MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Steven E. Ripstra
Ripstra Law Office
Jasper, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ian McLean
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Edward A. Fox,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 19. 2022

Court of Appeals Case No. 21A-CR-2696

Appeal from the Pike Circuit Court

The Honorable Jeffrey L. Biesterveld, Judge

Trial Court Cause No. 63C01-2010-MR-000288

Robb, Judge.

Case Summary and Issues

[1] Following a jury trial, Edward Fox was convicted of Count I, murder, a felony; Count II, burglary, a Level 1 felony; and Count III, burglary, a Level 4 felony. At sentencing, the trial court vacated Fox's conviction of Count III as a lesser included offense of Count II. Fox was sentenced to an aggregate term of fifty-five years in the Indiana Department of Correction.

[2] Fox now appeals, raising multiple issues for our review which we restate as: (1) whether there was sufficient evidence to support Fox's conviction of murder; (2) whether there was sufficient evidence to support Fox's conviction of burglary; (3) whether the trial court abused its discretion in admitting certain testimony and evidence; and (4) whether Fox's sentence is inappropriate in light of the nature of the offense and his character. Concluding that sufficient evidence supports Fox's convictions, the trial court did not abuse its discretion in admitting the testimony and evidence, and Fox's sentence is not inappropriate, we affirm.

Facts and Procedural History

[3] In 2019, Fox and his wife, Sharon, were going through divorce proceedings. After a physical altercation where Fox shoved Sharon in May 2019, Fox left the couple's home in Petersburg, Indiana, and began living in a camper in nearby Washington, Indiana. In June, Sharon obtained a protective order against Fox

due to the shoving incident as well as past violence in the marriage and Fox was ordered not to have any contact with Sharon directly or indirectly.

[4] As the divorce proceedings progressed, it was demonstrated that Fox had made and continued to make a series of poor financial decisions. Fox had withdrawn over $100,000 from his retirement account without telling Sharon, purchased multiple timeshares, failed to reduce the balance on their mortgage, and was taking advances against their mortgage without telling Sharon. In December 2019, Fox believed that he had won a computerized drawing promoted by Publishers Clearing House for $2,900,000. In order to obtain his alleged prize, he was asked to provide a money order for $29,500 and $2,000 in Amazon gift cards to a group of "Agents" associated with the drawing. Exhibits, Volume II at 5. Fox obliged, but the drawing was a scam and Fox lost his money.

[5] Money also impacted attempts at mediation that took place in late 2019 and into early 2020. Sharon was set to receive substantially more of the marital property than Fox as a result of the divorce because she had brought numerous assets into the marriage by inheritance. However, Fox believed he was entitled to the value of improvements he had made to those assets. Fox wanted approximately $100,000 while Sharon was willing to settle on approximately $40,000. The two could not agree on a property division and mediation attempts ended. Mediation was set to resume in September 2020.

[6] Despite the breakdown in mediation and Fox's clear financial troubles, he believed that he would come into money soon. In early July 2020, he told a

saleswoman at a local mobile home dealership who was familiar with Fox's divorce proceedings that he "wanted[ed] to see the . . . homes you have for a hundred thousand dollars." Transcript, Volume V at 57. The saleswoman responded, "You don't have a hundred thousand dollars." *Id*. However, Fox was insistent, stating he was "going to have a hundred thou[sand] [and he would] be paying cash." *Id*. at 57.

[7] Around this same time, Fox got his truck stuck in a ditch in a field near Sharon's home. He claimed to be looking for a place to cut firewood and that he had received permission from the property owners. However, Fox did not need firewood for his camper and had not notified the property owners that he was coming for a visit. This was not the first time Fox had been seen near Sharon's home under unusual circumstances, as Sharon's neighbor had previously observed Fox driving past Sharon's house and parked in the woods "[a] good ways off the road" in an "unusual place" near her home. Tr., Vol. IV at 222-23. Fox would later admit that he had driven by or gone to the woods near Sharon's home at least nine or ten times since the entry of the protective order. He explained that he was checking on both Sharon and his personal property.

