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IN THE COURT OF APPEALS OF INDIANA

Winston E. Corbett,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 10, 2021

Court of Appeals Case No. 21A-CR-118

Appeal from the Elkhart Circuit Court

The Honorable Michael A. Christofeno, Judge

Trial Court Cause No. 20C01-1811-MR-4

Vaidik, Judge.

Case Summary

[1] Just after midnight on October 9, 2011, Jim and Linda Miller were brutally attacked in their home in Goshen, Indiana. When police arrived at the home,

Jim was dead in the driveway, having been stabbed at least fifty times. Linda survived with serious injuries. Although DNA evidence was collected from the home, no suspect was identified, and the case grew cold.

[2] Seven years later, a detective at the Goshen Police Department sent the DNA evidence to a genealogy company for testing and received Winston Corbett's name as a possible lead. Corbett, who at the time of the attack was sixteen and living with his parents less than a mile from the Millers, had recently been discharged from the United States Navy and had returned to Goshen to live with his mother. Further investigation of Corbett led law enforcement to conduct a trash search at his home, and DNA taken from that search was consistent with the DNA from the crime scene. Police then obtained a search warrant for Corbett's DNA, and again testing revealed Corbett's DNA was consistent with the DNA from the crime scene.

[3] Corbett was charged with and convicted of the murder of Jim and the attempted murder of Linda and sentenced to 115 years in prison. He now appeals, raising a variety of challenges to his conviction and asserting his sentence is inappropriate. Finding no reversible error and that his sentence is not inappropriate, we affirm.

Facts and Procedural History

[4] In 2011, Jim and Linda lived in Goshen with their two teenage children. In the early morning of October 9, Jim and Linda were awake, waiting for their

children to return home from a band competition. A little after midnight, Linda went into the bathroom to get ready for bed. She noticed the bathroom door move and was suddenly hit with a sharp object on the side of her head. Linda screamed as her attacker repeatedly stabbed her in the shoulder, back, and head. Hearing Linda, Jim entered the adjoining bedroom, and the attacker began assaulting Jim. Linda then entered the bedroom and tried to hit the attacker with one of the lamps in the bedroom. However, she was unsuccessful and retreated to the bathroom. The attacker continued his assault on Jim, eventually forcing him out of the bedroom. Linda, bleeding severely, then left the bathroom and called 911.

[5] Officers Brandon Miller[1] and Jeremy Welker of the Goshen Police Department were the first to arrive on the scene. Both officers entered the house and found Linda in the bedroom "covered in blood." Tr. Vol. II p. 156. Officer Miller continued to search the house, following a blood trail that led into the garage. From there he saw Jim's body at the end of the driveway. Jim was lying "lifeless" and was "completely covered in blood." *Id.* at 159, 211. He was declared dead at the scene. Linda was taken to Goshen General Hospital in critical condition. She suffered lacerations to her face, lips, ears, scalp, hands, shoulders, and back. She had a left temporal bone fracture and a hematoma

[1] No relation to Jim and Linda.

caused by a punctured lung. A chest tube was inserted to treat the punctured lung, and Linda underwent several surgeries to treat the lacerations.

[6] Linda was interviewed at the hospital and described the attacker as around 5'10'', slim, black haired, fair skinned, and "twenty to twenty-five" or possibly "an upper high school classman." Ex. C, p. 13. An exterior search of the Millers' home revealed a window screen had been cut along the sides, and investigators believed this to be the attacker's point of entry. Evidence technicians and a blood-spatter expert were brought in to analyze the extensive bloodstain evidence in the home. Six areas of the home had bloodstain evidence: the bathroom, bedroom, hallway, foyer, garage, and driveway. Swabs were taken of the bloodstain evidence, including swabs from the screen-door handle, the baseboard of the foyer, and pooled blood near Jim's body. Later DNA testing by the Indiana State Police Laboratory revealed the blood from the foyer contained a single-source DNA profile "consistent" with an unknown individual ("Unknown Male 2"). Tr. Vol. VII p. 201. Blood from the screen door showed a mix of DNA profiles, one of which was "consistent" with Unknown Male 2. *Id.* at 203. Blood from near Jim's body also contained a mix of DNA, from which Unknown Male 2 "could not be excluded." *Id.* at 204.

[7] Officers also spoke with the Millers' neighbors, three of whom reported suspicious activity at their homes around the time of the Miller attack. Two neighbors had window screens cut like the screen at the Millers' home. Another neighbor reported he heard noise in his home that night and found his front door ajar.

