

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Timothy R. Thomas,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 3, 2023

Court of Appeals Case No.
22A-CR-770

Appeal from the Lake Superior
Court

The Honorable Salvador Vasquez,
Judge

Trial Court Cause No.
45G01-2101-MR-13

Memorandum Decision by Judge Weissmann
Judges May and Crone concur.

Weissmann, Judge.

- [1] Timothy R. Thomas shot and killed Nicholas Lile during an alcohol-infused social gathering at the Lile home. Thomas claimed self-defense, arguing that a heavily intoxicated Lile was the provocateur and tried to strangle him. The jury acquitted Thomas of murder but found him guilty of aggravated battery.
- [2] Thomas appeals, arguing that the murder acquittal barred any convictions for battery, the trial court improperly excluded his impeachment evidence, and his 16-year sentence is too harsh. We conclude the aggravated battery conviction was justified, no evidentiary error occurred, and his sentence is not inappropriate. We therefore affirm both Thomas's conviction and sentence.

Facts

- [3] Lile, his wife, and her best friend, Angela Gauler, were drinking heavily and socializing at the Lile home. Around 9:30 p.m., Gauler invited Thomas to join them. When he arrived at the Lile home, Thomas, a supervisory police officer with the United States Department of Veterans Affairs, was wearing his personal handgun in a holster under his clothing.
- [4] The mood moved from friendly to uncomfortable as Lile and Thomas spoke about their deployments to Iraq and Afghanistan in different military branches. Lile's mood darkened as he spoke of a friend who had been killed in Iraq. Noticing how intoxicated everyone else was, Thomas decided to leave. But before he began walking up the stairs from the basement, Thomas claims Lile tackled him. The fight escalated, ending when Thomas shot and killed Lile.

- [5] Thomas grabbed his coat and boots and went to his car to call 911. He reported that he was an off-duty officer and that he had been attacked. He did not mention Lile's need for medical attention until five minutes after the call began.
- [6] The State charged Thomas with murder and later added a firearms enhancement allegation and two new charges: Level 3 felony aggravated battery and Level 5 felony battery. At trial, Thomas claimed he acted in self-defense. The jury returned verdicts of not guilty on the murder count and guilty on the two battery counts. Thomas then waived his right to a jury trial on the firearms enhancement allegation, which the trial court, after hearing evidence, applied. Based on double jeopardy concerns, the court entered judgment of conviction only on the aggravated battery count. It sentenced Thomas to 11 years imprisonment, increased by 5 years due to the firearms enhancement.
- [7] Thomas moved to correct error alleging that the jury found he acted in self-defense when it found him not guilty of murder. The trial court denied the motion, ruling:

Specifically, the defendant asserts as erroneous and against the weight of the evidence, that Mr. Thomas could be found not guilty in Count I and guilty as to Counts II and III given the defendant's claim that he was acting in self-defense. The Court disagrees. As indicated in the State's Answer, a reasonable jury could find that there was not a knowing or intentional killing but still could find that there was a knowing or intentional battery.

The Court finds that there was substantial and sufficient evidence presented for the jury to find beyond a reasonable doubt that the Defendant was guilty of committing Count II Aggravated Battery

and beyond a reasonable doubt that he was not acting in self-defense. The verdict is supported by the evidence present at trial, the verdict is not against the weight of the evidence, and the verdict is not clearly erroneous.

App. Vol. IV, pp. 226-27.

Discussion and Decision

[8] Thomas raises three issues on appeal. First, he repeats his claim that his murder acquittal precluded the guilty verdicts on the two battery counts. Second, Thomas contends the trial court abused its discretion in excluding video evidence of Gauler's statement to police in which she made statements allegedly conflicting with her trial testimony. Third, Thomas challenges his sentence as inappropriate under Indiana Appellate Rule 7(B) in light of the nature of the offense and the character of the offender.

[9] We conclude the murder acquittal did not impact the jury's ability to find Thomas guilty of a battery. We also conclude that the trial court properly excluded the video evidence of Gauler's prior inconsistent statement to police offered by Thomas to impeach Gauler. Impeachment was complete when Gauler admitted making the prior statement so extrinsic evidence of that statement was inadmissible under Indiana Evidence Rule 613(b). Finally, we find that Thomas has not met his burden of establishing that his 16-year sentence arising from his killing of Lile is inappropriate.

I. Murder Acquittal

[10] Thomas makes two arguments as to why the murder acquittal precluded any battery conviction. First, he claims the murder verdict is an implicit determination that Thomas prevailed on his self-defense claim. If the jury believed he acted in self-defense, Thomas reasons, it could not convict him of any of the three crimes with which he was charged. Second, he asserts the mens rea of each of the three offenses was identical. Therefore, according to Thomas, the jury could not find that Thomas did not intend to commit murder while also finding he intended to commit aggravated battery or battery. We address each claim in turn.