[8] On July 19, Fox asked his son, Robert, when Robert had last spoken with Sharon. Robert indicated that he had not spoken with his mother in several days and Fox requested that Robert call her to check on her well-being. Robert thought this was an odd request as Fox only ever asked Robert to act as a go-between to retrieve Fox's personal property. Robert did not want to call Sharon

and instead, Robert later called his father and lied, saying that he had talked to Sharon and she was fine. According to Robert, Fox "sounded very skeptical . . . like he didn't believe me." Tr., Vol. II at 146. Fox also asked a friend to go over to Sharon's and check on her. However, the friend suggested that Fox contact the police, which Fox ultimately did to request a welfare check on Sharon.

[9] That evening, Officer Jared Simmons of the Pike County Sheriff's Department was dispatched to Sharon's home. From outside the home, Officer Simmons could see through a window into Sharon's kitchen. He observed a set of stairs that led from the kitchen into the home's basement. From his vantage point, he could see a discarded cane and oranges at the top of the stairs and part of a discolored body at the bottom of the stairs. Officer Simmons then entered the home where he found Sharon lifeless at the bottom of the stairs. Due to a fear of falling, Sharon never walked around the house without her glasses or phone. Sharon was found without both items. As a result of the fall, her head was smashed against the wall at the bottom of the steps. Her head was in a pool of blood and one of her arms was raised above her head. The nightgown she was wearing no longer covered the private parts of her body. Medical personnel and other officers arrived shortly thereafter, including Indiana State Police Detective John Odom.

[10] The following day, Fox spoke with Detective Odom at the Pike County Sheriff's Department. During their conversation, the two discussed Fox's request for a welfare check and although Fox stated that he had previously

driven by Sharon's home to check on her, he said he had not learned of her death until he received word from both a friend and his daughter. Fox also indicated that he kept his cellphone on him at all times. Hoping to rule out Fox as a suspect, Detective Odom requested to examine Fox's cellphone, but Fox refused. Detective Odom then called the prosecuting attorney and was advised to seize the phone. However, Fox continued to refuse to hand over his phone and attempted to leave the Sheriff's Department. A uniformed officer attempted to stop Fox and a physical altercation ensued. Ultimately, Fox's phone was taken from him, and he was arrested for resisting law enforcement.

[11] On the same day, an autopsy was conducted on Sharon's body. The estimated time of death was some time on or after July 16, 2020. The manner of death was determined to be "accidental." Tr., Vol. IV at 43. However, Doctor James Jacobi, the pathologist performing the autopsy, could not exclude another person's actions as the cause of Sharon's fatal fall. The coroner in charge of certifying Sharon's manner of death did not agree that it was an accident because of Fox's actions on and around the time of Sharon's death.

[12] In the following days, Fox spoke with Detective Odom on three additional occasions. On July 21, Fox admitted that he would occasionally go by Sharon's house to "check on her, just to make sure she's okay," and that he had done so the week before her death was discovered. State's Exhibit 39 at 11:10 – 11:15. However, he later indicated that he had gone to the house late on Wednesday, July 15, and observed Sharon through a window while she was in her bed. He then spent time in an outbuilding near the home checking on some

of his personal property. Fox told Detective Odom that he returned around midnight on July 16, this time to check on some of his tools. According to Fox, he did not look inside the home and see Sharon's lifeless body or return to the home again.

[13] On July 23, Fox admitted to Detective Odom that he had lied to police about learning of Sharon's death from a friend and his daughter. Fox indicated that he already knew that Sharon was dead when he spoke to Robert on July 19 to request that Robert conduct a welfare check on Sharon. Fox told Detective Odom that at approximately midnight on July 17, he had taken Robert's car so as to not be seen, parked down the road from Sharon's home, and walked to Sharon's home where he saw her body at the bottom of the steps through the kitchen window. He denied going inside but said that from the window he could see what Sharon was wearing, the direction her legs were pointing, and her head in a pool of blood. Detective Odom responded that Fox could not have seen so much of Sharon's body from the window and instead would have had to enter the house. Fox again denied entering the home. However, when confronted with the possibility that his DNA might be discovered on Sharon's body, he admitted that he did enter the home. He first attempted to enter by picking the lock with a lock-pick set he had purchased online,[1] but the pick broke inside the lock and instead he entered with the help of a pocketknife.

