MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Glenn C. Keller, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 11, 2024

Court of Appeals Case No. 23A-CR-845

Appeal from the Lake Superior Court

The Honorable Salvador Vasquez, Judge

Trial Court Cause No. 45G01-2208-MR-34

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

[1] Glenn Keller shot and killed Shaquille Russell on "Calumet Day," an annual community celebration in the Calumet neighborhood of East Chicago, Indiana. Now convicted of Russell's murder, Keller argues that the trial court abused its discretion in making various evidentiary rulings at trial. We find no reversible error and affirm.

Facts

[2] In July 2022, Keller and Russell lived on neighboring streets in Calumet. Keller was homeless but generally resided on McCook Avenue, occasionally staying at the home of his girlfriend, Shamona Taylor. Russell lived two streets over on Melville Avenue, also known as "Ville Block." Tr. Vol. III, p. 75. Historically, the residents of McCook and Melville Avenues had tension with each other, and Keller and Russell were no exception.

[3] Two days before Calumet Day, Keller encountered Russell's girlfriend, Taquita Curtain, at a gas station and hassled her about Russell. According to Curtain, Keller said: "[Russell] better not come to Calumet Day with a [Ville Block] chain on"; "[I] don't like those Ville [B]lock n****s"; and "[I]t'll be up on Calumet Day." *Id.* at 73. Keller also indicated that he would snatch Russell's chain if he wore it to the celebration and would "shoot [Curtain's] car up" if he saw Russell in it. *Id.*

[4] Curtain told Russell about her encounter with Keller, and the next day, Russell angrily confronted Keller about it. During the confrontation, Russell said:

"What chain you gone snatch off my neck?"; "You never even seen me with a chain"; and "Matter of fact, give me that chain." *Id.* at 84-85. Russell then stole the chain Keller was wearing by snatching it off his neck. Eventually, the two shook hands, agreed they were "cool," and went their separate ways. *Id.* at 88.

[5] The next day was Calumet Day. Russell and Curtain attended the celebration together, and Curtain saw Keller there in the afternoon. Keller was wearing a black hoodie and blue jeans, and he stared at Curtain as she passed by. Russell assured Curtain that Keller would not bother them. But that night, as Russell was getting into Curtain's car to leave, Keller ambushed Russell and shot him eight times with a .40 caliber handgun. Russell died almost instantly.

[6] Curtain did not see the shooting, but she heard the shots from inside her car and saw Keller running away from the scene. Though Curtain did not immediately tell police that Keller should be a suspect, police began receiving anonymous tips that led them to focus on Keller. Police also obtained surveillance videos of the shooting, which they believed depicted Keller as the shooter. Eventually, Curtain confirmed to police that Keller was one who shot Russell, and the State charged Keller with murder.

[7] Among the evidence presented at Keller's jury trial, the State offered two surveillance videos of Russell's shooting. The first video, Exhibit 7, was recorded by a camera mounted on the exterior of a bar near the spot where Russell was shot. This video did not show the shooter's face, but it revealed that the shooter wore a black hoodie and blue jeans. And when the video was

played during Curtain's testimony at trial, Curtain identified the shooter as the same person she saw running away from the scene—Keller.

[8] The second video, Exhibit 10, was recorded by a mobile police camera that was positioned down the street from the bar. This video primarily showed the shooter's actions before the shooting, and it revealed the shooter to be a black male with a "very pointy beard" and a "distinguished . . . domed shaped" head. *Id.* at 224-25. Two police officers testified that Keller exhibited these facial features at the time of his arrest, as evidenced by his booking photographs. And Taylor testified that the individual shown in Exhibit 10 was, in fact, Keller.

[9] In addition to the surveillance videos, the State played for the jury an audio recording of a jailhouse telephone call in which Keller, while awaiting trial, asked Taylor to lie and say he was with her at all times on Calumet Day. Taylor, however, testified that she did not see Keller at all that day.

[10] The jury found Keller guilty of Russell's murder, and the trial court entered judgment of conviction. The court then sentenced Keller to an enhanced sentence of 63 years in prison due, in part, to Keller's criminal history and "violent and manipulative" character. App. Vol. II, pp. 160-61.

Discussion and Decision

[11] Keller appeals his murder conviction by challenging four of the trial court's evidentiary rulings at trial. Specifically, Keller claims the court erred by:

(1) prohibiting Keller from questioning Taylor about a prior sexual relationship she had with Curtain;

(2) allowing Curtain to testify about statements Taylor made to her during a pre-Calumet Day telephone call;

(3) allowing the State to twice play for the jury the Exhibit 7 surveillance video of Russell's shooting; and

(4) admitting into evidence Facebook posts that Keller purportedly made one week after the shooting.