A. Self-defense

[11] We reject Thomas's claim that he prevailed on his self-defense claim as to the murder charge and, thus, necessarily must have prevailed on his self-defense claim as to the two battery counts. A valid claim of self-defense legally justifies an otherwise criminal act. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). A person is justified in using deadly force and does not have a duty to retreat if the person reasonably believes that force is necessary to prevent serious bodily injury to himself or a third person or the commission of a forcible felony. Ind. Code § 35-41-3-2(c).

[12] A defendant who claims he acted in self-defense must prove he was in a place where he had a right to be, acted without fault, and reasonably feared or perceived death or great bodily harm. *Larkin v. State*, 173 N.E.3d 662, 670 (Ind.

2021). “The State must then negate at least one element beyond a reasonable doubt ‘by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.’” *Id.* (quoting *Lilly v. State*, 506 N.E.2d 23, 24 (Ind. 1987)).

[13] Thomas interprets the jury’s not guilty verdict on the murder count as necessarily meaning the jury found he acted in self-defense. He then claims that the elements of murder differ from the elements of aggravated battery only as to the type of victim injury. Murder requires a killing. Ind. Code § 35-42-1-1. Aggravated battery requires injury creating substantial risk of death. Ind. Code § 35-42-2-1.5. Under these circumstances, Level 5 felony battery involves a rude, insolent, or angry touching either committed with a handgun or causing serious bodily injury. Ind. Code § 35-42-2-1(g).

[14] Thomas reasons that the same evidence—that is, that Thomas shot and killed Lile—proved this injury element as to all three offenses. As he perceives the other elements of the three crimes as identical, he concludes the crimes must be indistinguishable from each other for purposes of a self-defense claim. A verdict finding that he proved self-defense as to one count necessarily would mean that he proved self-defense as to all counts.

[15] Thomas’s argument has several holes. First, the jury need not have even reached Thomas’s claim of self-defense to the murder count if the jury found the State had not proven the elements of murder: specifically, a knowing or intentional killing. Ind. Code § 35-41-1-1. “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.” Ind. Code § 35-41-2-2(b). “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” Ind. Code § 35-41-2-2(a). Given the evidence suggesting that Thomas intended only to repel Lile’s attack, the jury could have determined that Thomas did not knowingly or intentionally kill Lile. The jury would have had no need to consider any defenses if the State failed in its initial burden of proving the underlying crime of murder.

[16] At best, Thomas’s self-defense argument amounts to a claim of inconsistent verdicts. Inconsistent verdicts, however, are not grounds for reversal. *See Beattie v. State*, 924 N.E.2d 643, 649 (Ind. 2010) (adopting the rule that “[j]ury verdicts in criminal cases are not subject to appellate review on grounds that they are inconsistent, contradictory, or irreconcilable”).

[17] And finally, the record supports the jury’s rejection of Thomas’s self-defense claim as to the battery counts. Challenges to the sufficiency of the State’s evidence rebutting a defendant’s self-defense claim are reviewed like any other sufficiency of the evidence claim. *Brown v. State*, 738 N.E.2d 271, 273 (Ind. 2000). We do not reweigh the evidence or judge the credibility of witnesses and reverse only if no reasonable person could say that the State negated self-defense beyond a reasonable doubt. *Stewart v. State*, 167 N.E.3d 367, 377 (Ind. Ct. App. 2021).

[18] As the State notes, Thomas testified that Lile was so intoxicated that he could not stand and was still on the floor when Thomas drew and pointed his gun. The evidence suggested Thomas shot from the area of the staircase at a distance of at least 13 to 15 feet from Lile, given the placement of Lile's body and the lack of gunshot residue on Lile's shirt near the wound. As Lile was unarmed and heavily intoxicated, the jury reasonably could have found that Thomas willingly participated in the violence and was at fault by drawing his gun on an unarmed man, rather than climbing the stairs and exiting the home. *See* Ind. Code § 35-41-3-2 (allowing deadly force and no duty to retreat only when the person reasonably believes that force is necessary to prevent serious bodily injury to himself or a third person or the commission of a forcible felony). The jury also could have reasonably found that Thomas lacked a reasonable fear of death or great bodily harm at the time he drew the gun and fired it. *See id.* Thomas has failed to convince us that his self-defense claim precluded his conviction for aggravated battery.