[1] A subsequent search warrant to Google yielded information that on July 15, 2020, Fox had viewed two videos demonstrating how to use a lock-pick set.

According to Fox, he went to Sharon's body and attempted to move her arms and legs, but he "pretty much [knew] that she was gone" and so he left, returned Robert's car, and returned to his camper. State's Exhibit 76 at 39:24 – 39:29. Detective Odom was skeptical that Fox had attempted to move Sharon's arms and legs due to Sharon's arm remaining in a fixed position above her head when her body was discovered. Fox's reasoning for leaving without calling authorities was that he was worried about having broken the protective order against him.

[14] On July 24, Fox spoke with Detective Odom a final time. He told Detective Odom that Sharon would not use the basement stairs and that she had no reason to go to the basement. He again admitted that he had encouraged others to call police and request a welfare check on Sharon despite knowing that she was dead. Fox also discussed assets and finances associated with the divorce proceedings. This was a common theme throughout their conversations as Fox had previously indicated that he had invested $100,000 into remodeling Sharon's house and that he had nowhere else to go. He also acknowledged that he would not inherit from Sharon if the divorce was finalized. According to Fox, he was getting "the short end of the stick" in the divorce proceedings. State's Exhibit 82 at 28:18 – 28:25.

[15] Subsequently, police executed multiple search warrants for Fox's property. Evidence of two separate life insurance policies was discovered. One policy was through AFBA, a military service organization, and the other with CUNA. Neither policy was recent but as beneficiary of the policies Fox was set to

receive over $300,000 in the event of Sharon's death. Specifically, the CUNA policy covered accidental death in the amount of $200,000. While incarcerated, Fox attempted to claim payment on the CUNA policy and gave his brother power of attorney to handle the matter. Additionally, an analysis of Fox's cellphone data verified that Fox traveled to Sharon's home late on July 16, staying into the early morning on July 17, and returning to Sharon's home late on July 17.

[16] On October 5, 2020, the State charged Fox with Count I, murder, a felony; Count II, burglary, a Level 1 felony; and Count III, burglary, a Level 4 felony. Prior to the start of Fox's jury trial in the summer of 2021, the State filed a motion for admission of prior testimony from the June 2019 protective order hearing to demonstrate there was a history of Fox physically abusing Sharon. Fox responded by filing a motion in limine objecting to the use of the protective order hearing as impermissible evidence of prior bad acts. In July 2021, a hearing was held on the State's motion for admission of prior testimony, and the trial court preliminarily ruled that the evidence would be allowed subject to a proper foundation being laid at trial.

[17] A jury trial was conducted from July 26 through August 4. During the State's case-in-chief, Fox objected to the use of testimony from the protective order hearing as evidence of prior bad acts of domestic violence. He also objected to the introduction of examples of what the State characterized as "get rich quick" schemes such cash-related apps, games, and solicitations on his cellphone

during the time of Sharon's death as impermissible character evidence. Tr., Vol. IV at 139-40. The trial court admitted the evidence over Fox's objections.

[18] During the State's case-in-chief, the State presented extensive evidence of Fox's tumultuous relationship with Sharon, financial troubles, and suspicious behavior before and after Sharon's death. The State also offered evidence of the two life insurance policies and testimony that Sharon feared Fox which resulted in increased safety measures during mediation meetings. Additional testimony detailed that Sharon feared the basement steps, avoided the steps due to her issues with balance, walked with a cane, and kept her phone with her at all times in case she fell and needed help. Testimony also suggested that after Sharon's death, Fox riffled through her belongings looking for $1,800 he believed that she owed him. At the conclusion of the trial, the jury found Fox guilty on all three counts. The trial court entered judgment of conviction, ordered a presentence investigation report, and set sentencing for later that month.

