

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

John Quirk
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Caroline G. Templeton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Shelby Nicole Hiestand,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 25, 2022

Court of Appeals Case No.
21A-CR-2314

Appeal from the Jay Circuit Court

The Honorable Brian D.
Hutchison, Judge

Trial Court Cause No.
38C01-2001-MR-2

Altice, Judge.

Case Summary

[1] Following a jury trial, Shelby Hiestand was convicted of murder, a felony, and sentenced to fifty-five years in prison. On appeal, Hiestand presents three issues for our review, which restate as follows:

1. Did the trial court abuse its discretion in admitting into evidence the video recording of Hiestand's statement to police?
2. Did the trial court improperly limit Hiestand's cross-examination of a witness and thereby hinder her right to present a defense?
3. Did the trial court abuse its discretion in permitting a witness to testify regarding statements made by another individual?

[2] We affirm.

Facts & Procedural History

[3] Shea Briar and Esther Stephen were engaged following their child's birth in January 2019, but their relationship ended near the end of September or early October 2019. After the breakup, Briar and Stephen had disagreements over custody and parenting time. Eventually, Briar filed a petition to establish paternity and custody of the child and for parenting time.

[4] Hiestand and Stephen were best friends, having met when Stephen coached Hiestand's softball team. They also worked together at a local daycare. Kristi Sibray was also acquainted with Stephen through Stephen's work as a softball

umpire and because Stephen worked at the daycare where Sibray took her children.

[5] In the fall of 2019, Hiestand and Stephen went to Sibray's house nearly a dozen times. Stephen talked to Sibray, on at least one occasion, about Briar and the legal action he was pursuing to establish paternity and custody. During the conversation, Stephen told Sibray that Briar "needed [to] go" and that he "needed to die." *Transcript Vol. II* at 203. According to Sibray, Stephen admitted that she and Hiestand had "looked into ways to try to kill [Briar]," including "crushing up pills and putting it in his drink" and "check[ing] into what it would cost to have a hit man." *Id.* at 205. Stephen even specified "a dollar amount that they needed" for a hit man. *Id.* Sibray testified that although Hiestand did not speak, Hiestand was listening to the conversation and would nod her head in agreement with Stephen's comments. However, when Stephen mentioned that "[o]ne of their ways of getting rid of [Briar] would be to shoot him," Hiestand responded "yes, [I] could shoot him." *Id.* at 206.

[6] In early January 2020, Stephen contacted Sibray and asked if she could watch her daughter on Saturday, January 11, 2020. This was the first time Stephen had made such a request, and Sibray agreed. About 10:00 p.m. Saturday night, Stephen dropped off her child at Sibray's house. Stephen called Sibray around 11:45 p.m. and said she was "going to be a little bit longer." *Id.* When she finally returned around 1:00 a.m., Sibray asked Stephen where she had been and Stephen said, "I can't tell you." *Id.* at 209. As Stephen walked out the

door, she turned and told Sibray, “you might hear about it in a couple of days.”
Id.

[7] Just after 2:00 a.m. on January 12, 2020, Officer Aaron Stroncsek responded to a dispatch of an unresponsive male lying in the roadway. Briar was found lying on his back, fading in and out of consciousness. Briar had some abrasions and minor bleeding to his arms and hands and some blood around his head but no other major injuries that were readily apparent. He was transported to the hospital, where he died. An autopsy revealed that Briar had suffered a gunshot wound to the middle of his back and that the bullet went through the left atrium, left ventricle, and septum of his heart. Briar would have lost blood pressure almost immediately and would have fallen, which fall, it was opined, caused the bruises, scrapes, and minor bleeding that was initially noted at the scene. The gunshot wound was identified as the cause of Briar’s death.

[8] On January 14, 2020, law enforcement went to the daycare where Hiestand worked and asked her to come to the sheriff’s department to answer some questions. At the beginning of the interview, Chief Deputy Patrick Wells of the Jay County Sheriff’s Department told Hiestand that investigators had spoken with other individuals and that she had been identified as someone associated with those individuals as well as with Briar. He then advised Hiestand:

I don’t want you to think that you’re under arrest. We’re just going to ask you some questions. And you also understand that I’m talking to you in jail, so I’m going to read you your rights. That does not mean anything. It just lets you know that you have rights.