[8] Police ran the DNA from the crime scene through the police database but found no match, and the investigation stalled. In 2018, Detective Nick McCloughen of the Goshen Police Department became the lead investigator of the case. Detective McCloughen contacted a private company—Parabon Nanolabs—regarding "genetic DNA testing" of the samples from the crime scene. Appellant's App. Vol. II p. 33. On October 16, 2018, Parabon provided Corbett's name to Detective McCloughen as an "investigative lead." Supp. Ex. A, p. 17. Detective McCloughen investigated Corbett and discovered that at the time of the attack he lived less than a mile from the Millers, was sixteen years old, and matched Linda's physical description of the attacker. Further investigation revealed Corbett had recently been discharged from the United States Navy and had returned to Goshen to live with his mother. At this point, Detective McCloughen wanted to confirm Corbett's current address, so he arranged a "knock and talk" conducted by Detective Chuck Osterday. Detective Osterday went to Corbett's address and, walking the typical path to the front door, knocked. Corbett answered, and he and Detective Osterday talked briefly. The next day, law enforcement arranged for a trash pull from Corbett's home. Several items from the trash likely to contain DNA—a used bandage, gum, and drink cans—were sent to the Indiana State Police Laboratory for analysis. The lab determined the DNA on those items was consistent with Unknown Male 2.

[9] Detective McCloughen then applied for a search warrant for Corbett's DNA. His probable-cause affidavit provided in part,

On the 16th day of October, 2018, this Affiant received an investigative lead regarding the unknown male DNA. The information gave the name of a potential suspect, Winston E. Corbett. Through investigation, it was found Winston E. Corbett lived at 2206 S. Main Steet Goshen, IN at the time of the homicide. Based on Google Earth the approximate distance from 2206 S. Main St. to 1736 Wildwood Ct. is .6 miles. Based on Winston E. Corbett's one and only operator's license number (OLN) that was issued on 7/31/12, Winston E. Corbett was 6 foot tall and weighed 130 pounds. Winston E. Corbett's hair color is shown as brown but in the BMV photograph it appears to be very dark brown or black hair color. Winston E. Corbett would have been 16 years of age at the time of the homicide. The information Linda provided on October 13, 2011, about the suspect were similar characteristics to Winston E. Corbett at the time of the murder.

On the 19th day of October, 2018 this Affiant had received information from the Naval Criminal Investigative Service (NCIS) that Winston E. Corbett had completed his duties in the Navy in September of 2018. This Affiant had found Winston E. Corbett's mother, Karis Corbett, had moved into the residence of 17515 Bramblewood Drive Goshen, IN. The Investigator for NCIS, Ryan Gwozdz, provided Winston E. Corbett's forwarding address to be 17515 Bramblewood Drive Goshen, IN.

On the 22nd day of October, 2018, Detective Osterday went to the address of 17515 Bramblewood Drive Goshen, IN to see if Winston E. Corbett was living at this address. Detective Osterday knocked on the door of 17515 Bramblewood Drive Goshen, IN. A male answered the door and identified himself as Winston Corbett.

* * * *

On the 23rd day of October, 2018, at approximately 0800 hours Detective Carich, Detective Harder and this Affiant met with Borden's trash service at the intersection of County Road 27 and County Road 40. The hopper to the trash truck was cleaned out so only trash from 17515 Bramblewood would be in the hopper. Det. Carich rode in the Borden's trash truck with the employee, Steve Lanko, to collect the trash from 17515 Bramblewood, Goshen. Once Det. Carich and Steve Lanko came back to the intersection of County Road 27 and County Road 40, the trash items were removed from the hopper and placed into a truck this Affiant was driving. The trash was taken to a secured location known to this Affiant where the contents of the trash were examined. The trash had several large trash bags that had contents that appeared to be from kitchen trash. There was also a small plastic "Martin's" grocery bag that had trash in it. It appeared to this Affiant and the other two detectives that the Martin's bag would be consistent with a bathroom or a bedroom trash due to its size and contents. Items located inside the Martin's grocery bag and collected for evidence were: a used Band-Aid, an empty Pepsi can, three (3) empty Green Arizona Tea bottles, an empty Dr. Pepper can, an empty Wicked Grove Hard Cider bottle, a piece of chewed gum, boarding tickets from Seattle to Chicago and Chicago to South Bend with the name of "CORBETT/WINSTONE", luggage tags with the name of "CORBETT/WINS", a receipt from the Navy Exchange and a Chalet liquor store receipt from 9/15/2018.

