MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Arjewus Lujune Willis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 24, 2022

Court of Appeals Case No. 21A-CR-486

Appeal from the Marion Superior Court 30

The Honorable Cynthia L. Oetjen, Judge

The Honorable Anne Flannelly, Magistrate

Trial Court Cause No. 49D30-2010-F1-32093

Altice, Judge.

Case Summary

[1] Following a bench trial, Arjewus Lujune Willis was convicted of attempted murder, a Level 1 felony, and pointing a firearm, a Level 6 felony. The trial court sentenced him to an aggregate term of thirty-seven and one-half years imprisonment. On appeal, Willis presents numerous issues for our review, which we restate as follows:

> 1. Is the evidence sufficient to sustain Willis's attempted murder conviction?
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> 2. Was it structural error when the victim's relative nodded to the victim while she was testifying?
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> 3. Did Willis's trial counsel provide ineffective assistance?
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> 4. Did the prosecutor commit fundamental error during closing argument?
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> 5. Did the magistrate have authority to sentence Willis?
>
> 6. Did the trial court abuse its sentencing discretion by placing undue emphasis on Willis's criminal history?

[2] We affirm.

Facts & Procedural History

[3] Randi Washington and Willis had known each other for over twenty years and began dating in May 2018. In October 2020, they were "on the edge of breaking up." *Transcript Vol. II* at 31. On October 12, Willis, who had recently moved to North Carolina, called Washington "nonstop," including while she was at work. *Id*. at 32. Washington got off work just after midnight and went home to her apartment. Shortly after she got home, Washington received yet another call from Willis. At the time, Washington believed Willis was calling from North Carolina.[1]

[4] Washington and her roommate, Brandon McCloud, fell asleep watching television. They were awakened by sounds coming from the area of the sliding glass door. Washington went to investigate and, upon moving the blinds, saw Willis trying to gain entry. Washington told Willis that he needed to leave, but he kept trying to move the sliding door off its track with a pry bar. When his efforts were thwarted by Washington kicking the door back into the track, Willis grabbed a shotgun he had hidden behind a chair on the patio and pointed it at Washington. Washington immediately turned, but as she started to move away, Willis shot through the sliding glass door. Washington fell to the floor and her back and head started "burning." *Id*. at 41.

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[1] A subsequent forensic examination of digital information associated with Willis's phone placed Willis within two miles of Washington's apartment when he made this call.

[5] Willis entered the apartment, grabbed Washington, and dragged her outside. Washington managed to free herself from Willis's grasp and ran back into her apartment. As Washington and McCloud started to exit through the front door, Willis appeared and pushed it closed. Washington and McCloud fell beside Washington's bed, which was situated in the main room just inside the front door. As he stood over them, Willis pointed the gun at Washington. When she asked him why he was doing this, Willis stated, "I'm going to kill your ass," and then pulled the trigger, shooting Willis in the right forearm. *Id*. at 111. He then pointed the gun at McCloud. Despite having been shot, Washington stood and pushed the gun out of McCloud's face. McCloud fled through the front door as Willis walked out through the sliding door but immediately came back in. Washington asked him to "just leave" but he stood around for a couple of minutes. *Id*. at 45. When he heard sirens, Willis grabbed Washington's phone and left. He later turned himself in on an outstanding warrant in Hamilton County.

[6] Washington was transported to the hospital. Although her heart stopped at one point, she survived her injuries. Washington has yet to regain full use of her arm and continues to suffer from pain, nerve issues, and muscle spasms.

[7] On October 18, 2020, Willis was charged with ten counts: Count I, attempted murder, a Level 1 felony; Count II, burglary as a Level 1 felony; County III, aggravated battery as a Level 3 felony; Count IV, attempted kidnapping as a Level 3 felony; Count V, domestic battery with a deadly weapon, a Level 5 felony; Count VI, attempted battery by means of a deadly weapon, a Level 5

felony; Counts VII and VIII, pointing a firearm as Level 6 felonies; Count IX, stalking as a Level 6 felony; and Count X, distribution of an intimate image as a Class A misdemeanor. A bench trial was held on February 25, 2021, at the conclusion of which the trial court found Willis guilty of Counts I, III, V, VII, and VIII and acquitted him of Counts II, IV, VI, and IX.[2] The trial court then dismissed Counts III, V, and VII due to double jeopardy concerns. On March 5, 2021, the trial court sentenced Willis to consecutive terms of thirty-five years on Count I and two and one-half years on Count VIII. Additional facts will be provided as needed.