Exhibit 4 at 9:58:19. Hiestand then confirmed that she could read and write by reading the first line of the advisement of rights form. After an officer read the remaining rights as set out on the form to her, Hiestand signed the form indicating that she acknowledged and understood her rights.

[9] During her recorded statement to police, Hiestand acknowledged that she knew Briar and explained why she disliked him. When asked about the night of January 11, 2020, Hiestand reported that she and Stephen had worked at a concession stand and then gone to the daycare. At some point, a third individual, who was college-aged and had access to a van, met them at the daycare. According to Hiestand, Stephen then called Briar and asked him if he wanted to hang out. Initially, Hiestand stated that after they picked up Briar, she drove around until she came upon a bridge in a rural area, where they all got out of the van and shot at racoons. Hiestand then admitted that she shot Briar in the back but claimed it was an accident.

[10] In response to further questioning, Briar admitted that she and Stephen had talked about hurting Briar after he filed the paternity action. She also told police that she knew to drive the group to that particular bridge because Stephen had chosen it ahead of time since it was isolated. Hiestand explained that Stephen wanted something done about Briar and admitted that she “stepped up to the plate.” *Id.* at 11:05:10. She described how Stephen and Briar walked to the other side of the bridge, with Briar’s back to Hiestand. She said that Briar was unaware that her rifle was in the van and he did not see her take it out. Hiestand maintained that she did not remember pulling the trigger,

claiming instead that she blacked out and the next thing she remembered was that Briar was on the ground.

[11] Hiestand stated that she took Briar's phone from his pocket, while Briar gasped for air and moved his head back and forth. Stephen then threw Briar's phone in the river. Hiestand indicated that the rifle was under her bed and that the bullets were in a drawer in her nightstand. Hiestand again admitted that she was the "trigger person" because it was her rifle. *Id.* at 11:07:26.

[12] In addition to her oral statement, Hiestand made a written statement, in which she admitted to her involvement in Briar's death. She stated that she drove to the bridge and that after they all got out of the van, "I grabbed my gun, standing on the opposite side of the bridge as [Briar], I blacked out and pulled the trigger." *Exhibits Vol. 4* at 12.

[13] At the conclusion of the interview, Chief Deputy Wells asked for consent to search Hiestand's phone. Hiestand was told she could refuse to give her consent, but nevertheless, signed the consent form. A forensic examination of her phone recovered text messages between Hiestand and Stephen. In one text message, dated December 5, 2019, Hiestand texted Stephen: "Nope I'm killing that bastard with my own two hands." *Id.* at 33.

[14] On January 15, 2020, the State charged Hiestand with murder, a felony. Hiestand filed a motion to suppress her oral and written statements to police, arguing that she was not properly informed of her Miranda rights and that she did not properly waive them. The trial court held a hearing on the motion on

June 3, 2020. During the hearing, Hiestand testified that she did not pay attention when the officers were advising her because Chief Deputy Wells had told her that they “didn’t mean anything.” *Transcript Vol. II* at 49. In its order denying the motion to suppress, the trial court rejected Hiestand’s claim that Wells’s statement obviated any importance she may have placed on her rights as she was being so advised. The court found that her testimony was “wholly unconvincing,” “perfunctory,” and “not believable.” *Appendix Vol. II* at 33.

The court concluded:

It is clear from the recording of the interview that Wells, who had just assured her that she was not under arrest, was telling her that the fact that he was about to advise her of her rights did not mean that she would then automatically be under arrest. Wells[’s] very next statement was, “It just lets you know that you have rights, okay?” [Another officer] then took the time to clearly advise her of each of her rights and [Hiestand] acknowledged understanding each of them.

Id.