[19] At sentencing, the trial court vacated Fox's conviction for Count III, burglary as a Level 4 felony, because it was a lesser included offense of Count II, burglary as a Level 1 felony. Fox was sentenced to fifty-five years on Count I and thirty years on Count II, to be served concurrently with one another. Fox now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

[20] When reviewing the sufficiency of the evidence required to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Rather, we consider only the evidence supporting the verdict and reasonable inferences that can be drawn therefrom. *Id*. Where there is conflicting evidence, we must consider the evidence in the light most favorable to the conviction. *Id*. We will affirm if there is substantial evidence of probative value from which the trier of fact could find guilt beyond a reasonable doubt. *Trotter v. State*, 838 N.E.2d 553, 557 (Ind. Ct. App. 2005).

B. Murder

[21] Fox argues the evidence is insufficient to support his conviction of murder. A person who knowingly or intentionally kills another human being commits murder, a felony. Ind. Code § 35-42-1-1(1). Therefore, to obtain a conviction of murder in this case, the State was required to prove beyond a reasonable doubt that: (1) Fox (2) knowingly or intentionally (3) killed Sharon. *See* Ind. Code § 35-41-4-1(a) (stating the standard of proof). A conviction for murder may be based entirely on circumstantial evidence. *Sallee v. State*, 51 N.E.3d 130, 134 (Ind. 2016). Such circumstantial evidence need not overcome every reasonable hypothesis of innocence, rather, it is sufficient if an inference may

reasonably be drawn which supports the finding of guilty. *Burns v. State*, 59 N.E.3d 323, 328 (Ind. Ct. App. 2016), *trans. denied*.

[22] Fox contends the evidence only supports Dr. Jacobi's determination that Sharon's death was an accident. According to Fox, the State's evidence must "exclude another 'reasonable theory of [i]nnocence.'" Brief of Appellant at 24. However, Fox's argument is a request that we reweigh the evidence, which we will not do. *Elliot v. State*, 450 N.E.2d 1058, 1061 (Ind. Ct. App. 1983). On appeal, the reviewing court is not required to exclude other reasonable hypotheses of innocence. *Id*. Instead, where evidence of guilt is circumstantial, the question for the reviewing court is whether reasonable minds could reach the inferences drawn by the jury; if so, there is sufficient evidence. *Id.*

[23] Here, the circumstantial evidence, when viewed as a whole, supports a reasonable inference of Fox's guilt. Prior to Sharon's death, Fox and Sharon were in the midst of contentious divorce proceedings. Although the two attempted to mediate, no agreement was reached as Fox believed he was entitled to far more than Sharon was willing to agree to. According to Fox, he was getting "the short end of the stick" in the divorce proceedings. State's Ex. 82 at 28:18 – 28:25. Moreover, when speaking with Detective Odom, he expressed frustration that he had nowhere to go and would not inherit from Sharon if the divorce were to be finalized. *See Pattison v. State*, 958 N.E.2d 11, 22-23 (Ind. Ct. App. 2011) (reasoning that evidence of the defendant's financial concerns associated with an impending divorce and desire to avoid any negative financial consequences associated with the divorce was circumstantial

evidence supporting the defendant's murder conviction), *trans. denied*. Despite these financial concerns associated with the divorce, mere weeks before Sharon's death, Fox told a local saleswoman that he was about to come into a "hundred thou[sand]" dollars." Tr., Vol. V at 57. Indeed, Fox was the beneficiary of two insurance policies on Sharon, one of which had an accidental death payout of $200,000.

