

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Sierra M. Hernandez,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 4, 2023

Court of Appeals Case No.  
23A-CR-188

Appeal from the  
Allen Superior Court

The Honorable  
Frances C. Gull, Judge

Trial Court Cause No.  
02D05-2112-MR-25

**Memorandum Decision by Senior Judge Baker**  
Judges May and Kenworthy concur.

**Baker, Senior Judge.**

## Statement of the Case

- [1] The tumultuous relationship between Sierra M. Hernandez and her on-again off-again partner Roderick Patterson came to an abrupt end when Patterson was found fatally wounded in Hernandez’s house. A jury found Hernandez guilty of Patterson’s murder. She appeals, arguing that her Sixth Amendment rights were violated: (1) by the exclusion of additional evidence to explain the delay in her 911 call; and (2) when a witness was released from her subpoena, without Hernandez’s agreement, but remained available to testify. Finding no violations of Hernandez’s constitutional rights occurred, we affirm.

## Facts and Procedural History

- [2] Patterson and Hernandez were in a romantic relationship that ran its course, and they were apart for around six years before they renewed their relationship in August 2020. They remained together until February 2021. During that time, Hernandez became pregnant with Patterson’s child. Hernandez lived with her three young children and her young brother in Fort Wayne. Patterson did not live with Hernandez, but would occasionally stay with her. He often stayed with his cousin Shakida Davis, with whom he was close.
- [3] Hernandez and Patterson’s relationship was both abusive and tumultuous. For example, on April 28, 2021, Patterson slashed the tires of Hernandez’s vehicle, broke the windshield, and broke a window of Hernandez’s home. She reported the incident to law enforcement.

- [4] On April 30, 2021, Patterson and his cousin Davis went to Indianapolis “to hang out.” Tr. Vol. 2, p. 161. They returned to the Fort Wayne area at around 10:30 p.m. on May 1st. Hernandez contacted Patterson via Snapchat, and Patterson told Davis that he would like for her to drop him off at Hernandez’s house. She dropped him off just prior to midnight. As she drove away, Davis saw Patterson place his bookbag in the backseat of Hernandez’s car and saw Hernandez open the door to her home to let Patterson inside.
- [5] At around 2:45 a.m., Hernandez’s sister Kayana and Kayana’s friend picked Hernandez up at her home. Hernandez drove the women to a parking lot so they could physically fight other women. She also videotaped the fight on her phone. The women dropped off Hernandez at her home at around 3:45 a.m. and left.
- [6] Meanwhile, at around 3:17 a.m., Patterson phoned Davis and asked her to pick him up from Hernandez’s house. He contacted Davis two more times asking her to pick him up. He also texted Hernandez, asking her where the spare key to her home was located. Additional text messages between the pair on the night of Patterson’s murder revealed that they were arguing about the identity of a person with whom Hernandez was talking. Patterson texted that Hernandez was “goofy” and that he was leaving before he “beat df outta” her. Exhibit Vol. I, pp. 133, 135 (State’s Exhibit 118). He also called her a “b[\*\*\*]h.” *Id.* at 136.

- [7] At 3:58 a.m., Hernandez called 911 to report that Patterson had been stabbed in the chest. Initially, she told police that Patterson came to her house, banged on the door, and she brought him inside. She further stated that he was bleeding a lot.
- [8] Officer Joel Lengerich was the first person to arrive on the scene at around 4:00 a.m. He found Patterson lying on the floor in a bedroom at the back of the house. Patterson was covered in blood and taking agonal breaths, which signify brain injury and impending death. There was a jacket to the left of him and a white T-shirt that were heavily soaked in blood.
- [9] Emergency personnel arrived at around 4:02 a.m. and transported Patterson to the hospital by ambulance. They located a pulse when they arrived at the scene, but lost it shortly after placing him in the ambulance. He continued to take agonal breaths when they left the scene at 4:12 a.m. Patterson was declared dead when he arrived at the hospital at 4:29 a.m.
- [10] Davis was around fifteen to twenty minutes away from Patterson when he first asked her to pick him up. She drove to Hernandez's home and found that police officers were present and had set up a perimeter around the house. Davis tried to contact Patterson, but could not reach him. She slept for a while in the car and when she awoke approached an officer. She sent Hernandez a message through Facebook Messenger at around 9:00 a.m., but Hernandez responded by blocking her. Davis reached out to Hernandez's sister but did not receive a response.