On the 23rd day of October, 2018, at 1450 hours Det. Harder and this Affiant submitted the used Band-Aid, the empty Pepsi can, three (3) empty Green Arizona Tea bottles, the empty Dr. Pepper can, the empty Wicked Grove Hard Cider bottle, and the piece of chewed gum to the Indiana State Forensics Laboratory for analysis of the items to be compared to the DNA that was collected at the crime scene on October 9th 2011.

> On the 25th day of October, 2018, this Affiant was contacted by Linda Mahlie from the Indiana State Forensics Laboratory. Linda advised all eight (8) items submitted on the 23rd of October 2018, had DNA present that came from the same person. Linda stated after her analysis she was able to conclude the DNA from the above eight (8) listed items were consistent with the unknown Male DNA that had previously been identified in the evidentiary samples collected from the driveway and the foyer at the crime scene.

Id. at 17-19 (formatting altered). The affidavit described the evidence to be seized as a "sample of Corbett's DNA (buccal swab)." *Id.* at 19.

[10] A warrant was issued, and officers collected a DNA sample from Corbett via a buccal swab, which was analyzed by the Indiana State Police Laboratory and found to be consistent with Unknown Male 2. Corbett was then arrested and charged with murder and attempted murder.

[11] Before trial, Corbett moved to suppress evidence relating to his DNA obtained from the buccal swab, arguing certain portions of the search-warrant affidavit "must be struck"—including the "investigative lead" that provided Corbett's name because it was hearsay and evidence from the knock and talk and trash pull because they were unconstitutional searches. Tr. Vol. II p. 26. Corbett argued that without this information the affidavit did not provide probable cause for the search warrant. A hearing was held in September 2020, and the trial court denied Corbett's motion.

[12] The case proceeded to a jury trial in November. Over Corbett's objection, Linda Mahlie, the forensic biologist from the Indiana State Police Laboratory,

testified the DNA obtained from Corbett's buccal swab was consistent with Unknown Male 2. Linda Miller testified about the events of October 9, 2011, and reiterated her description of the attacker—slim, dark hair, approximately 5'10'' and "on that cusp of manhood, but not there yet." Tr. Vol. III p. 57. She also identified Corbett as the attacker in open court. Dr. Joseph Prahlaw, the forensic pathologist who conducted Jim's autopsy, testified Jim sustained at minimum twenty-five "stab wounds" and twenty-five "incised wounds" to his head, face, neck, chest, back, and upper extremities. *Id.* at 198. In addition, he testified Jim suffered "blunt force injuries," including a broken nose and two broken cheekbones. *Id.* According to Dr. Prahlaw, Jim died from a combination of blood loss and "central nervous system trauma" caused by "multiple sharp force" and "blunt force injures." *Id.* at 228, 244.

[13] Midway through the trial, the State sought to introduce evidence about the three other attempted home invasions near the Millers' home on October 9, 2011. Corbett objected, arguing there was no evidence he was involved in the other attempts and therefore "there is no relevance." Tr. Vol. IV p. 76. The court then questioned why the evidence could not come in "under [Indiana Evidence Rule] 404(b)(2) to show motive, opportunity, intent?" *Id.* at 77. Corbett responded that "in order to have some probative value of motive, intent, opportunity, or plan, there has to be some evidence actually establishing that the person committed those acts[.]" *Id.* at 78. The trial court disagreed, overruled the objection, and admitted the evidence "under Rule 404(b)(2) as it relates to motive, opportunity, intent." *Id.* at 83.

[14] For his defense, Corbett presented an expert witness who called into question the Indiana State Police Laboratory's conclusions that the two mixed DNA profiles—one from the screen-door handle and the other from near Jim's body—were consistent with Corbett's DNA, although he did not dispute the lab's conclusion that the single-source DNA profile found in the foyer matched Corbett. Corbett also testified and stated he had never been to the Millers' home. During the State's cross-examination of Corbett, the following exchange occurred:

> [Prosecutor]: You did get in some trouble with the Navy. Correct?
>
> [Corbett]: I did, yes.