[24] Further, data taken from Fox's cellphone confirmed Fox was at Sharon's home on or around the date of Sharon's death. Fox admitted that he had regularly driven by or parked down the road from Sharon's home to observe her without her knowledge. On the nights surrounding Sharon's death, he indicated that he was simply checking on Sharon and some of his personal property. On one of these nights, he borrowed his son's car without permission and parked down the road so as to not be seen. Despite admitting that he entered Sharon's home, knew Sharon was dead, and attempted to move her body, he did not call the authorities and instead attempted to get others to conduct a welfare check on Sharon. The coroner found Fox's conduct concerning and as a result, would not certify Sharon's death as an accident. *See Fry v. State*, 25 N.E.3d 237, 249 (Ind. Ct. App. 2015) (reasoning that evidence of defendant's habit of entering the victim's property to observe the victim as well as being on the victim's property immediately prior to the murder was circumstantial evidence supporting the defendant's murder conviction), *trans. denied*. Fox's propensity for entering Sharon's property and his presence there around the time of her death also supports a reasonable inference of guilt.

[25] Moreover, following Sharon's death, Fry attempted to conceal his knowledge of her death as well his presence inside her home on or around the night she died. Fox attempted to have multiple people perform a welfare check on Sharon. Fox's son indicated that this was odd as his father only ever attempted to reach out to Sharon for Fox's personal property. Fox also lied to law enforcement on multiple occasions. Although he ultimately admitted to being inside Sharon's home and knowing she was dead, he had four separate interviews with Detective Odom and each time he changed parts of his story including his conduct on or around the night of Sharon's death. *See Burns*, 59 N.E. 3d at 329 (reasoning that lying about his whereabouts on the day of the victim's disappearance was circumstantial evidence supporting the defendant's murder conviction), *trans. denied*. Fox's attempts to conceal his presence at Sharon's home and knowledge of her death is also illustrative of his guilt.

[26] Additionally, Sharon was found at the bottom of the same steps that she feared without her glasses or her phone. Sharon's habits also support Fox's murder conviction as she was known to have problems with balance, feared the steps leading to the basement, carried her phone with her at all times, and needed her glasses to see. *See Pattison*, 958 N.E.2d at 23 (reasoning that the victim's habit of not using the workout equipment she died on was circumstantial evidence that her husband murdered her using that same equipment).

[27] Accordingly, the evidence taken collectively is sufficient for the jury to have concluded beyond a reasonable doubt that Fox murdered Sharon.

C. Burglary

[28] Fox also argues that insufficient evidence supports his burglary conviction. To convict Fox of burglary as a Level 1 felony, the State was required to prove beyond a reasonable doubt that Fox did break and enter the dwelling of another person with the intent to commit a felony or theft therein. Ind. Code § 35-43-2-1(4).

[29] Fox does not suggest that he did not break and enter Sharon's home. Instead, he again contends that the evidence to support his conviction is "entirely [] circumstantial." Br. of Appellant at 25. According to Fox, the evidence is also "consistent with his explanation" that his actions within Sharon's home (attempting to move her body and not calling the authorities) were based on a fear "of the legal consequences" associated with violating the protective order preventing him from having contact with Sharon. *See id*. at 19, 25. Again, his argument asks us to reweigh the evidence presented by the State, which we will not do. *Davis v. State*, 186 N.E.3d 1203, 1214 (Ind. Ct. App. 2022).

[30] Fox is correct that the evidence against him is circumstantial; however, a burglary conviction can also be sustained from circumstantial evidence alone. *Id*. at 1213. Although a burglar can have multiple intents during the moment of breaking and entering, the presence of other intents does not subtract from the reasonability of inferring the intent to do wrong. *Id*. Indeed, the intent to commit a felony may be inferred from the circumstances. *Id*. Here, the State provided ample circumstantial evidence to prove Fox's guilt. Fox was in the

middle of a contentious divorce, in dire financial circumstances, and was set to receive substantially less than he hoped from the divorce proceedings. Despite this financial outlook, he told a saleswoman in early July 2018, that he would soon be coming into hundreds of thousands of dollars and was looking to purchase a mobile home with cash. *See* Tr., Vol. V at 57-58. At the time of Sharon's death, Fox was the beneficiary of two life insurance policies on Sharon, including a $200,000 policy for accidental death. In fact, while incarcerated, Fox attempted to collect on one of the insurance policies.