[15] A jury trial commenced on August 9, 2021. Hiestand objected to the admission of the video recording of her statement, which the trial court overruled for the reasons stated in its order denying her motion to suppress. After the recorded interview was played for the jury, Hiestand asked questions of Chief Deputy Wells about what was said during the interview, and the State objected to “recap[ping] the entire interview,” because it was hearsay and because the Exhibit spoke for itself. *Transcript Vol. 2* at 101. The trial court sustained the objection.

[16] During Sibray’s trial testimony, the State asked her what Stephen said during her visits. Hiestand objected on hearsay grounds. The State responded that there was ample evidence of a conspiracy and thus, the statement of a co-conspirator was not hearsay. The trial court overruled Hiestand’s objection. At the conclusion of the evidence, the jury found Hiestand guilty as charged. On October 20, 2021, the trial court sentenced Hiestand to fifty-five years in prison. Hiestand now appeals. Additional facts will be provided as necessary.

Discussion & Decision

1. Admission of Evidence

[17] Hiestand argues that the trial court erroneously admitted into evidence her video recorded statement to police. Specifically, she argues that she was not properly advised of her Miranda rights. We review the trial court’s decision to admit evidence for an abuse of discretion. *Ware v. State*, 816 N.E.2d 1167, 1175 (Ind. Ct. App. 2004). The trial court’s decision is an abuse of discretion if it is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

[18] Pursuant to the United States Supreme Court’s decision in *Miranda v. Arizona*, a person who is subjected to a custodial interrogation¹ must first be warned that “he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if

¹ The State does not dispute that Hiestand’s recorded statement was part of a custodial interrogation.

he cannot afford an attorney one will be appointed for him prior to any questioning[.]” should he so desire. 384 U.S. 436, 479 (1966). Statements made to police by a person in police custody in response to police interrogation are inadmissible at trial unless the State proves beyond a reasonable doubt that they were preceded by a knowing and voluntary waiver of the privilege against self-incrimination and were themselves voluntarily given. *Risinger v. State*, 137 N.E.3d 292, 296 (Ind. Ct. App. 2019), *trans. denied*.

[19] Hiestand’s argument that she was not properly advised of her rights and thus, did not properly waive them is based entirely on Chief Deputy Wells’s statement to her that the advisement of rights “didn’t mean anything.” *Transcript Vol. II* at 49. Hiestand claims that because of Wells’s statement, she did not pay attention when advised of her rights and that her signature on the advisement of rights form was “simply an acknowledgment that she was read the rights.” *Appellant’s Brief* at 10.

[20] We have reviewed the video recording of Hiestand’s statement and conclude that the trial court was spot on in its assessment of what transpired. In context, Chief Deputy Wells’s statement was clearly intended to convey to Hiestand that she was not under arrest even though she was being advised of her rights. At no point while being advised of her rights did Hiestand indicate that she did not understand. Rather, she affirmatively acknowledged her rights when prompted and clearly indicated that she understood her rights. By proceeding to make a statement to police without exercising her rights, Hiestand voluntarily waived her Miranda rights. *See Risinger*, 137 N.E.3d at 296-97. Like the trial court, we

reject Hiestand’s claim that Wells’s statement obviated the importance of her rights as they were explained to her. We therefore conclude that the trial court did not abuse its discretion in admitting Hiestand’s recorded statement into evidence.

2. Limitation on Cross-Examination

[21] Hiestand argues that the trial court improperly limited her ability to cross-examine a witness thereby denying her a “meaningful opportunity to present a complete defense.” *Appellant’s Brief* at 24. Specifically, Hiestand challenges the trial court’s decision to sustain the State’s objection to her cross-examination of Chief Deputy Wells.

[22] A trial court’s decision as to the appropriate extent of cross-examination will only be reversed for an abuse of discretion. *McCorker v. State*, 797 N.E.2d 257, 266 (Ind. 2003). Likewise, while the Sixth Amendment guarantees a criminal defendant a meaningful opportunity to present a complete defense, the defendant is required to comply with the rules of evidence. *Saintignon v. State*, 118 N.E.3d 778, 786 (Ind. Ct. App. 2019) (citing *Marley v. State*, 747 N.E.2d 1123, 1132 (Ind. 2001)), *trans. denied*.