[12] The admission or exclusion of evidence is generally a matter left to the trial court's discretion. *Rogers v. State*, 130 N.E.3d 626, 629 (Ind. Ct. App. 2019). We therefore reverse only where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* We find no reversible error here.

I. Prior Sexual Relationship

[13] While cross-examining Taylor at trial, Keller sought to inquire about a sexual relationship Taylor had with Curtain eight months before Russell's shooting. Taylor had acknowledged the existence of the relationship during a pre-trial deposition, but pursuant to an order in limine, Keller was required to make an offer of proof as to the relationship's relevance before mentioning it at trial.

[14] Outside the presence of the jury, Keller informed the trial court of Taylor's deposition testimony, highlighted that he was in a relationship with Taylor at the time of the shooting, and theorized that Curtain viewed him as a rival for Taylor's affection. On this basis, Keller argued that Taylor and Curtain's prior sexual relationship was relevant to showing Curtain's bias against him. The trial court disagreed and sustained its motion in limine.

[15] Keller now contends the trial court abused its discretion, claiming evidence of a witness' bias is "always relevant" at trial because it "may discredit the witness or affect the weight of the witness' testimony." Appellant's Br., p. 14 (citing *Shanholt v. State*, 448 N.E.2d 308, 316 (Ind. Ct. App. 1983)). We recognize that Indiana Evidence Rule 616 "provides for the admission of evidence showing bias or prejudice of a witness without any qualifications." *Ingram v. State*, 715 N.E.2d 405, 407 (Ind. 1999). But the basis for a witness' alleged bias cannot be "purely speculative"; it must be grounded in fact. *Tolliver v. State*, 922 N.E.2d 1272, 1286 (Ind. Ct. App. 2010).

[16] The basis for Curtain's alleged bias against Keller was purely speculative. In his offer of proof, Keller presented no evidence that Curtain wanted to rekindle her relationship with Taylor or that she was otherwise jealous of Keller and Taylor's relationship. Keller showed only that he and Taylor were in a relationship at the time of Russell's shooting and that Curtain and Taylor were in a relationship eight months earlier. Accordingly, the trial court did not abuse its discretion by prohibiting Keller from inquiring into Taylor and Curtain's prior sexual relationship.

II. Telephone Statements

[17] On direct examination, the State questioned Curtain about statements Taylor made during a telephone call on the day before Calumet Day, a few hours after Russell stole Keller's chain. Keller objected to the State's line of questioning, claiming Taylor's statements were hearsay and therefore inadmissible under Indiana Evidence Rule 802. The State countered that Taylor's statements were

admissible under the hearsay exception for excited utterances under Indiana Evidence Rule 803(2). The trial court seemingly agreed with the State and allowed its line of questioning to continue.

[18] Curtain went on to testify that, during the telephone call, Taylor excitedly accused Russell of robbing Keller not only of his chain but also of Taylor's cellphone and a gun. Curtain tried to explain to Taylor that Russell only stole Keller's chain, but Taylor hung up and did not respond to Curtain's follow-up text message. At the time of trial, Curtain and Taylor had yet to speak again.

[19] Keller contends the trial court abused its discretion by allowing Curtain to testify about Taylor's out-of-court statements because they did not qualify as excited utterances under Evidence Rue 803. On appeal, however, the State changes tack and claims Taylor's statements were not hearsay at all. We agree with the State.

[20] "Hearsay is an out-of-court statement offered for 'the truth of the matter asserted.'" *Blount v. State*, 22 N.E.3d 559, 565 (Ind. 2014) (quoting Ind. Evidence Rule 801(c)(2)). Thus, "whether a statement is hearsay will most often hinge on the purpose for which it is offered." *Id.* (cleaned up). According to the State, Taylor's out-of-court accusations that Russell robbed Keller of a cellphone and a gun were not offered to prove that Russell stole those items. They were offered to explain why Curtain and Taylor did not speak to each other again after their phone call ended.

[21] Keller does not contest the State's alleged motive for offering Taylor's statements at trial. Rather, he claims the State waived the issue by raising it for the first time on appeal. But as the prevailing party, the State "may defend the trial court's ruling on any grounds, including grounds not raised at trial." *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 813 (Ind. 2012); *accord McMillen v. State*, 169 N.E.3d 437, 441 (Ind. Ct. App. 2021) ("[W]e will affirm the trial court's hearsay ruling on any legal basis apparent in the record.").

[22] Because the State did not offer Taylor's out-of-court statements to prove the truth of the matter asserted, the trial court did not abuse its discretion by allowing Curtain to testify about that non-hearsay.

III. Surveillance Video

[23] During trial, the State twice played for the jury the Exhibit 7 surveillance video of Russell's shooting. The first playing occurred during Curtain's testimony; the second playing occurred during the testimony of Sayra Jimenez-Segovia, an Intel Support Officer with East Chicago Police Department. Keller objected to the second playing of Exhibit 7 as cumulative of the first, but the trial court overruled his objection.