Tr. Vol. VIII pp. 174-75. Defense counsel objected, and an off-the-record discussion was held between the attorneys and the court. The court then stated, "So [Defense counsel's] objection, I believe, was that this is an improper question and improper form of impeachment. Court will overrule that objection and allow [the prosecutor] to proceed under Eviden[ce] Rule 609(a)(2)[.]" *Id.* at 175. The following exchange then occurred:

> [Prosecutor]: And during the time in the Navy, you went to what's called a Captain's Mast. Correct?
>
> [Corbett]: Yes.
>
> [Prosecutor]: And you were found to have violated the Uniform Code of Military Justice, Article 107, False Official Statement.

> [Corbett]: I believe it was—yes. I thought it was something else, but yes.
>
> [Prosecutor]: You believe it was what?
>
> [Corbett]: I thought it was 82, which was a general, but I don't remember.
>
> [Prosecutor]: And you were punished for that.
>
> [Corbett]: Yes.

Id. at 176. On redirect, Corbett testified he had been honorably discharged from the Navy.

[15] Later, the parties made a record of Corbett's Evidence Rule 609 objection. Defense counsel argued he objected "based upon the fact that the State produced no evidence to support the proposition that it was a crime, what that crime was, what the elements of that crime were, and whether or not it was a crime of dishonesty." *Id.* at 199. He then asked for a mistrial, citing in part the damage done by this testimony. The trial court denied his motion for mistrial, and noted regarding the Rule 609 evidence that "it's my recollection that the question asked of Mr. Corbett was, 'Were you convicted of a judgment involving false statements?' And his answer was yes. So the record I have now

before me is that he was convicted of a crime involving false statements." *Id.* at 205.[2]

[16] After the presentation of evidence, the trial court indicated it intended to give the following instruction:

> Evidence has been introduced that the Defendant was involved in bad acts other than those charged in the information. This evidence has been received solely on the issue of Defendant's motive, opportunity or intent. This evidence should be considered by you only for that limited purpose.

Appellant's App. Vol. II p. 155. This instruction is based on the pattern jury instruction for evidence of other crimes, wrongs, or acts—Indiana Pattern Criminal Jury Instruction 12.1000—and was intended to instruct the jury on the evidence of the other attempted home invasions. Corbett objected that "[t]his instruction tells the jury that the defendant was involved in bad acts other than those charged." Tr. Vol. VIII pp. 197-98. Corbett instead requested the following instruction:

> Evidence has been introduced that the Defendant was [sic] **may have been** involved in attempted home entries other than the crimes charged in the information. This evidence has been received solely on the issue of Defendant's motive, intent, and preparation. This evidence should be considered by you only for that limited purpose.

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[2] As shown above, this was an incorrect recollection of the questioning.

Appellant's App. Vol. II p. 142 (emphasis added). The trial court refused to give Corbett's instruction and instead gave the instruction shown above based on the pattern instruction.

[17] The jury found Corbett guilty as charged. At sentencing, the trial court identified three mitigating factors: (1) Corbett has no criminal history, (2) he was sixteen at the time of the offenses and twenty-five at the time of trial, and (3) he graduated high school and served in the Navy for five years before being honorably discharged. The court identified several aggravators. First, the court found "the harm, injury, loss, or damage" "was significant and greater than the elements." Tr. Vol. IX p. 72. In so finding, the court noted: (1) the ongoing trauma to Linda, her children, and the community, (2) both victims were "unarmed and defenseless," (3) Linda suffered twenty-three wounds including lacerations to the head, back, hands, face, and neck and Jim suffered at least fifty stab or incised wounds and blunt-force trauma to the head, and (4) Corbett's actions were "sadistic." *Id.* at 73, 76. The court also identified the following as aggravators: Corbett committed a crime for which he was not charged (residential entry), he brought a deadly weapon, he displayed "depravity," "callousness," and "heinousness" by going to school the day after the attack "as if nothing had happened," and he has not expressed "empathy" toward the victims. *Id.* at 76. Finding "that the aggravators taken individually or as a whole outweigh any mitigating factors," the court sentenced Corbett to maximum sentences of sixty-five years for murder and fifty years for attempted murder, to be served consecutively, for an aggregate sentence of 115 years. *Id.*

[18] Corbett now appeals.

