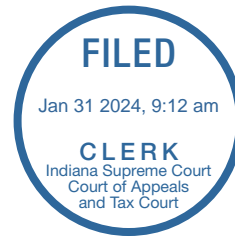


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Shane Michael Turner,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 31, 2024

Court of Appeals Case No.
23A-CR-1487

Appeal from the Switzerland
Circuit Court

The Honorable W. Gregory Coy,
Judge

Trial Court Cause No.
78C01-2201-F3-15

Memorandum Decision by Judge Mathias
Judges Riley and Crone concur.

Mathias, Judge.

[1] Shane Michael Turner was convicted in Switzerland Circuit Court of Level 3 felony aggravated battery, Level 6 felony criminal recklessness, and with being a habitual offender. He appeals his convictions and sentence, raising two issues:

I. Whether the trial court abused its discretion when it admitted into evidence over Turner's hearsay objection statements an excluded witness made to an investigating police officer; and,

II. Whether his sentence was inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] On January 11, 2022, Jarrodd Courtney was involved in a verbal altercation with Jessica Scudder, his former girlfriend, near his friend Casey Brickner's home in Switzerland County, Indiana. Courtney approached Scudder, who was sitting in the back seat of Roxann Boatman's vehicle. Turner and Boatman were also seated in the car. Courtney and Scudder argued, and Courtney then slammed the car door and started to walk back to Brickner's residence. As Courtney walked up to the house, Boatman, who was still seated in her vehicle, began yelling at Courtney. Courtney yelled profanities at Boatman, and she exited the vehicle.

[4] Boatman walked up to Courtney and continued to scream at him. Courtney believed that Boatman was going to hit him. Boatman unsuccessfully tried to

hit Courtney, but Courtney hit Boatman first. Turner then exited Boatman's vehicle and approached Courtney. Turner had his "hands up" and repeatedly said that he was going to "f***ing cut" Courtney. Tr. Vol. 3, p. 124. Courtney initially started to run away from Turner but then turned around and tried to hit Turner. Courtney saw something in Turner's hand as they began to hit each other. Courtney felt something hit his face and then felt a "sharp" pain. *Id.* at 125. Courtney began bleeding and felt blood "pouring" from his face. *Id.* at 126.

[5] Courtney ran back to Brickner's house, and Turner and Boatman left. Courtney observed that his face was cut and asked Brickner to take him to his mom's house. Courtney's mother called the police. Police officers arrived and Deputy English treated Courtney's wound on his face. Courtney told the deputy that he fought with Turner and Turner cut him. *Id.* at 130. The deputy determined that Courtney needed to be treated at a trauma center and he was flown by helicopter to a hospital in Cincinnati.

[6] Medical personnel determined that Courtney suffered stab wounds to his face, arm, and chest. Courtney's wounds on his face, arms, chest, and inside his mouth were treated with 296 stitches. *Id.* at 132. Courtney's stab wounds caused permanent scarring on his face and armpit.

[7] On January 13, 2022, the State charged Turner with Level 3 felony aggravated battery and Level 6 felony criminal recklessness. The State also alleged that Turner was a habitual offender. Turner's jury trial commenced on May 1, 2023.

Before trial, the trial court agreed that Brickner would not be permitted to testify because he had failed to appear for depositions.

- [8] During trial, Sheriff Deputy Joseph Spillman testified that he interviewed Brickner about the incident between Courtney and Turner. *Id.* at 196. Turner questioned the deputy about his interview with Brickner and asked whether Brickner had stated that he saw “the stabbing.” *Id.* at 220. The deputy replied that Brickner stated he “saw the fight.” *Id.* When the deputy was asked to clarify that Brickner did not say that he saw the “stabbing,” the deputy replied, “I would say that that is somewhat correct, yes.” *Id.* During redirect examination, the State asked Deputy Spillman, “[w]hen you spoke with Casey Brickner, he did in fact say that he had seen it?” *Id.* at 221. Turner objected on hearsay grounds, and the State replied that Turner had “opened the door” to the question. *Id.* The trial court agreed and overruled the objection. After refreshing the deputy’s recollection, he testified that Brickner indicated that he saw Turner stab Courtney. *Id.* at 222.
- [9] The jury found Turner guilty as charged. Turner then admitted to being a habitual offender. During Turner’s sentencing hearing, the trial court considered the following aggravating circumstances: that the harm, injury, loss, or damage was significant and greater than what was required to prove the elements of the offense, specifically Courtney’s serious permanent scarring and continued pain, and Turner’s criminal history and two pending charges. The court considered Turner’s admission to being a habitual offender as a mitigating circumstance. After concluding that the aggravating circumstances outweighed