- [11] Officer Lengerich and Detective Brent Roddy spoke with Hernandez at the crime scene. She told them that she was with her sister and when she came home, she saw Patterson walking up the street. She said that she took him to the back bedroom because he could not speak. He collapsed when he entered the room, and Hernandez noticed that he had been stabbed.
- [12] Officers searched outside but could not locate a blood trail. They discovered a spot of blood by Hernandez's car and some blood on the front porch, but there was no trail from the front door to the bedroom. Testing revealed that the blood from those areas was Patterson's.
- [13] Through the course of their investigation, officers learned that Patterson was associated with an address approximately one mile from Hernandez's home. They discovered nothing to connect Patterson's injury to that location. Additionally, they learned it would take approximately twenty-five minutes to walk from that location to Hernandez's home.
- [14] During her interview at the Fort Wayne Police Department, Hernandez told officers that she was with her sister that night, received a call from Patterson, and returned home. She claimed that she arrived home at around 3:45 a.m., and when she was exiting the vehicle, she heard Patterson yelling. She said that she took him into the house where she removed his shirt and saw his injury. She stated that she applied pressure to his wound and called 911.
- [15] A forensic pathologist determined that Patterson's cause of death was a stab wound to the chest and that the manner of death was homicide. The stab

wound was a “small oval defect” in the “left anterior mid-chest.” Tr. Vol. 3, pp. 90-91. The stab wound measured one-eighth of an inch by one-fourth of an inch in size and around two-and-a-half to three inches deep. “[T]he wound pathway [went] from the left chest downward into the heart, and so it’s left to right, front to back, and downward.” *Id.* at 95.

[16] The item used to stab Patterson hit a left rib and the right ventricle of Patterson’s heart. The wound caused blood to enter the lungs and pericardial sac with every heartbeat. A fatal wound like this would cause the loss of blood pressure in around thirty to sixty seconds, and death would occur in approximately four to six minutes. Agonal breathing, moaning, and gasping could occur past that time. A forensic pathologist testified that a person with that wound might be able to walk one to one-and-a-half minutes after the wound’s infliction.

[17] Informed by the autopsy’s findings, officers returned to Hernandez’s house and searched for items that could have inflicted Patterson’s fatal wound. They found two rat-tail combs with metal handles. One was located in the bathroom sink and the other was located in the bathroom trash can. The shape, the length, and the metal pointed ends of the rat-tail combs were consistent with Patterson’s wound pathway. One of the combs was three-and-a-half inches long and the other was approximately three-and-three-quarter inches long. Hernandez’s DNA was found on both combs.

- [18] Hernandez was interviewed a second time on May 10, 2021. During this interview, Hernandez told officers that she was inside her house the first time she saw Patterson walking toward her home. She said she looked out her window, saw him speed walking toward her home, and went outside to meet him. She said they met in the grass, and it was there that she saw blood and decided to usher him inside. In a third interview, Hernandez continued to deny involvement in Patterson's murder.
- [19] Hernandez did not tell Patterson's family about his death, nor did she attend his funeral. His family reached out to her, but she did not respond to them until eleven days after his death. She told them that she found Patterson outside and nonresponsive. Hernandez communicated with Patterson's mother via Facebook Messenger in June or July, but when Patterson's mother turned the messages over to law enforcement, she noticed that some of them had been deleted.
- [20] Prior to trial, the State filed a supplemental motion in limine in which it sought to prevent the admission of evidence that: 1) Patterson had an outstanding warrant for his arrest; 2) Patterson had recently been released from the Department of Correction; and 3) Hernandez and Patterson had an unrelated domestic history. Defense counsel stated, "we have no objection to . . . the supplemental motion in limine[,]" and the court granted the State's motion. Tr. Vol. 2, p. 5.

