, as the trial court noted, Owens opened the door to this evidence when he challenged the investigation. A detective asking a witness about a stress test to see the witness's response,

whether any test was actually given, was relevant to that issue. And Owens had the opportunity to cross-examine the detective on his investigative techniques and the merits of stress tests. He also had the opportunity to examine Matthews on whether he had in fact taken any such tests. We therefore decline to find fundamental error on this issue.

[24] Still, Owens also asserts that the marked-up investigator's notes included with Owens' letter demonstrated that the investigating detective found Matthews credible, and the admission of that evidence therefore made a fair trial impossible. But there is no clear language in the detective's notes to that effect. At best, Owens is assuming a reasonable juror might have inferred from those notes that the detective believed Matthews, but that is not sufficient to have made a fair trial impossible. Further, Owens had the opportunity to challenge Matthews' credibility at trial. There is no fundamental error on this issue.

Issue Four: Social Media Video

[25] Owens also argues that the trial court abused its discretion under Indiana Evidence Rule 403 when it permitted the State to introduce the social media video into evidence. Under Indiana Rule of Evidence 403, "relevant evidence may be excluded if its probative value is substantially outweighed by the danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." *Snow v. State*, 77 N.E.3d 173, 179 (Ind. 2017) (quotation marks omitted). As our Supreme Court has made clear:

> "Trial judges are called trial judges for a reason. The reason is that they conduct trials. Admitting or excluding evidence is what they do." *United States v. Hall*, 858 F.3d 254, 288 (4th Cir. 2017) (Wilkinson, J., dissenting). That's why trial judges have discretion in making evidentiary decisions. This discretion means that, in many cases, trial judges have options. They can admit or exclude evidence, and we won't meddle with that decision on appeal. *See Smoote v. State*, 708 N.E.2d 1, 3 (Ind. 1999). There are good reasons for this. "Our instincts are less practiced than those of the trial bench and our sense for the rhythms of a trial less sure." *Hall*, 858 F.3d at 289. And trial courts are far better at weighing evidence and assessing witness credibility. *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). In sum, our vantage point—in a "far corner of the upper deck"—does not provide as clear a view. *State v. Keck*, 4 N.E.3d 1180, 1185 (Ind. 2014).

Id. at 177. Our trial courts have "wide discretion" in applying Rule 403. *Id.*

[26] Owens asserts that the social media video, which showed Owens in possession of a silver handgun while "listening to rap music, behaving erratically," and apparently smoking marijuana, was inadmissible. Appellant's Br. at 25. He adds that "[r]ap music . . . is associated with crime," *id.* at 30, although the basis for his objection in the trial court was exclusively focused on the apparent use of marijuana. In any event, the trial court reviewed the video and carefully considered both its probative value and the opportunity for unfair prejudice before admitting the video. We cannot say that the undue prejudice was so clearly against Owens that we are in a position to "overr[i]de the trial court's wide discretion" under Rule 403. *Snow*, 77 N.E.3d at 179. Thus, we affirm the court's admission of that evidence.

Issue Five: Sentencing Discretion

[27] Owens next asserts that the trial court abused its discretion when it sentenced him. As our Supreme Court has made clear:

> We have long held that a trial judge's sentencing decisions are reviewed under an abuse of discretion standard. An abuse of discretion occurs if the decision 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. When sentencing, a trial court abuses its discretion if it, among other things, considers reasons that are improper as a matter of law.

McCain v. State, 148 N.E.3d 977, 981 (Ind. 2020) (cleaned up).

[28] According to Owens, the trial court considered three aggravators that were improper as a matter of law: that Owens did not accept responsibility for the crimes; the harm to the victim's family; and the assertion that Owens "ambushed" Griffin. Appellant's Br. at 32-33. But we read the court's sentencing statement differently. With respect to the court's comment that Owens did not accept responsibility, the court did not clearly assign aggravating weight to that comment. What is clear, however, is that the court did not afford Owens any mitigating weight for that either. Further, we do not read the court's sentencing statement to assign any aggravating weight to the harm to the victim's family.

[29] We do agree with Owens that the court used the facts and circumstances of the murder as an aggravator, which the court described in part as an "ambush." *See id.* As a matter of law,

> [w]hen evaluating the nature of the offense, the trial court may properly consider the particularized circumstances of the factual elements as aggravating factors. The trial court must then detail why the defendant deserves an enhanced sentence under the particular circumstances. Generally, this aggravator is thought to be associated with particularly heinous facts or situations.

Howell v. State, 97 N.E.3d 253, 271 (Ind. Ct. App. 2018) (quoting *McElroy v. State*, 865 N.E.2d 584, 589-90 (Ind. 2007)), *trans. denied*. Thus, our trial courts are entitled to weigh the particularized facts of the offense in assessing the defendant's sentence. *Id.* And the court's assessment here is not contrary to the record. We therefore cannot conclude that the trial court's assessment of the particularized facts of Owens' offenses was an abuse of the court's discretion.

Issue Six: Sentencing Inappropriateness

[30] Finally, Owens asserts that his aggregate sentence of ninety years in the Department of Correction is inappropriate in light of the nature of the offenses and Owens' character. Indiana Appellate Rule 7(B) provides that "[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." This Court has recognized that "[t]he advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed." *Sanders v. State*,

71 N.E.3d 839, 844 (Ind. Ct. App. 2017). And the Indiana Supreme Court has explained that the "principal role of appellate review should be to attempt to leaven the outliers," not to "achieve a perceived 'correct' result in each case." *Shoun v. State*, 67 N.E.3d 635, 642 (Ind. 2017). Further, the defendant has the burden on appeal to persuade us that the sentence imposed is inappropriate. *Id.*

[31] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court "prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[32] Here, the trial court entered its judgment of conviction against Owens for murder, two Level 4 felonies, and a Class A misdemeanor. Murder carries a sentencing range of forty-five to sixty-five years, with an advisory term of fifty-five years. I.C. § 35-50-2-3. A Level 4 felony carries a sentencing range of two to twelve years, with an advisory term of six years. I.C. § 35-50-2-5.5. And a Class A misdemeanor is punishable by up to one year in jail. I.C. § 35-50-3-2. Thus, the maximum term Owens faced was ninety years, which the trial court imposed after finding the particularized facts of Griffin's murder, Owens'

lengthy criminal history,[4] and Owens' poor character to be aggravating circumstances and finding that Owens' guilty plea to his status as a serious violent felon was not entitled to significant mitigating weight.

[33] We cannot say that Owens' sentence is inappropriate. With respect to the nature of the offenses, Owens murdered Griffin by shooting Griffin twice in the neck after some perceived slight of disrespect. Owens fled Indiana when he heard he might be a suspect in the murder. He interfered with or attempted to interfere with several witnesses, namely, Matthews, Wolfe, and Bucci, and he disposed of Bucci's phone. Further, with respect to his character, Owens has a long criminal history, as noted by the trial court, and at the sentencing hearing he frequently interrupted witnesses and the court.

[34] Owens' argument on appeal is simply that we disregard the trial court's reasoning and sentence and in its place impose the advisory term for murder and run the other sentences concurrent with that term. But Owens offers no "compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson*, 29 N.E.3d at 122. Accordingly, deference to the trial court here "prevail[s]." *Id.* We affirm Owens' sentence.

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[4] Owens' criminal history includes three prior felony convictions and four prior misdemeanor convictions going back to 2002.

Conclusion

[35] In sum, we affirm Owens' convictions and sentence.

[36] Affirmed.

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