Discussion and Decision

I. Admission of Evidence Pursuant to Search Warrant

[19] Corbett contends the trial court erred in admitting evidence relating to "the buccal swab for [his] DNA" because it was obtained by a search warrant unsupported by probable cause. Appellant's Br. p. 25. Under the United States Constitution, the Indiana Constitution, and Indiana Code section 35-33-5-1, a court can issue a warrant only "upon probable cause." In the search-warrant context, this requires the judge or magistrate "to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Jaggers v. State*, 687 N.E.2d 180, 181 (Ind. 1997) (formatting altered). When a defendant later challenges the issuance of a search warrant, the reviewing court (first the trial court, then the appellate court if there is an appeal) must give significant deference to the judge's or magistrate's determination and decide only whether there was a "substantial basis" for concluding that probable cause existed, that is, whether reasonable inferences drawn from the totality of the evidence support that conclusion. *Id.* at 181-82.

[20] Corbett's argument is three-fold: he argues (1) Detective Osterday's knock and talk at his home was an unconstitutional search, (2) the police's trash pull was unconstitutional, and (3) the remaining evidence in the affidavit is therefore uncorroborated hearsay.

A. Knock and Talk

1. U.S. Constitution

[21] Corbett first argues Detective Osterday's knock and talk violated the Fourth Amendment to the U.S. Constitution. The Fourth Amendment "protects persons from unreasonable search and seizure by prohibiting, as a general rule, searches and seizures conducted without a warrant supported by probable cause." *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013). Corbett contends the knock and talk constituted an unconstitutional warrantless search because Detective Osterday's intent during the knock and talk was to "see if Winston E. Corbett was living at this address" and this purpose amounted to an illegal search for his person. Appellant's Br. p. 21.

[22] To support his argument, Corbett cites *Florida v. Jardines*, 569 U.S. 1 (2013). In *Jardines*, police received a tip that the defendant was growing marijuana in his home. Police went to the home with a drug-sniffing dog and walked the dog up to the defendant's front door, where the dog alerted for the presence of marijuana. Based on this information, police obtained a search warrant and searched the defendant's home, where they found marijuana plants. Before trial, the defendant moved to suppress evidence of the marijuana plants as the product of an illegal search under the Fourth Amendment. The United States Supreme Court held the use of a drug-sniffing dog in the curtilage of a private residence implicated the Fourth Amendment. The Court explained that whether an officer's actions amounted to a Fourth Amendment search

depended on whether the actions complied with an implicit or explicit license to enter. *Id.* at 8. Regarding an implicit license, the Court stated,

> We have accordingly recognized that "the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds." This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters. Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is "no more than any private citizen might do."
>
> But introducing a trained police dog to explore the area around the home in hopes of discovering incriminating evidence is something else. There is no customary invitation to do that. An invitation to engage in canine forensic investigation assuredly does not inhere in the very act of hanging a knocker. To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to—well, call the police. The scope of a license—express or implied—is limited not only to a particular area but also to a specific purpose. Consent at a traffic stop to an officer's checking out an anonymous tip that there is a body in the trunk does not permit the officer to rummage through the trunk for narcotics. Here, the background social norms that invite a visitor to the front door do not invite him there to conduct a search.

Id. at 8-9 (citations omitted). But no intrusive conduct like the drug-sniffing dog in *Jardines* is present here. Police approached Corbett's home on the typical

path, knocked, and briefly spoke to Corbett on the front porch after he answered the door. This is no more than any private citizen may do.

[23] Yet Corbett argues the conduct here amounts to a search because officers went to the home to determine if he lived there. However, in *Jardines*, the Court distinguished between a search and information-gathering, stating "it is not a Fourth Amendment search to approach the home in order to speak with the occupant, because all are invited to do that. The mere 'purpose of discovering information,' [] in the course of engaging in that permitted conduct does not cause it to violate the Fourth Amendment." *Id.* at 9 n.4 (citation omitted). This is emphasized again in *Taylor v. State*, 120 N.E.3d 661 (Ind. Ct. App. 2019), where police officers approached the defendant's front door to conduct a knock and talk and saw illegal activity through a window. Police used this information to obtain a search warrant, and at trial the defendant unsuccessfully sought to suppress any evidence from the warrant as the fruit of an illegal search. We later upheld the admission of evidence from that warrant, noting the officers' intent in approaching the door was to speak with the defendant regarding allegations that had been made against him and holding that activity "is akin to that described in *Jardines*, wherein the Court recognized an implicit license to enter the curtilage of a person's home," approach by the front path, knock, and wait to be received. *Id.* at 666.

[24] Similarly, here Detective Osterday approached the home and knocked with the intent to speak to the occupants and determine who lived at the home. This information-gathering conduct is clearly authorized under *Jardines*. *See also Perez*

v. State, 27 N.E.3d 1144 (Ind. Ct. App. 2015) ("Although the officers had a license to approach Perez's porch and front door to conduct a knock-and-talk, they did not have a similar license to conduct a warrantless search there, with a dog or otherwise. Consent to talk at one's door does not provide consent to search the curtilage of one's home."), *trans. denied*.