[31] Fox also admitted to being at or near Sharon's home on multiple occasions on or around the time of her death despite there being a protective order against him for past violence against Sharon. On one of these occasions, he took his son's vehicle and parked down the road so that he would not be noticed. He then admitted to being present in Sharon's home while she was dead, and evidence presented by the State also suggests that he riffled through her belongings in an attempt to find money he believed he was owed. Moreover, after Sharon's death, Fox attempted to conceal his presence at her home on or around the time of her death. He attempted to have others perform welfare checks on her, lied about how he learned that Sharon was dead, and repeatedly changed his story regarding what he was doing at the home. Accordingly, the evidence presented by the State was such that a reasonable factfinder could find, beyond a reasonable doubt, that Fox committed burglary. There is sufficient evidence of probative value to support Fox's burglary conviction.

II. Admissibility of Evidence

A. Standard of Review

[32] The trial court is afforded broad discretion in ruling on the admissibility of evidence. *Shinnock v. State*, 76 N.E3d 841, 842 (Ind. 2017). On appeal, we review the trial court's ruling for an abuse of discretion. *Id*. An abuse of discretion occurs only when the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id*.

B. Protective Order Hearing Testimony

[33] Pursuant to Indiana Evidence Rule 404(b)(1), "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." This restriction prevents the jury from indulging in the "forbidden inference" that a criminal defendant's "prior wrongful conduct suggests present guilt." *Fairbanks v. State*, 119 N.E.3d 564, 568 (Ind. 2019) (citation omitted), *cert. denied*, 140 S. Ct. 198 (2019). However, prior bad acts may be admissible to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Ind. Evidence Rule 404(b)(2).

[34] Fox first argues that it was error to allow audio and the transcript of the protective order hearing testimony in as evidence. Specifically, he contends the State's "motive and intent" evidence was "the anticipated Dissolution division of assets, Insurance policy, Sharon's Will, and Probate Law if the Dissolution was final" and not the testimony from the protective order hearing. Br. of

Appellant at 31. According to Fox, the protective order hearing "merely shows that the Parties' recent relationship was, at times, tumultuous" and is impermissible under Rule 404(b). *Id*. However, the protective order hearing details a thirty-five-year history of physical abuse perpetuated by Fox against Sharon. Where a relationship between parties is characterized by conflict, evidence of the defendant's prior assaults and confrontations with the victim may be admitted to show motive for committing the crime of murder. *See Smith v. State*, 891 N.E.2d 163, 171-72 (Ind. Ct. App. 2008) (allowing acts of prior violence between the defendant and his wife to demonstrate the nature of their relationship and the defendant's financial motive for murdering his wife), *trans. denied*. Fox's argument that the protective order hearing testimony cannot be used to demonstrate motive and intent is incorrect.

[35] Fox next contends that even if testimony from the protective order hearing is evidence of motive and intent, it was "not necessary" and was "cumulative, [and] highly prejudicial" in violation of Indiana Rule of Evidence 403. Br. of Appellant at 32. Even when evidence is within the scope of Rule 404(b), the trial court must also decide whether the probative value of the evidence is substantially outweighed by unfair prejudice. *Hicks v. State*, 690 N.E.2d 215, 223 (Ind. 1997). Unfair prejudice occurs when the jury will substantially overestimate the value of the evidence or the evidence will arouse or inflame the passions or sympathies of the jury. *Fuentes v. State*, 10 N.E.3d 68, 73 (Ind. Ct. App. 2014), *trans. denied*.