Discussion & Decision

1. Sufficiency

[8] Willis argues that the State presented insufficient evidence to support his conviction for attempted murder. More precisely, he contends that the evidence regarding his specific intent to murder Washington was lacking. He asserts that if he had intended to kill her, "he would have shot her in the head." *Appellant's Brief* at 19.

[9] Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting the conviction. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh evidence, and we will affirm unless

[2] Prior to sentencing, the State moved to dismiss Count X.

no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id*. It is not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence will be found sufficient if an inference may reasonably be drawn from it to support the conviction. *Id*. at 147.

[10] A person who knowingly or intentionally kills another human being commits murder. Ind. Code § 35-42-1-1. A person attempts to commit a crime when, acting with the culpability required for commission of the crime, the person engages in conduct that constitutes a substantial step toward commission of the crime. Ind. Code § 35-41-5-1. Although the culpability requirement for murder includes the lesser standard of knowingly, a conviction of attempted murder requires proof of a specific intent to kill. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008).

[11] Because intent is a mental state, "the trier of fact often must infer its existence from surrounding circumstances when determining whether the requisite intent exists." *Goodner v. State*, 685 N.E.2d 1058, 1062 (Ind. 1997); *see also Long v. State*, 935 N.E.2d 194, 197 (Ind. Ct. App. 2010) (without a confession, intent must be determined from a consideration of the conduct and the natural consequences of the conduct), *trans. denied*. Specific intent may be inferred from the nature of the attack and the circumstances surrounding the crime, including the use of a deadly weapon in a manner likely to cause death or great bodily injury. *Pilarski v. State*, 635 N.E.2d 166, 172 (Ind. 1994); *Corbin v. State*, 840 N.E.2d 424, 429 (Ind. Ct. App. 2006). Our Supreme Court has also held that

discharging a weapon in the direction of a victim is substantial evidence from which a trier of fact could infer intent to kill. *Leon v. State*, 525 N.E.2d 331, 332 (Ind. 1988).

[12] Here, Willis was angry about the end of his relationship with Washington. During early morning hours, Willis showed up unannounced at Washington's apartment and, when he could not make entry, he aimed a shotgun in her direction and fired through a glass door. Washington was hit across her back and head with glass and shrapnel. Then, after struggling with Washington and preventing her exit through the front door, Willis stood over Washington, pointed his gun, and shot her in the right forearm, causing significant injuries. By itself, the evidence that Willis shot Washington twice at close range is sufficient to support the trial court's judgment that Willis was guilty of attempted murder. *See Fry v. State*, 885 N.E.2d 742, 750 (Ind. Ct. App. 2008) (finding sufficient evidence of intent to kill where victim testified that defendant aimed gun at him and started shooting). Erasing any doubt as to his intentions, as he stood over Washington and pointed the gun at her, Willis told her, "I'm going to kill your ass." *Transcript Vol. 2* at 111. *See Schilling v. State*, 376 N.E.2d 1142, 1143 (1978) (holding that intent to kill may be established by a defendant's use of a deadly weapon against the victim coupled with an announced intention to kill). The evidence is sufficient to support Willis's conviction for attempted murder.

2. Structural Error

[13] During the bench trial, a relative of Washington's was in the gallery and twice nodded in her direction while she testified. Willis's trial counsel interrupted the proceedings and asked that the individual be excluded from the courtroom for "communicating with the witness." *Transcript Vol. II* at 46. The State explained that the individual was there "for support" and that he was not a witness to any of the events. *Id*. The trial court granted Willis's request and ordered the individual to leave the courtroom. The court then admonished other spectators in the courtroom to "not communicate in any way with any witness or with the defendant." *Id*. at 47.

[14] On appeal, Willis suggests that the nodding by Washington's relative amounted to coaching or witness tampering that should be reviewed through the lens of structural error. Willis, however, offers no factual or legal support for his claim that such interaction was coaching or tampering. Willis has therefore waived this claim on appeal. *See Burnell v. State*, 110 N.E.3d 1167, 1171 (Ind. Ct. App. 2018) (noting that we will not review undeveloped arguments).