[21] During the jury trial, the State presented evidence through phone records showing that both Patterson's and Hernandez's phones were located in the vicinity of Hernandez's house around 12:17 a.m. on May 2, 2021. Evidence also showed that after 12:17 a.m., Patterson's phone remained in the vicinity of Hernandez's house. The State presented evidence refuting Hernandez's claims that she had very little contact with Patterson after April 28, 2021. Records showed that the two had exchanged 163 communications from April 28 to May 2, 2021, and that Hernandez had deleted some messages between the two from her phone.

[22] Alexis Nelson, Patterson's sister, testified for the State at trial. At the conclusion of her testimony, the State asked if she could be released from her subpoena. Defense counsel said, "We have an objection to that, Judge." Tr. Vol. 4, p. 18. The trial court said, "you are free to go, ma'am. Thank you." *Id.* The trial court did not address the objection, defense counsel did not say anything further, and the next witness' testimony was presented.

[23] Later, during a break and outside the presence of the jury, the trial court asked if there were any matters to be addressed. Counsel and the trial court disputed whether defense counsel had agreed to release Nelson from her subpoena. The State and the trial court believed that defense counsel had agreed, while defense counsel argued that he did not release her. The State rested, and defense counsel presented evidence in Hernandez's defense. However, defense counsel did not attempt to call Nelson to the stand, make an offer of proof as to her



anticipated testimony, or state the grounds on which he believed her testimony was admissible.

[24] Hernandez testified on her own behalf. She told the jury that she arrived home at around 3:45 a.m., entered her house, and then heard a commotion outside. When she looked out the window, she observed Patterson walking up her driveway. She responded to the State's question about her delay in calling 911 by explaining that she waited to call until after she brought Patterson inside her home and called his mother.

[25] On re-direct examination, defense counsel asked Hernandez why she did not call 911 first. The State objected on the ground that defense counsel was attempting to violate the order in limine prohibiting reference to Patterson's outstanding arrest warrant. Defense counsel argued that the State had opened the door by questioning Hernandez about her delay in calling 911. The trial court did not allow defense counsel to pursue an answer to the question, and denied defense counsel's motion for a mistrial.

[26] After the trial court gave its final instructions to the jury, defense counsel reiterated that he had not released Nelson from the subpoena. The parties renewed their disagreement about whether Hernandez had agreed to release Nelson. Once again, defense counsel did not make a record of what Nelson's testimony would be, or on what ground it was admissible. The jury found Hernandez guilty of Patterson's murder.

## Discussion and Decision

[27] Hernandez appeals from her conviction, claiming that her Sixth and Fourteenth Amendment rights were violated during the course of her trial. We address each argument in turn.

### A. The 911 Call Delay

[28] Hernandez argues that her Sixth Amendment right to confront and cross-examine witnesses was violated when the court prohibited her from testifying about the delay in time that took place between when she first saw Patterson and when she called 911. Specifically, she claims on appeal that she sought to clarify any confusion created by the State's questions about her delay.

[29] Hernandez raises various arguments, none of which would be successful in obtaining a reversal. *See* Appellant's Br. pp. 13-18 (general admission-of-evidence principles, implicit allegations of prosecutorial misconduct at trial and in closing argument, and a possible right-to-present-a-defense claim). The State counters that those arguments are unavailing for a number of reasons. *See* Appellee's Br. pp. 17-25 (failure to present cogent argument, failure to make an offer of proof, failure on the merits because Hernandez is not an adverse witness against herself, and harmless error). We conclude that Hernandez's arguments fail because she has not preserved them for our review by making an offer of proof on the record.