[36] Here, testimony from the protective order hearing is unlikely to have created unfair prejudice. The State presented extensive testimony regarding the existence of the protective order, the shoving incident that led to the initiation of the protective order, and Fox's disregard for the protective order in coming onto Sharon's property multiple times. Moreover, testimony also indicated that Sharon feared for her physical safety around Fox and that additional safety measures had to be taken for Sharon to feel safe at mediation sessions. Additionally, audio and written transcripts of the testimony were redacted so that information regarding other alleged concerns and bad acts performed by Fox were not presented to the jury. *See* Tr., Vol. II at 169. Accordingly, it is unlikely that the testimony from the protective order hearing resulted in unfair prejudice to Fox. Therefore, we cannot say the trial court abused its discretion in admitting the testimony from the protective order hearing.

[37] However, even if it was error to admit the testimony of the protective order hearing, any error would have been harmless as Fox's conviction for murder is clearly supported by the evidence. *See supra* ¶¶ 21-24; *see also Johnson v. State*, 671 N.E.2d 1203, 1207 (Ind. Ct. App. 1996) (indicating that error in the admission of evidence is harmless where there is substantial independent evidence of guilt such that it is unlikely the erroneously admitted evidence played a role in the conviction), *trans. denied*.

C. Cash-related Apps, Games, and Solicitations

[38] At trial, Fox objected to the admission of evidence of cash-related apps, games, and solicitations found on his cellphone because it fails to show motive and is

not relevant. The State argued that these "get rich quick" schemes demonstrated Fox's preoccupation with his financial situation and demonstrated his financial motive for killing Sharon. Tr., Vol. IV at 139. After considering whether Fox would be unfairly prejudiced by admission of the evidence, the trial court agreed with the State and admitted the evidence from Fox's cellphone.

[39] On appeal, Fox argues the trial court abused its discretion in allowing the State to introduce evidence of "Get Rich [Quick] Schemes" such as apps, games, and solicitations on his cellphone at the time of Sharon's death. Br. of Appellant at 32. Specifically, he again contends that the "tie between this evidence and motive . . . is too strained and remote to be reasonable." *Id*. at 37 (internal quotations omitted). Here, the examples of cash-related apps, games, and solicitations on Fox's cellphone at the time of Sharon's death are illustrative of his perception of his finances and his financial motive for killing Sharon. The evidence shows that Fox had lost a large amount of his own money, including while attempting to quickly acquire wealth through a deceptive sweepstakes drawing, and would be left with very little if divorce proceedings were completed. *See Smith*, 891 N.E.2d at 171 (indicating that evidence of the defendant's perception of his finances in conjunction with evidence of his anxiety about how his wife impacted his finances was relevant evidence of his financial motivation for killing his wife). Therefore, we cannot say the trial court erred in determining that examples of cash-related apps, games, and solicitations were evidence of motive and therefore, relevant and admissible.

[40] Fox also argues that any probative value provided by this evidence is substantially outweighed by its prejudicial effect. However, the State presented extensive evidence of Fox's problematic financial situation, dissatisfaction with the amount he would receive if the divorce was finalized, and belief that he would soon come into a large sum of money. Accordingly, it is unlikely the jury would "substantially overestimate the value" of the cash-related apps, games, and solicitations on his cellphone or that such evidence would "arouse or inflame the passions or sympathies of the jury." *Fuentes*, 10 N.E.3d at 73. The trial court did not abuse its discretion in admitting evidence of cash-related apps, games, and solicitations on Fox's cellphone the night of Sharon's death.

[41] However, even if the examples of the cash-related apps, games, and solicitations were admitted in error, any error is harmless as there is substantial independent evidence in support of Fox's guilt. *See supra* ¶¶ 21-24; *see also Johnson*, 671 N.E.2d at 1207.

III. Inappropriate Sentence

A. Standard of Review

[42] Indiana Appellate Rule 7(B) permits us to revise a sentence "if, after due consideration of the trial court's decision, [we] find[ ] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Sentencing is "principally a discretionary function" of the trial court to which we afford great deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference should prevail 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). An evaluation of the nature of the offense and character of the offender are separate inquiries that are ultimately balanced to determine whether a sentence is inappropriate. *Reis v. State*, 88 N.E.3d 1099, 1102 (Ind. Ct. App. 2017).