[24] Keller now claims the trial court abused its discretion. We disagree. "Evidence is cumulative if it supports a fact established by existing evidence and is of the same kind or character as the previously admitted evidence." *Richardson v. State*, 189 N.E.3d 629, 636 (Ind. Ct. App. 2022). The first and second playings of the Exhibit 7 surveillance video supported two distinct facts.

[25] During the first playing of Exhibit 7, Curtain testified that the depicted shooter was the same person she saw and identified as Keller running away from the scene of Russell's shooting. During the second playing of Exhibit 7, Officer Jimenez-Segovia testified that the depicted shooter was the same person shown in Exhibit 10. Officer Jimenez-Segovia further explained how she backtracked the shooter's movements from Exhibit 7 to Exhibit 10 to conclude that the videos depicted the same person.

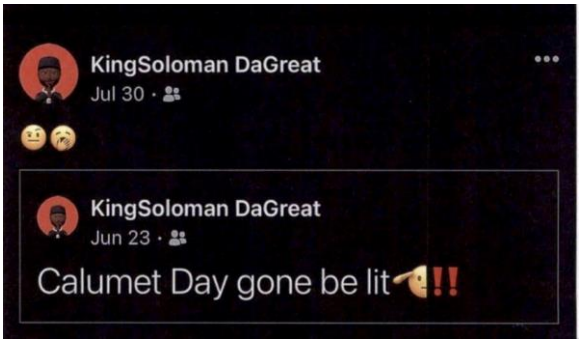
[26] Because the second playing of Exhibit 7 was not cumulative of the first, the trial court did not abuse its discretion by allowing the State to twice play the video.

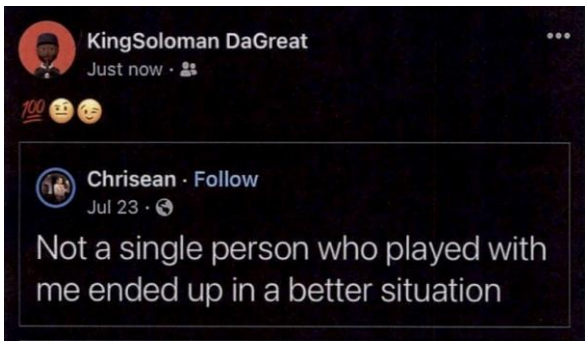
IV. Facebook Posts

[27] Also during trial, the State offered into evidence screenshots that Curtain took of three Facebook posts that Keller purportedly made one week after Calumet Day under the username "KingSoloman DaGreat." Tr. Vol. III, p. 141. To authenticate the posts under Indiana Evidence Rule 901, Curtain testified that she and Keller were Facebook friends and that "KingSoloman DaGreat" was Keller's username. Curtain also testified that she and Keller had previously communicated through the "KingSoloman DaGreat" Facebook page. However, Curtain acknowledged that it is possible for someone to post on another person's Facebook page, and she admitted to not knowing specifically who authored the posts depicted in her screenshots.

[28] Over Keller's objection, the trial court found Curtain's screenshots and the three Facebook posts they depicted sufficiently authenticated and admitted them into

evidence. The first screenshot depicted Keller sitting on a couch and, according to Curtain, was from a Facebook Live video in which Keller repeatedly rapped the phrase, "Hand down, man down." *Id.* at 142; Exhs. p. 88. The other two screenshots depicted, in pertinent part, the following static posts:





Exhs. pp. 89-90.

[29] Keller claims the trial court abused its discretion by admitting the screenshots of his purported Facebook posts. But even if it did, only harmless error resulted. "The improper admission of evidence is harmless error 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." *Lafayette v. State*, 917 N.E.2d 660, 666 (Ind. 2009).

[30] At trial, the State presented substantial independent evidence that Keller murdered Russell. Curtain testified about her and Russell's encounters with Keller in the days leading up to Calumet Day, including Keller's threat to shoot Russell if he saw him in Curtain's car. Curtain also testified that she saw Keller

running away from the scene of the shooting and that the shooter depicted in the Exhibit 7 surveillance video was the same person she saw running away.

[31] Additionally, the Exhibit 10 surveillance video showed the shooter as having distinct features—including a very pointy beard—that matched Keller's appearance at the time of his arrest. And Keller's own girlfriend, Taylor, identified the individual shown in Exhibit 10 as Keller. Taylor also testified that Keller asked her to lie and say he was with her on Calumet Day, presumably to establish an alibi for Russell's murder.

[32] Given this evidence, we find it substantially unlikely that Keller's purported Facebook posts contributed to his conviction. Any error in their admission was therefore harmless.

[33] We affirm the trial court's judgment.

Riley, J., and Bradford, J., concur.