MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Lisa Diane Manning
Danville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Jonathon Hoffmire,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 2, 2021

Court of Appeals Case No. 20A-CR-1035

Appeal from the Jefferson Circuit Court

The Honorable Donald J. Mote, Judge

Trial Court Cause No. 39C01-2001-F3-67

Friedlander, Senior Judge.

[1] Jonathon Hoffmire appeals his conviction of Level 5 felony battery resulting in serious bodily injury,[1] arguing the trial court erred when it excluded certain evidence that supported his self-defense claim. Concluding there was no error, we affirm.

[2] In the early morning hours of January 16, 2020, a woman and her boyfriend were driving when they saw a physical altercation occurring between two individuals on the side of the road. As they drove by, they saw that one of the men, later identified as Cory Dade, was on his back on the ground, and the other man, later identified as Hoffmire, was standing over Dade appearing to stomp on Dade's head. The couple turned their car around and went back to the location of the two men. Dade was still on the ground, but Hoffmire was walking away from him. When the couple asked Hoffmire about the well-being of both men, Hoffmire responded that Dade had "snuck him," meaning that Dade had snuck up on him. Tr. Vol. II, pp. 118, 147. Dade was still on the ground "rolling" and "squirming." *Id.* at 145. The couple called 911, and officers were dispatched to the scene.

[3] Sergeant Phillips of the Madison Police Department was one of the responding officers. He located Hoffmire, who stated that he was "sucker-punched from behind" by Dade. *Id.* at 167. Hoffmire also informed the officer that he

[1] Ind. Code § 35-42-2-1 (2018).

thought he had "hurt [Dade] pretty bad[ly]" and that Dade was not moving. *Id.* Sergeant Phillips observed blood and scratches on Hoffmire's face.

[4] Another officer located Dade who was in "[v]ery poor condition"—his face was swollen, he was bleeding, and he was in and out of consciousness. *Id.* at 192. Dade's pants were around his ankles, his shirt was hanging off one arm, and he had no shoes on. A paramedic who responded to the scene noted that Dade was unresponsive and exhibited several symptoms indicating a head injury. He scored seven and then six on the Glasgow Coma Scale, which evaluates a patient's neurologic condition. On that scale, scores range from three to fifteen with a score of ten indicating the patient is alert and talking, a score of eight or nine indicating head trauma, and a score of three indicating death. An ambulance transported Dade to the hospital where he was then airlifted to a level one trauma center. Dade was still unresponsive when he arrived at the trauma center. He was intubated and was found to be suffering from a subdural hematoma, nasal fractures, orbital fractures, and respiratory and renal failure. Dade was admitted to the intensive care unit, where he remained for twenty-three days.

[5] Based upon this incident, the State charged Hoffmire with aggravated battery, a Level 3 felony; battery resulting in serious bodily injury, a Level 5 felony; and robbery, a Level 2 felony. The State also alleged that Hoffmire was an habitual offender. In exchange for Hoffmire's waiver of a jury trial, the State dismissed the aggravated battery and robbery charges.

[6] At trial, Hoffmire alleged he acted in self-defense. On cross examination of Sergeant Phillips, defense counsel asked about some mention that Dade had started the fight. The sergeant responded that another officer had told him something. The State objected based on hearsay, and the court stated that if Sergeant Phillips was going to testify to what another officer told him someone else said, it would be hearsay within hearsay and an offer to prove was required. The offer of proof revealed that Sergeant Phillips was going to testify that the other officer told him "it sounded like [Dade] possibly said it was his fault or something like that." Tr. Vol. II, p. 180. The court ruled that, to the extent Sergeant Phillips would testify to what the other officer told him Dade may have said, the testimony constituted hearsay within hearsay, and it was inadmissible absent any exceptions. Defense counsel presented no other argument or evidence concerning the admissibility of Dade's alleged statement.

[7] Hoffmire testified on his own behalf and was able to present his defense. He claimed he struck Dade in self-defense after Dade attacked him from behind and hit him in the side of his face. He denied kicking or stomping on Dade.

[8] Hoffmire was found guilty of the Level 5 felony battery and was adjudged to be an habitual offender. The court sentenced him to five years executed, with a five-year enhancement for the habitual offender designation. He now appeals his battery conviction.

[9] For his sole issue on appeal, Hoffmire contends the trial court abused its discretion by excluding the testimony of Sergeant Phillips recounting what another officer told him Dade may have said concerning the altercation.

[10] "'A trial court has broad discretion to admit or exclude evidence, including purported hearsay.'" *Minor v. State*, 36 N.E.3d 1065, 1070 (Ind. Ct. App. 2015) (quoting *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014)), *trans. denied*. We will disturb the trial court's ruling only if it amounts to an abuse of discretion, meaning the decision is clearly against the logic and effect of the facts and circumstances before the court or it is a misinterpretation of the law. *Id.*

[11] Hearsay is an out-of-court statement used to prove the truth of the matter asserted and is inadmissible unless it falls under a hearsay exception. Ind. Evidence Rules 801(c), 802. "If a statement involves hearsay within hearsay, also known as multiple hearsay or double hearsay, the statement may still be admitted if 'each layer of hearsay' qualifies 'under an exception to the hearsay rule[.]'" *Teague v. State*, 978 N.E.2d 1183, 1187 (Ind. Ct. App. 2012) (quoting *Palacios v. State*, 926 N.E.2d 1026, 1030 (Ind. Ct. App. 2010)); *see also* Ind. Evidence Rule 805 ("Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.").

[12] As the State correctly alleged at trial, Hoffmire offered Dade's purported statement for the truth of the matter asserted—i.e., that Dade initiated the altercation with Hoffmire. Although refuting that this was the purpose of

admitting Dade's purported statement, defense counsel stated that "what we're trying to get at is whether or not Mr. Hoffmire was acting in self-defense." Tr. Vol. II, p. 179. The court explained that the statement, as relayed through Sergeant Phillips, was inadmissible hearsay within hearsay and that, without an exception, it would sustain the State's objection.

[13] As the evidence at issue here involves double hearsay, Evidence Rule 805 requires that Dade's statement to the officer and the officer's statement to Sergeant Phillips must both fall within a hearsay exception for the statement to be admissible. Hoffmire, however, failed to set forth how each layer of the evidence—the out-of-court statement by Dade and the statement by the other officer— qualifies as an exception to the hearsay rule. Once the trial court had ruled, the court asked Hoffmire if he needed to make any other record in terms of the admissibility of the evidence upon which he had made the offer to prove, and he presented none. In his brief to this Court, Hoffmire simply argues that Dade's statement that he may have been at fault for the altercation supports Hoffmire's theory of self-defense and therefore should have been admitted. Hoffmire presented no evidence or argument as to the applicability of any hearsay exceptions; thus, the trial court did not abuse its discretion when it excluded the evidence of Dade's alleged statement.

[14] Judgment affirmed.

Riley, J., and Mathias, J., concur.