3. Ineffective Assistance[3]

[15] In ineffective assistance of counsel cases, reversal is appropriate where a defendant shows both that counsel's performance fell below an objective

[3] A criminal defendant claiming ineffective assistance of trial counsel is at liberty to elect whether to raise this claim on direct appeal or in post-conviction proceedings. *Woods v. State*, 701 N.E.2d 1208, 1216 (Ind. 1998), *cert. denied* (1999). But if raised on direct appeal, the appellate resolution of the issue acts as *res judicata* and

standard of reasonableness and that said deficient performance so prejudiced the defendant as to deprive him of a fair trial. *Pennycuff v. State*, 745 N.E.2d 804, 811 (Ind. 2001) (citing *Strickland v. Washington*, 466 U.S. 668, 697 (1984)). There is a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id*. Judicial scrutiny of counsel's performance is highly deferential and should not be exercised through the distortions of hindsight. *Id*. Isolated poor strategy, inexperience, or bad tactics do not necessarily amount to ineffectiveness of counsel. *Id*. When considering ineffective assistance of counsel claims, we "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id*. (citing *Strickland*, 466 U.S. at 690). A claim that trial counsel was ineffective may be disposed of on the prejudice inquiry alone. *Vermillion v. State*, 719 N.E.2d 1201, 1208 (Ind. 1999); *Williams v. State*, 706 N.E.2d 149, 154 (Ind. 1999).

[16] Willis first claims that his trial counsel was ineffective for failing to challenge Officer Adam Franklin's training and experience in digital forensics. Specifically, he argues Officer Franklin was not qualified to testify as an expert on tracking cell phone locations and cell phones generally.

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precludes its relitigation in subsequent post-conviction relief proceedings. *Thomas v. State*, 797 N.E.2d 752, 754 (Ind. 2003).

[17] Officer Franklin of the Indianapolis Metropolitan Police Department (IMPD) testified regarding Willis's location in the hours just before and after the shooting. He determined that when Washington received Willis's call after she got home from work, Willis was located within a few miles of Washington's apartment. Officer Franklin explained that he is a Communication Records Analyst with IMPD's Digital Forensics Unit, which unit is tasked with analyzing different digital materials from a variety of sources. He explained that his specific task was "to obtain call records from different carriers and map them out, as well as convert all, all records to Eastern Standard Time." *Transcript Vol. II* at 120. Upon acknowledging that he had been trained to complete such tasks, the State interjected, "I believe Officer Franklin has testified in front of both counsels and Your Honor before. If we could stipulate to his training and experience with IMPD and in digital forensics?" *Id*. at 121. Willis's trial counsel had no objection, and the trial court approved the stipulation. Officer Franklin then testified that after receiving certified call records associated with Willis's cell phone, he was able to map out, with help from a secure program used by law enforcement all over the country, Willis's location on the night of the shooting. He created a forty-page PowerPoint presentation explaining his findings, which was admitted into evidence without objection.

[18] This court has previously held that cell phone forensics is not "scientific" testimony pursuant to Ind. Evid. R. 702, but rather, it is more aptly categorized as "technical" or "specialized" knowledge. *See Taylor v. State*, 101 N.E.3d 865,

871 (Ind. Ct. App. 2018) (noting that the process by which data is recovered from cell phones "is more akin to engineering than science"). Thus, Willis's trial counsel could not have been ineffective for failing to object to Officer Franklin's testimony on the basis that he was not qualified as an expert. *See Walker v. State*, 843 N.E.2d 50, 59 (Ind. Ct. App. 2006) (noting that to prove ineffective assistance based on failure to object, a defendant must show that a proper objection would have been sustained by the trial court), *trans. denied*.

[19] Furthermore, Officer Franklin testified that he had been trained in digital forensics, he had processed over 400 sets of cell phone records in his four years of experience, and he utilized a secure program that is used "all across the country by law enforcement." *Transcript Vol. II* at 127. *See Taylor*, 101 N.E.3d at 871 (finding cell phone data properly admitted where detective testified that he had 700 hours of training in cell phone forensics and had recovered data from approximately 800 cell phones). Additionally, the cell phone data, which established only that Willis was near Washington's apartment, was cumulative of Willis's own admission that he had been at Washington's apartment that night and Washington's and McCloud's positive identification of Willis as the shooter. Thus, even if there was error, Willis cannot establish prejudice.

[20] Willis next argues that his trial counsel was ineffective for failing to object to hearsay testimony regarding the nature of Washington's injuries. Specifically, Detective Gregory Shue testified that the initial call went to another detective with the homicide unit but once they realized Washington was still alive, he was called to take the lead on the case. As noted by the State, the challenged

testimony was not objectionable hearsay because Detective Shue did not testify as to anything said to him out of court, nor was his testimony used to prove the truth of the matter that Washington was severely injured. *See* Ind. Evidence Rule 801 (c) (defining hearsay as an out-of-court statement used to prove the truth of the matter asserted). Detective Shue was simply explaining that he was called in to handle the case because the victim survived, a matter that was within his personal knowledge. Trial counsel did not render defective performance by failing to object to this testimony.