the mitigating circumstance, the court ordered Turner to serve sixteen years for Level 3 felony aggravated battery concurrent to two and one-half years for Level 6 felony criminal recklessness with a deadly weapon. The court imposed an eighteen-year sentence enhancement for the habitual offender adjudication, for an aggregate sentence of thirty-four years. Turner was given credit for time served.

[10] Turner now appeals his conviction and sentence.

Hearsay Testimony

[11] Turner argues that the trial court abused its discretion when it allowed Deputy Spillman to testify on redirect what Brickner had stated to him during the investigation. We review a trial court's evidentiary decisions for an abuse of discretion and will reverse those decisions only when they are "clearly against the logic and effects of the facts and circumstances." *Pugh v. State*, 52 N.E.3d 955, 964 (Ind. Ct. App. 2016) (citing *Nicholson v. State*, 963 N.E.2d 1096, 1099 (Ind. 2012)), *trans. denied*. Moreover, "'a claim of error in the admission or exclusion of evidence will not prevail on appeal 'unless a substantial right of the party is affected.'" *Ceasar v. State*, 139 N.E.3d 289, 292 (Ind. Ct. App. 2020), *trans. denied* (citations omitted). For this reason, if the trial court errs in admitting evidence, we will not reverse the defendant's conviction where the error is harmless. *Id.* An error in the admission of evidence is harmless where the "probable impact" of the erroneously admitted evidence, "in light of all the

evidence in the case, is sufficiently minor so as not to affect the substantial rights” of the defendant. [Ind. Appellate Rule 66\(A\)](#).

- [12] The State argues that Turner “opened the door” to the admission of the hearsay evidence. Appellee’s Br. at 15. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *See* [Ind. Evidence Rule 801\(c\)](#). Generally, hearsay is inadmissible. *See* [Evid. R. 802](#). “However, what might otherwise be inadmissible hearsay evidence ‘may become admissible where the defendant ‘opens the door’ to questioning on that evidence.’” [Turner v. State, 953 N.E.2d 1039, 1055 \(Ind. 2011\)](#) (quoting [Kubsch v. State, 784 N.E.2d 905, 919 n.6 \(Ind. 2003\)](#))).

“Opening the door refers to the principle that where one party introduces evidence of a particular fact, the opposing party is entitled to introduce evidence in explanation or rebuttal thereof, even though the rebuttal evidence otherwise would have been inadmissible.” Evidence which opens the door must leave the trier of fact with a false or misleading impression of the facts related. When that happens, the State may introduce otherwise inadmissible evidence if it is a fair response to evidence elicited by the defendant.

[Garcia-Berrios v. State, 147 N.E.3d 339, 343 \(Ind. Ct. App. 2020\)](#) (internal citations omitted).

- [13] During Turner’s cross-examination of Deputy Spillman, Turner asked the deputy about his interview with Brickner and asked whether Brickner had stated that he saw “the stabbing.” *Id.* at 220. The deputy replied that Brickner told him he saw the fight. *Id.* The deputy then agreed with defense counsel that

Brickner did not actually state that he saw Turner stab Courtney. *Id.* During redirect examination, the State asked the deputy to clarify his testimony during the cross-examination, and Turner objected. *Id.* at 221. The trial court allowed the deputy to testify to Brickner's statements after concluding that Turner opened the door. *Id.* The deputy was asked to refresh his recollection with the reports he wrote during the investigation, and the deputy testified that Brickner told him that Turner stabbed Courtney. *Id.* at 222.

[14] We agree with the State that Turner opened the door to this line of questioning. Turner elicited testimony from the deputy that he did not recall Brickner specifically stating that he saw Turner stab Courtney. In rebuttal, the State refreshed the deputy's recollection of Brickner's statement to him during the investigation. This was a fair response offered to rebut testimony elicited by Turner.¹

[15] For this reason, we conclude that the trial court did not abuse its discretion when it admitted Deputy Spillman's testimony.