B. Mens Rea

[19] Thomas also claims his murder acquittal required acquittal on the other counts based on his view that the requisite intent for all three crimes—murder, aggravated battery, and Level 5 felony battery—is identical: that is, each requires knowing or intentional conduct. *See* Ind. Code § 35-42-1-1 (murder); Ind. Code § 35-42-2-1.5 (aggravated battery); Ind. Code § 35-42-2-1 (Level 5 battery). Thomas contends the same evidence showing Thomas knowingly or intentionally shot Lile was used to prove each of the offenses, such that the

State’s failure to prove one offense was a failure to prove all three. He therefore challenges the trial court’s ruling, in its denial of his motion to correct error, that “a reasonable jury could find there was not a knowing or intentional killing but still find that there was a knowing or intentional battery.” App. Vol. IV, p. 234.

[20] Thomas’s argument that the intent elements of murder, aggravated battery, and battery are identical is incorrect. Although each offense required proof that Thomas acted “knowingly” or “intentionally,” that culpability requirement applied “to every material element of the prohibited conduct.” Ind. Code § 35-41-2-2(d). Given that the material elements of the conduct prohibited by the murder statute and by the battery statutes are different, the effect of applying “knowingly” and “intentionally” to those elements necessarily means that the State’s burden of proof differed as to each offense. *See* Ind. Code § 35-41-2-2(d).¹

[21] As we noted earlier in this opinion, the murder statute specifically prohibits a knowing or intentional killing—conduct that neither aggravated battery nor

¹ “A person who . . . knowingly or intentionally kills another human being . . . commits murder.” Ind. Code § 35-42-1-1. Aggravated battery occurs when a person “knowingly or intentionally inflicts injury on a person that creates substantial risk of death or causes: (1) serious permanent disfigurement; (2) protracted loss or impairment of the function of a bodily member or organ; or (3) the loss of a fetus.” Ind. Code § 35-42-2-1.5. A person commits Level 5 felony battery by knowingly or intentionally touching “another person in a rude, insolent, or angry matter” and the offense either “results in serious bodily injury to another person” or “is committed with a deadly weapon.” Ind. Code § 35-42-2-1(c), (g)(1)-(2).

battery specifically prohibits. Ind. Code §§ 35-42-1-1, -2-1, -2-1.5.² The jury could have reasonably found that Thomas did not intend to kill Lile but did intend to cause him a lesser bodily injury.

[22] Given these considerations and Thomas’s failure to cite any authority in which a murder acquittal has barred battery convictions in the same prosecution, we find the murder acquittal did not preclude his aggravated battery conviction.

II. Admission of Evidence

[23] Thomas next claims that the trial court erroneously excluded extrinsic evidence of Gauler’s statement to Lake County Sheriff’s Department Detective Estaban Carrattini the afternoon after Lile’s death. During that recorded interview, Gauler reported that just before the shooting, somebody was combative, Lile and Thomas engaged in a physical altercation, and that Gauler saw a flash. While in mental health treatment later, Gauler also stated that she had seen a physical altercation between the men.

² In *Leonard v. State*, 73 N.E.3d 155, 162 (Ind. 2017), our Supreme Court stated that “element” and “prohibited conduct” are not synonymous for purposes of the intent statute, Indiana Code § 35-41-2-2(d). To the extent Thomas speaks in terms of prohibited conduct, we do the same.

[24] At trial, Gauler testified that she could not recall most of the events surrounding Lile's death due to her intoxication both at the scene and during the interview by Detective Carattini the next afternoon. Gauler testified that her recall improved after she slept and became sober. She told the jury that something had happened on the other side of the pool table before Lile was shot and that Thomas and he were close together at the time.

[25] But Gauler's testimony fell short of an explicit statement that she had seen an altercation between the two men. On cross-examination, Gauler admitted that she told Detective Carattini during the interview that a physical altercation had occurred between Lile and Thomas. She noted that at the time of the interview, she had been drinking, had not slept or ate since before Lile's death, and was panicked due to being in a police station.

[26] In light of that testimony, Thomas sought for purposes of impeachment to introduce a portion of the recorded interview of Gauler by Detective Carrattini. Thomas hoped to show that Gauler was not intoxicated when she told the detective that Lile and Thomas had been in an altercation just before the shooting. The trial court sustained the State's objection to the recording, noting that Gauler had repeatedly acknowledged her statement to Detective Carattini.

[27] On appeal, Thomas concedes that if the witness acknowledges making a prior inconsistent statement, impeachment is complete and extrinsic evidence of the statement otherwise admissible under Indiana Evidence Rule 613(b) becomes

inadmissible. *Shepherd v. State*, 157 N.E.3d 1209, 1219-20 (Ind. Ct. App. 2020).