[21] Lastly, Willis claims that trial counsel was ineffective for failing to seek suppression of Willis's statements to police.[4] He first argues that counsel should have challenged his statements to Detective Shue in which he told him "You don't have any PC" and "You don't have a gun and you don't have a car." *Transcript Vol. II* at 202. He also argues that his counsel should have tried to suppress his statement to detectives at the Hamilton County Jail because he did not knowingly and intelligently waive his right to counsel insofar as his statement referenced this incident. Willis generally claims that both statements were "obtained in violation of [his] rights under the Fifth and Fourteenth Amendments of the United States Constitutions." *Appellant's Brief* at 25. Willis, however, provides no factual or legal support for his arguments. He has

[4] Trial counsel did not file a motion to suppress Willis's statements to police prior to trial. As Willis is challenging his statements after his completed bench trial, the issue is whether counsel rendered ineffective assistance by failing to object to the admission of such evidence. *See, e.g., Washington v. State*, 784 N.E.2d 584, 586 (Ind. Ct. App. 2003) (noting that a motion to suppress is insufficient to preserve error for appeal, but rather the defendant must make a contemporaneous objection to the admission of the evidence at trial).

therefore waived this claim on appeal. *See Willet v. State*, 151 N.E.3d 1274, 1277 (Ind. Ct. App. 2020) (noting that failure to present a cogent argument results in waiver on appeal).

4. Closing Argument

[22] Willis argues that during closing argument, the prosecutor mischaracterized the testimony and evidence as it pertained to the kidnapping charge and that such constituted fundamental error. He specifically challenges the prosecutor's statements that Willis intended to kidnap Washington, asserting that there was "no testimony or evidence presented that [he] intended to kidnap [Washington], and if [he] intended to kidnap [her] as the State claims, then [he] would not have attempted to kill her." *Appellant's Brief* at 26.

[23] First, the prosecutor's argument that Willis intended to kidnap Washington by dragging her outside of her apartment was properly based on the evidence presented. *See Hobson v. State*, 675 N.E.2d 1090, 1096 (Ind. 1996) (noting that a prosecutor can discuss evidence and reasonable inferences that can be drawn therefrom during closing arguments). Second, Willis was acquitted of the kidnapping charge and thus any error was harmless and not fundamental. *See Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018) (noting that an error is harmless when it results in no prejudice to the "substantial rights" of a party); *Jewell v. State*, 887 N.E.2d 939, 942 (Ind. 2008) (observing that "fundamental error is extremely narrow and available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for

harm cannot be denied, and which violation is so prejudicial to the rights of the defendant as to make a fair trial impossible").

5. Sentencing Authority

[24] Willis argues that Magistrate Anne Flannelly did not have authority to sentence him because she was never appointed as a master commissioner, judge pro tempore, or special judge. However, per Indiana statutes "a magistrate has the same powers as a judge" except for "the power of judicial mandate." Ind. Code § 33-23-5-8.5; I.C. § 33-23-5-8. Willis's claim that Magistrate Flannelly lacked authority to sentence him is entirely without merit.

6. Sentencing[5]

[25] Sentencing decisions are within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007); *Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). A trial court abuses its discretion when it fails to enter a sentencing statement at all, its stated reasons for imposing the sentence are not supported by the record, its sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or its reasons for imposing the sentence are improper as a matter of law. *Anglemyer*, 868 N.E.2d at 490-91; *Hudson*, 135 N.E.3d at 979. The relative weight assignable to reasons properly found by the

[5] Willis does not set out a standard of review for his sentencing claim.

trial court to enhance a defendant's sentence is not subject to review for abuse of discretion. *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014), *trans. denied*.

[26] Willis argues that the trial court placed "undue weight" on his criminal history. *Appellant's Brief* at 27. However, the amount of weight afforded to an aggravating factor cannot be reviewed on appeal. *See Gross*, 22 N.E.3d at 869.

[27] Regardless, the trial court did not abuse its discretion by considering Willis's prior felony conviction and his history of arrests (including pending cases at the time of sentencing). *See Pickens v. State*, 767 N.E.2d 530, 534 (Ind. 2002) (noting that it is well within a trial court's discretion to consider a record of arrests as an aggravating circumstance); *Hape v. State*, 903 N.E.2d 977, 1001 (Ind. Ct. App. 2009) (holding that trial court could properly consider pending charges at the time of sentencing), *trans. denied*. In its sentencing statement, the trial court noted that Willis had a prior felony conviction, had been arrested nine times, and had two pending felony cases at the time he committed the instant offenses. Two of his arrests involved allegations of child molestation and both of his pending charges involved allegations of domestic battery. The trial court did not abuse its discretion in finding Willis's criminal history to be aggravating and we will not review the trial court's discretion as to the weight it attributed to such.

[28] Judgment affirmed.

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