[25] Detective Osterday's actions did not violate Corbett's rights under the Fourth Amendment.

2. Indiana Constitution

[26] Corbett also challenges the knock and talk under Article 1, Section 11 of the Indiana Constitution, which provides,

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Although this language is virtually identical to its Fourth Amendment counterpart, our Supreme Court has interpreted and applied it independently. *Taylor*, 120 N.E.3d at 667. To determine whether a search violates Article 1, Section 11, we must evaluate the "reasonableness of the police conduct under the totality of the circumstances." *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005). "The totality of the circumstances requires consideration of both the degree of intrusion into the subject's ordinary activities and the basis upon

which the officer selected the subject of the search or seizure." *Id.* at 360. The reasonableness of a search or seizure turns on a balance of: (1) the degree of concern, suspicion, or knowledge that a violation has occurred, (2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and (3) the extent of law-enforcement needs. *Id.* at 361.

[27] Here, police had a reasonable degree of suspicion—Detective McCloughen had received Corbett's name as an investigative lead based on genetic testing of blood samples from the crime scene. He investigated and discovered Corbett matched Linda's description of the attacker and lived less than a mile from the Millers at the time of the attack. Further, police "have a strong need to investigate criminal activity," and here the need was even higher given the seriousness of the crime. *Tuggle v. State*, 9 N.E.3d 726, 736 (Ind. Ct. App. 2014), *trans. denied*. And the act of approaching a front door and asking basic identifying questions is minimally invasive. *Taylor*, 120 N.E.3d at 668. As such, we cannot conclude Detective Osterday's actions were unreasonable under the totality of the circumstances.

[28] Officers conducting a knock and talk at Corbett's home did not violate Article 1, Section 11 of the Indiana Constitution.

B. Trash Search

[29] Corbett also challenges the search of the trash outside his residence, arguing the search was not supported by reasonable suspicion and therefore violates Article 1, Section 11 of the Indiana Constitution. In *Litchfield*, our Supreme Court

announced a two-part test for determining whether a trash search is reasonable. 824 N.E.2d at 364. First, the search must be based upon an "articulable individualized suspicion, essentially the same as is required for a 'Terry stop' of an automobile" before an officer can seize trash set out for collection. *Id.* Additionally, the trash must be retrieved in substantially the same manner as the trash collector would take it. *Id.*

[30] In construing these rules, it has been determined reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than a preponderance of the evidence, but it still requires at least a minimal level of objective justification and more than an inchoate and unparticularized suspicion or "hunch" of criminal activity. *Eshelman v. State*, 859 N.E.2d 744, 748 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*. When making a reasonable-suspicion determination, the court examines the totality of the circumstances to see whether the officer has a "particularized and objective basis" for suspecting legal wrongdoing. *Turner v. State*, 843 N.E.2d 937, 944 (Ind. Ct. App. 2006), *reh'g denied*. Corbett contends the trash search was conducted solely based on an "anonymous hearsay tip that Winston could be a potential suspect" and that this was insufficient to support a warrantless trash search. Appellant's Br. p. 24.

[31] Detective McCloughen reported he "received an investigative lead regarding the unknown male DNA" and that the lead gave "the name of a potential suspect, Winston E. Corbett." Supp. Ex. A, p. 17. We agree with both parties

this is essentially an anonymous tip.[3] *See State v. Litchfield*, 849 N.E.2d 170, 174 (Ind. Ct. App. 2006) (treating address list given to police by the Drug Enforcement Administration as an anonymous tip), *trans. denied*. An anonymous tip alone is insufficient to establish reasonable suspicion. *Id.* However, an anonymous tip "corroborated by the observations of police" can establish reasonable suspicion. *Id.* (citation omitted). Here, after receiving the tip, Detective McCloughen investigated Corbett and discovered he matched Linda's description of the attacker and had lived less than a mile from the Millers' home. Officers also conducted a knock and talk to ensure Corbett was living at the house before conducting the trash pull. This corroborating information supports a finding of reasonable suspicion. *See Rotz v. State*, 894 N.E.2d 989, 993 (Ind. Ct. App. 2008) (finding reasonable suspicion for a trash pull where officers received information "akin to an anonymous tip" that defendant was involved in criminal activity and corroborated the information by researching defendant's criminal history and observing his home), *reh'g denied*, *trans. denied*.