Evidence Rule 613(b) provides:

Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires.

[28] But relying on *Pruitt v. State*, 622 N.E.2d 469 (Ind. 1993), Thomas contends that exceptions exist to the rule that extrinsic evidence of an acknowledged prior inconsistent statement is inadmissible. The trial court found *Pruitt* unavailing, and so do we.

[29] *Pruitt* involved the admission of extrinsic evidence of a witness's prior inconsistent statement that she had recanted allegedly in response to police duress. *Id.* at 472-73. The State offered the extrinsic evidence to refute the witness's claim of police duress, and the trial court allowed the evidence only to determine the witness's credibility. *Id.* at 473.

[30] By contrast, Gauler did not recant her prior statement. She merely testified that her recall improved after she stopped consuming alcohol and finally slept after more than 24 hours awake. The duress to which Gauler testified related to her nervousness at being in a police station and did not arise from Detective Carattini's actions. Thus, *Pruitt* does not advance Thomas's claim.

[31] Moreover, Thomas has established no prejudice from the exclusion of the recorded statement. The record contains ample evidence of Gauler's prior

statements to Detective Carattini and to mental health professionals that Thomas and Lile were involved in an altercation before the shooting. And Detective Carattini specifically testified that he found Gauler to be coherent and did not believe she was intoxicated at the time of her statement about the altercation. That is exactly what Thomas hoped to prove through the jury's consideration of the video recording of Gauler's statement to Detective Carattini.

[32] Thomas offers no basis for finding that the excluded evidence was not cumulative to the other evidence of Gauler's prior statements. Without evidence of prejudice, Thomas cannot establish reversible error. *Farris v. State*, 818 N.E.2d 63, 70 (Ind. Ct. App. 2004) (error in exclusion of evidence is harmless if its probable impact on the jury, considering all the evidence in the case, is so minor as to not affect the defendant's substantial rights). Having rejected Thomas's claims that his conviction should be reversed, we affirm his conviction for aggravated battery.

III. Sentence

[33] Now we turn to Thomas's claim that his 16-year sentence is too harsh. This 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." Ind. Appellate Rule 7(B). This review requires substantial deference to the trial court because the "principal role of [our] review is to attempt to leaven the outliers,

and not to achieve a perceived correct sentence.” *Scott v. State*, 162 N.E.3d 578, 584 (Ind. Ct. App. 2021) (citations omitted).

[34] The sentencing range for aggravated battery, a Level 3 felony, is 3 to 16 years imprisonment, with an advisory sentence of 9 years imprisonment. Ind. Code § 35-50-2-5(b). The advisory sentence “is the starting point the Legislature selected as appropriate for the crime committed.” *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). Thomas’s pre-enhancement sentence of 11 years imprisonment for the aggravated battery therefore is 2 years above the advisory sentence. The firearms enhancement, which added 5 years to Thomas’s 11-year sentence, was the statutory minimum. *See* Ind. Code § 35-50-2-11(h) (allowing a firearms enhancement ranging from 5 to 20 years).

[35] As to the nature of the offense, Thomas argues that he was placed in unexpected circumstances—a room of intoxicated people—and was attempting to extricate himself before the offense occurred. But Thomas chose to travel to a social engagement in a private home armed with a hidden weapon. The trial court found that Thomas, a trained police officer, unreasonably used deadly force against an intoxicated and unarmed man. Tr. Vol. XII, p. 34. And rather than help Lile, a fellow military veteran, Thomas left the home and did not mention Lile’s injury until five minutes into his 911 call.

[36] As to Thomas’s character, Thomas served honorably in the military for two decades. The trial court found he has strong family support. His criminal history is limited: a 2014 misdemeanor conviction in Michigan for interfering

with electronic communication. Yet a trial court may consider any conviction in a defendant's criminal history if, as here, those records are reflected in the presentence investigation report. *Robertson v. State*, 871 N.E.2d 280, 287 (Ind. 2007). Even a limited criminal history is a poor reflection on the defendant's character. *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014).

[37] Thomas also has several prior arrests for crimes for which he was not convicted. Although the arrests may not be considered as part of his criminal history, they still reflect negatively on his character by showing that he “has not been deterred even after having been subject to the police authority of the State.” *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005). Thomas also was fired from the Merrillville Police Department for aggressive and negative conduct with the public—acts consistent with the conduct that led to Thomas's conviction here. Accordingly, Thomas has failed to carry his heavy burden of establishing that his sentence is inappropriate in light of the nature of the offense and the character of the offender.

[38] Finding no trial error and that Thomas's sentence is not inappropriate, we affirm the trial court's judgment.

May, J., and Crone, J., concur.