[23] Following the publication of the video recording of Hiestand’s confession, Hiestand took the opportunity to cross-examine Chief Deputy Wells. Hiestand asked him questions about what she said during the interview. The trial court sustained the State’s eventual objection finding, among other things, that the information being sought was cumulative. Hiestand then asked questions of

Chief Deputy Wells that essentially rehashed the questions he asked Hiestand during the interview. Again, the trial court sustained the State’s objection, finding such to be cumulative. The court had previously cautioned: “WE DON’T HAVE TWO AND A HALF HOURS TO GO OVER THE TWO AND A HALF HOUR VIDEO WE JUST SAW.” *Transcript Vol. II* at 101.

[24] The trial court properly did not abuse its discretion by prohibiting Hiestand from asking questions that simply repeated the questions posed and Hiestand’s answers during her interview with police. Ind. Rule of Evidence 403 allows, in part, for the exclusion of relevant evidence based on considerations of undue delay or needless presentation of cumulative evidence. “Cumulative evidence is that which goes to prove what has already been established by other evidence.” *Schafer v. State*, 750 N.E.2d 787, 793 (Ind. Ct. App. 2001). Here, the jury had just watched the recorded statement and the questions being posed by Hiestand were clearly cumulative of that evidence.

3. Hearsay

[25] Hiestand objected on hearsay grounds to Sibray’s testimony about comments Stephen made to her about a month prior to Briar’s death about ways to kill Briar that Stephen and Hiestand had researched and considered. Ultimately, the trial court permitted the testimony. Hiestand argues that this was error and warrants reversal of her conviction.

[26] Ordinarily, hearsay is any statement made out of court and offered to prove the truth of the matter asserted. Ind. Evid. R. 801(c). Evid. R. 801(d), however,

specifies that certain statements that would otherwise constitute hearsay are, by rule, not hearsay at all. One such example is when an opposing party's coconspirator is making the statement. Evid. R. 801(d)(2)(E). Importantly, however, to be admissible under this rule, the coconspirator's statement must be made in furtherance of the conspiracy. Furthermore, the coconspirator's "statement does not by itself establish ... the existence of the conspiracy...." *Id.* Rather, the State must introduce "independent evidence" of the conspiracy before a coconspirator's statement will be admissible as non-hearsay. *Lander v. State*, 762 N.E.2d 1208, 1213 (Ind. 2002).

[27] Hiestand argues that the State did not meet its burden of proof with regard to establishing a conspiracy. She also argues that Stephen's statements were not in furtherance of the conspiracy. Thus, Hiestand argues that Sibray's testimony should have been excluded as hearsay.

[28] Initially, the trial court determined that Stephen's statements to Sibray were not in furtherance of the conspiracy and sustained Hiestand's objection. A sidebar was held, the substance of which is not in the record. The State continued with its direct examination of Sibray and again attempted to elicit testimony from her about what Stephen had told her. The trial court sustained the objection but then "reversed" its decision and overruled Hiestand's objection. *Transcript Vol. II* at 201. Over Hiestand's continuing objection, Sibray was permitted to testify as to what Stephen told her about how she and Hiestand had researched and considered different ways to kill Briar.

[29] We need not address the merits of Hiestand’s argument because even if we assume error, we conclude that any error was harmless. An error in the admission of evidence is harmless “when the conviction is supported by such substantial independent evidence of guilt as to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction.” *Granger v. State*, 946 N.E.2d 1209, 1213 (Ind. Ct. App. 2011) (quoting *Lafayette v. State*, 917 N.E.2d 660, 666 (Ind. 2009)). In other words, we will reverse “only if the record as a whole discloses that the erroneously admitted evidence was likely to have had a prejudicial impact upon the mind of the average juror, thereby contributing to the verdict.” *Id.* (quoting *Wales v. State*, 768 N.E.2d 513, 521 (Ind. Ct. App. 2002), *trans. denied*). As already noted herein, Hiestand confessed to shooting Briar in the back and then leaving him to die.

[30] Judgment affirmed.

Bailey, J. and Mathias, J., concur.