[43] The defendant carries the burden of persuading us that the sentence imposed by the trial court is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may consider any factors appearing in the record in making such a determination, *Reis*, 88 N.E.3d at 1102. The question under Rule 7(B) is "not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate." *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). "The principal role of appellate review should be to attempt to leaven the outliers . . . not to achieve a perceived 'correct' result in each case." *Cardwell*, 895 N.E.2d at 1225.

B. Nature of the Offense

[44] Our analysis of the nature of the offense starts with the advisory sentence. *Reis*, 88 N.E.3d at 1104. The advisory sentence is the starting point selected by the legislature as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. When the trial court imposes an advisory sentence, the task of

demonstrating that a sentence is inappropriate is a particularly heavy burden. *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*.

[45] Fox argues that although he received the advisory sentence for his murder conviction, a "deviation down is more than justified." Br. of Appellant at 38. Specifically, he contends that he was merely convicted of "causing [Sharon] to fall down the basement stairs, resulting in her death" and that the nature of such actions was not "unusual, violent[,] or excessive" nor was it "egregious, cruel, and callous" compared to other murders. *Id*. at 38-39. However, as previously stated, the question on review is "not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate." *King*, 894 N.E.2d at 268.

[46] Here, the State presented evidence that Fox planned Sharon's death. Fox was set to receive substantially less than he wanted or thought he deserved from his divorce proceedings with Sharon and was in financial trouble. As a result, Fox went to Sharon's home late at night and killed her on the basement steps in order to make it look like an accident. He left her alone at the bottom of the stairs, without a means to call for help, and with her private parts exposed as result of her fall. Fox stood to collect over $300,000 in insurance payments including $200,000 in accidental death coverage as a result of Sharon's death. *See Ross v. State*, 676 N.E.2d 339, 347 (Ind. 1996) (reasoning that a sentence was not inappropriate because the defendant planned the murder of his children's mother). Accordingly, we cannot say that the premeditated nature and greed associated with Fox's actions render his sentence inappropriate.

C. Character of the Offender

[47] We conduct our review of a defendant's character by engaging in a broad consideration of his or her qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). A defendant's life and conduct are illustrative of his or her character. *Id*.

[48] Fox argues that his character renders his sentence inappropriate. Specifically, he contends his lack of a criminal history, his military service, and his childhood trauma from an abusive father and dyslexia diagnosis demonstrate that his advisory sentence was not appropriate. *See* Br. of Appellant at 39-40. Although we are respectful of these aspects of Fox's life, we disagree with his assessment. Fox planned Sharon's murder and intended to profit from her death by making it appear accidental. Further, despite the existence of a protective order, he drove to her property and watched her without her knowledge. Fox then broke into Sharon's home, murdered her on the basement steps that she was afraid of, and lied to authorities about his knowledge of her death and his presence at her home. Moreover, on or around the night of Sharon's murder, he admittedly drove his son's vehicle near to Sharon's home so that no one would suspect Fox was at her home. Fox's behavior prior to, during, and after Sharon's murder are not reflective of good character. Similarly, his callous disregard for Sharon's life in favor of receiving life insurance payments because of Sharon's death are further examples of poor character.

[49] In summary, Fox received the advisory sentence of fifty-five years for Sharon's murder. After reviewing the nature of Fox's offense and his character, we cannot say that Fox has carried the heavy burden to convince us that his advisory sentence is inappropriate.

Conclusion

[50] We conclude that sufficient evidence supports Fox's convictions for murder and burglary, the trial court did not abuse its discretion in admitting testimony from the protective order hearing or evidence of cash-related apps, games, and solicitations from Fox's cellphone, and Fox's sentence is not inappropriate. Therefore, we affirm.

[51] Affirmed.

Pyle, J., and Weissmann, J., concur.