[30] "To reverse a trial court's decision to exclude evidence, there must have been error by the court that affected the defendant's substantial rights and the

defendant must have made an offer of proof or the evidence must have been clear from the context.” *Harman v. State*, 4 N.E.3d 209, 215 (Ind. Ct. App. 2014), *trans. denied*.

An offer to prove consists of three parts: (1) the substance of the evidence, (2) an explanation of its relevance, and (3) the proposed grounds for its admissibility. The purpose of an offer to prove is to preserve for appeal the trial court’s allegedly erroneous exclusion of evidence. A party traditionally makes an offer to prove after the trial court has sustained an objection to the admission of the party’s evidence. However, it may also be made before the trial court’s ruling on an objection in order to aid in the admissibility ruling.

*Id.* at 215-216 (internal quotations and citations omitted).

[31] Hernandez did not make an offer of proof, but the substance of the excluded evidence—Patterson’s outstanding arrest warrant—and its relevance are fairly clear from the context. However, the grounds for the excluded evidence’s admissibility were not stated on the record. Defense counsel’s statement that the State had “opened the door,” Tr. Vol. 4, pp. 95-96, does not clearly invoke Hernandez’s right to confront and cross-examine witnesses or any other right under the Sixth Amendment. We cannot grant Hernandez the relief she seeks based on the record before us.

[32] Additionally, the Sixth Amendment, made applicable to the states through the Fourteenth Amendment, states that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. Thus, Hernandez’s argument fails from the outset because

Hernandez herself is the witness and, therefore, not an adverse witness. And she cannot cross-examine herself.

[33] However, even had Hernandez established a constitutional violation, the error is harmless beyond a reasonable doubt. “Whether such error is harmless [beyond a reasonable doubt] in a particular case depends upon a host of factors, all readily accessible to reviewing courts.” *Hall v. State*, 36 N.E.3d 459, 468 (Ind. 2015) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986)). “These factors include the importance of the witness’ testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution’s case.” *Id.*

[34] The State established through Hernandez’s testimony that she called 911 within two to three minutes of seeing Patterson. When asked by the State why she waited, Hernandez replied, “I had to bring him in the house and I did decide to call his mother before I dialed 911, and then I dialed 911, so in the midst of that I would probably say two minutes.” Tr. Vol. 4, p. 87. When asked by the State whether it was strange for someone to wait two to three minutes to call 911, Hernandez replied, “I don’t know if that’s strange. For me, I was in a panic situation. I didn’t exactly know what to do and there is a reason that I didn’t know if I should call the police or not.” *Id.* at 87-88.

[35] The trial court's decision did not prevent Hernandez from explaining the reason for her delay in calling 911. None of the reasons she presented—it was a stressful situation, it was early in the morning, she was panicked—left a false impression and they were plausible.

[36] Further, Hernandez's story about what transpired was ever-changing and ever-evolving. Evidence found in her home contradicted the story she told and compellingly showed that Patterson was fatally wounded in her home. The main source of Patterson's blood was found in the back bedroom of her home, and the droplets found in front of the home and near her car could have occurred when Patterson was transferred to the ambulance. The metal comb, which was consistent with the injury inflicted on Patterson, was located inside Hernandez's home. And the forensic pathologist's testimony—walking one minute to one-and-one-half minutes would be the maximum one with that wound could walk—contradicted Hernandez's testimony about his walking up her driveway and walking to the back of her home without her assistance. Cell phone evidence indicating the location of the two cell phones and time stamps of text messages also contradicted her version of the events.

[37] Hernandez has not demonstrated that her constitutional rights were violated by the trial court's enforcement of its order in limine. The State anticipated that her testimony would have been about those prohibited topics. However, she did not present an offer of proof as to what her testimony would be—whether it would have been in reference to the prohibited evidence or something else—and did not state the grounds upon which her testimony, whatever it would have

been, was admissible. The evidence against her was overwhelming, and Hernandez was allowed to offer a plausible explanation for the delay. Based on the record before us, we conclude there is no error.