¹ Moreover, even if the trial court had erred when it admitted the challenged testimony, the probable impact on the jury, "in light of all the evidence in the case," was sufficiently minor, and therefore, it did not affect the "substantial rights" of the defendant. *See Ind. Appellate Rule 66(A)*. The State presented overwhelming evidence that Turner stabbed Courtney. Multiple witnesses, including Courtney and Jessica, testified that Turner stabbed Courtney. Tr. Vol. 3, pp. 21, 35, 59, 125-126, 166.

Inappropriate Sentence

- [16] Turner was ordered to serve an aggregate thirty-four-year sentence for his Level 3 felony aggravated battery and Level 6 felony criminal recklessness convictions and the habitual offender adjudication. He argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender.
- [17] Under [Indiana Appellate Rule 7\(B\)](#), we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” Making this determination “turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” [Cardwell v. State](#), 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under [Rule 7\(B\)](#), however, is reserved for “a rare and exceptional case.” [Livingston v. State](#), 113 N.E.3d 611, 612 (Ind. 2018) (per curiam). Turner bears the burden to show that his sentence is inappropriate. [Anglemeyer v. State](#), 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh’g 875 N.E.2d 218.
- [18] When conducting this review, we generally defer to the sentence imposed by the trial court. [Conley v. State](#), 972 N.E.2d 864, 876 (Ind. 2012). Our role is to “leaven the outliers,” not to achieve what may be perceived as the “correct” result. *Id.* Thus, deference to the trial court’s sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as

showing restraint or a lack of brutality—and the defendant’s character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[19] The trial court ordered Turner to serve the maximum, sixteen-year sentence for his Level 3 felony conviction.² I.C. § 35-50-2-5(b). For the habitual offender adjudication, the trial court was permitted to enhance Turner’s sentence to a term between eight and twenty years. *See* I.C. 35-50-2-8(i). Because Turner admitted that he was a habitual offender, the parties and the trial court agreed that the court would not enhance Turner’s sentence by more than eighteen years. Tr. Vol. 4, pp. 104-05.

[20] Turner argues that the nature of his offense does not support the sentence imposed. Turner observes that he did not engage in the physical altercation with Courtney until after Courtney struck Boatman. Turner also argues that he showed restraint when he ended the fight and returned to his vehicle. Finally, Turner argues that he arranged to meet with an officer later that day to turn himself in.

[21] While Courtney was certainly not blameless in the incident, Turner exited the vehicle while armed with a sharp weapon. Turner’s actions escalated the

² He was also ordered to serve the maximum, albeit concurrent, two-and-one-half-year sentence for his Level 6 felony conviction. I.C. § 35-50-2-7(b).

situation rather than deescalating it. Turner used the weapon to cut Courtney's face, arm, and chest. The cuts were severe and caused significant bleeding. A police officer with medical training determined that Courtney needed to receive treatment at a trauma center. Therefore, Courtney was transferred to a hospital in Cincinnati via helicopter. Courtney required 296 stitches to treat the cuts and has serious, permanent scarring. Turner did arrange to meet with an officer after he stabbed Courtney, but he did not "turn" himself in. In fact, Turner told Officer Stanton that the officers would "have to shoot him to take him into custody." Tr. Vol. 3, pp. 88-89.

[22] Turning to Turner's character, the evidence presented at the sentencing hearing did not establish virtuous character traits or examples of positive character. Turner amassed five juvenile adjudications in two years when he was a child. Turner has also been convicted of three felonies and two misdemeanors, including convictions for battery, child molesting, and possession of a firearm by a serious violent felon. While serving his sentences for those offenses, he violated his probation four times and his probation was revoked twice. Turner admitted to using illegal substances for most of his life. Finally, on the date of the sentencing hearing, Turner had pending charges for Class A misdemeanor domestic battery and Level 6 felony failure to register as a sex or violent offender.

[23] Given the brutal nature of Turner's offense and no evidence of virtuous character traits, Turner has not met his burden of establishing that his aggregate

thirty-four-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

[24] The trial court did not abuse its discretion when it admitted the challenged hearsay testimony. In addition, Turner's aggregate thirty-four-year sentence is not inappropriate in light of the nature of the offense and the character of the offender. We therefore affirm Turner's convictions and sentence.

[25] Affirmed.

Riley, J., and Crone, J., concur.