[32] The trash search did not violate Article 1, Section 11 of the Indiana Constitution.

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[3] Detective McCloughen gave more information on Parabon Nanolabs—the genealogy company that provided him with Corbett's name—in his arrest-warrant affidavit and in his testimony at the suppression hearing. However, he did not provide the same in his search-warrant affidavit. As such, it is essentially an anonymous tip.

C. Hearsay Evidence

[33] Finally, Corbett contends the search warrant was invalid because the affidavit was based "on hearsay from an anonymous source." Appellant's Br. p. 18. We agree an anonymous tip alone is insufficient to establish probable cause to issue a search warrant. *Jaggers*, 687 N.E.2d at 182. However, probable cause can be established if the tip is sufficiently corroborated. *Id.* Corbett's argument presumes the anonymous tip is uncorroborated because the other evidence in the affidavit—namely, the evidence from the knock and talk and trash pull—is inadmissible due to "constitutional concerns." Appellant's Br. p. 20. His argument fails from the onset, since, as we explained above, neither the knock and talk nor the trash pull was unconstitutional. Therefore, the affidavit here contained not only the hearsay evidence naming Corbett as an "investigative lead," but also other evidence that corroborated the hearsay and provided sufficient probable cause. *See Scott v. State*, 883 N.E.2d 147, 155 (Ind. Ct. App. 2008) (finding search-warrant affidavit contained sufficient probable cause where confidential informant's information was corroborated by independent police investigation).

[34] The search warrant was supported by probable cause, so the trial court did not err in admitting evidence resulting from the warrant.

II. Bad Acts Evidence

A. Rule 404(b) Evidence

[35] Corbett contends the trial court abused its discretion in admitting evidence of the other attempted home invasions under Indiana Evidence Rule 404(b). A trial court has broad discretion in ruling on the admissibility of evidence, and we will disturb its ruling only on a showing of abuse of discretion. *Thompson v. State*, 15 N.E.3d 1097, 1101 (Ind. Ct. App. 2014), *reh'g denied*. When reviewing a decision under an abuse-of-discretion standard, we will affirm if there is any evidence supporting the decision. *Id.*

[36] Evidence Rule 404(b)(1) provides "[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." However, the evidence "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Ind. Evidence Rule 404(b)(2). Here, the trial court admitted the evidence under Rule 404(b)(2) "as it relates to proving motive, opportunity, or intent." Tr. Vol. IV p. 84.[4]

[4] At times in the trial court, the State appeared to assert an alternative theory of admissibility—that Corbett opened the door to evidence regarding motive in his opening statement. *See* Tr. Vol. IV p. 78 ("[Defense counsel] is the one who stood up in opening statement and said that motive was [] something he would argue, so he's already the one who's kind of put into play that the State can't prove what a motive is."). However, the trial court expressly admitted the evidence under Rule 404(b), and both parties confine their analyses to Rule 404(b)—the State does not renew that alternative argument or present any other theory of

[37] Corbett argues the trial court erred in admitting this evidence under Rule 404(b)(2) because no evidence was presented connecting him to the other attempted home invasions. The State responds it was not "necessary" to provide evidence that Corbett committed the attempted home invasions and that the evidence is admissible under Rule 404(b)(2) because it "was relevant to motive because it showed that the perpetrator of these crimes was someone who was just looking for any victim to attack, not someone who had a specific reason to target the Millers and want to kill them." Appellant's Br. pp. 36, 37.

[38] We disagree. While "[e]vidence of motive is always relevant in the proof of a crime," *Wilson v. State*, 765 N.E.2d 1265, 1270 (Ind. 2002), the "value of specific acts evidence to prove motive rests on the strength of proof that the defendant in fact committed that other act," *Camm v. State*, 908 N.E.2d 215, 224 (Ind. 2009), *reh'g denied*. And here the State showed no proof Corbett committed the attempted home invasions. Instead, the State's theory appears to be that Corbett committed the attack on the Millers, so he must have committed the other attempted home invasions, and those other attempts explain his motive to enter the Millers' home that night. This circular reasoning was expressly rejected by our Supreme Court in *Camm. Id.*

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admissibility on appeal. Therefore, we limit our discussion to the evidence's admissibility under Rule 404(b). To the extent this evidence may have been admissible even in the absence of evidence connecting Corbett to the attempted home invasions, that is not a Rule 404(b) argument. As such, we do not address this issue.