## **B. Release From Subpoena**

[38] Next, Hernandez claims that her Sixth Amendment rights were violated when the trial court released Alexis Nelson from her subpoena without discussing or acknowledging Hernandez’s objection. She argues in her appellate brief that the trial court improperly prevented her from pursuing a line of questioning regarding her phone number and about a phone number “that was so closely tied to the time frame of the actual homicide . . . .” Appellant’s Br. p. 19. The State contends that Hernandez’s claim should be waived and/or rejected for several reasons. *See* Appellee’s Br. pp. 26-28 (failure to present cogent argument, raising an argument for the first time in an appellate brief, failure to make an offer of proof, and harmless error). We conclude that Hernandez’s argument fails because she has not preserved it for our review by making an offer of proof on the record.

[39] Hernandez argues that her Sixth Amendment rights were violated in this situation. However, Hernandez was allowed to confront and cross-examine Nelson. During cross-examination, Nelson testified that after learning about her brother’s death, she used her phone to reach out to Hernandez on Facebook Messenger. She clarified that she did not call or text, but used her phone to open the Facebook app to send messages, to which she received no responses.

[40] When Hernandez’s counsel asked Nelson for her phone number, the State lodged a relevance objection. The State argued that because Nelson testified that she communicated via Facebook Messenger, her phone number was not relevant. Hernandez’s counsel argued that he “would like to know her number” because “there was—been loads and loads of evidence concerning cell phone records and we just need her number.” Tr. Vol. 4, p. 17. The court sustained the State’s objection and denied Hernandez’s motion for mistrial saying, “You had the opportunity to get this information short of a jury trial.” *Id.*

[41] Hernandez did not ask any more questions during Nelson’s cross-examination. Furthermore, Hernandez did not make an offer of proof about the grounds for admissibility of Nelson’s telephone number or its relevance to Hernandez’s defense. *See Harman*, 4 N.E.3d at 215-16. For the first time on appeal, Hernandez presents us with the rationale that Hernandez should have had the right to pursue that line of questioning, and that somehow that information would have filled in gaps in testimony by the State’s witnesses about who owned phone number 260-999-7304, a number dialed from Patterson’s phone by someone at 3:51 a.m. In sum, the record here is insufficient to show that the trial court erred by sustaining the objection.

[42] Additionally, when Hernandez revisited the issue during a jury break, Hernandez’s counsel said “Alexis is here. I did not release her.” Tr. Vol. 4, p. 48. Again, Hernandez made no offer of proof, but engaged in a debate with the trial court and State about whether counsel had released her from her subpoena.

And as counsel stated, the witness was present and thus, could have been called as a witness to testify in Hernandez's case-in-chief.

[43] Nevertheless, Indiana Trial Rule 45 is a means by which to "command [the] person to whom it is directed to attend and give testimony at a time and place therein specified." Trial Rule 45(A)(2) and (E) allow an attorney to issue a subpoena. And Rule 45(E) provides that it may be issued "at any place within the state." In sum, there was nothing to prevent Hernandez from securing Nelson's testimony and providing the trial court with an explanation of the grounds for admissibility of her telephone number, beyond "we just need her number." Tr. Vol. 4, p. 17. And as the trial court noted, Hernandez could have obtained that information prior to trial.

[44] Even if we were to conclude that the trial court erred, which we do not, the error would be harmless beyond a reasonable doubt. We have already recited the ample evidence against Hernandez establishing her guilt. And disregarding the other options for securing Nelson's testimony which were available to Hernandez, the court's decision to disallow evidence of Nelson's telephone number was harmless beyond a reasonable doubt given the ample evidence connecting Hernandez to the crime. We find no error here.

## Conclusion

[45] In light of the foregoing, we affirm the trial court's judgment.

[46] Affirmed.



May, J., and Kenworthy, J., concur.