[39] In *Camm*, the defendant was charged with killing his wife and two children. At trial, the State sought to introduce evidence the defendant's daughter had been molested before she died, arguing this evidence showed the defendant's motive to kill his family. The trial court admitted the evidence over the defendant's objection. Our Supreme Court reversed, holding the law governing the admissibility of specific-acts evidence for "another purpose" requires a trial court to find that the proponent has sufficient proof that the person who allegedly committed the act did, in fact, commit the act. *Id.* at 223. Because the molestation evidence was only relevant to the defendant's motive if he was the molester, and "the State failed to sufficiently connect the daughter's [molestation] injuries to the defendant," the evidence should not have been admitted. *Id.* In so holding, the Court rejected the State's argument that the molestation made it more likely the defendant was the murderer, noting "the circularity of this reasoning is apparent: the defendant probably was the killer, so he probably was the molester, so he probably was the killer." *Id.* at 224.

[40] The same can be said here. Undoubtedly, as the State argues, this evidence could be relevant to motive—it could explain why Corbett attacked a family he seemingly has no connection to. But this is true only if he committed those other home invasions, and there is no evidence in the record that he did.

[41] As such, the trial court abused its discretion in admitting evidence of the other attempted home invasions under Rule 404(b).

B. Bad Acts Jury Instruction

[42] Corbett also argues the trial court erred in refusing his tendered bad-acts jury instruction and instead instructing the jury as follows:

> Evidence has been introduced that the Defendant **was involved** in bad acts other than those charged in the information. This evidence has been received solely on the issue of Defendant's motive, opportunity or intent. This evidence should be considered by you only for that limited purpose.

Appellant's App. Vol. II p. 155 (emphasis added). Corbett contends this instruction "reinforced the improper damaging and prejudicial impact of the improperly admitted 'other acts' evidence[.]" Appellant's Br. p. 36.

[43] However, even if the trial court's instruction compounded its error in admitting the evidence under Rule 404(b), we need not reverse as we find this evidence, and the instruction, harmless.

C. Harmless Error Analysis

[44] Not every error by the trial court requires a reversal. *State v. Haldeman*, 919 N.E.2d 539, 543 (Ind. 2010). Errors which do not affect the substantial rights of the parties are to be disregarded. *Id.* "To determine whether an error prejudiced a defendant, we assess the probable impact the error had upon the jury in light of all of the other evidence that was properly presented. If the conviction is properly supported by other independent evidence of guilt, the error is harmless." *Williams v. State*, 43 N.E.3d 578, 581 (Ind. 2015) (citation omitted).

[45] Here, there was substantial independent evidence of guilt. Corbett's DNA was consistent with three swabs collected at the crime scene, at least one of which was solely his, a fact which even his expert did not dispute. Additionally, Corbett not only matched the description of the attacker, but Linda also identified him in court. These are both strong pieces of evidence that did not involve the alleged bad acts. *See Caldwell v. State*, 43 N.E.3d 258, 267 (Ind. Ct. App. 2015) (concluding the trial court's error in admitting evidence under Rule 404(b) was harmless "in light of the DNA evidence connecting Caldwell to the crimes"), *trans. denied*. Furthermore, we are not convinced evidence of the bad acts, even if coupled with the jury instruction, had much of a prejudicial impact on the jury in a brutal murder case. The bad acts alleged involved slicing screens and opening an unlocked door, relatively minor offenses. And this evidence was not heavily relied on by the State—it was vaguely mentioned only once in closing argument.

[46] Given the minor prejudicial effect and the substantial independent evidence of guilt, we find the evidentiary error and any error in the giving of the corresponding jury instruction were harmless.

III. Impeachment Evidence

A. Admission of Evidence under Evidence Rule 609

[47] Corbett next contends—and the State concedes—the trial court erred in admitting evidence of the Article 15 non-judicial punishment he received while in the Navy under Indiana Evidence Rule 609(a)(2). Specifically, Corbett argues

the non-judicial punishment does not constitute a criminal conviction with which he could be impeached. Evidence Rule 609(a), which governs impeachment by evidence of conviction of a crime, provides,

> For the purpose of attacking the credibility of a witness, evidence that the witness has been **convicted of a crime** or an attempt of a crime must be admitted but only if the crime committed or attempted is (1) murder, treason, rape, robbery, kidnapping, burglary, arson, or criminal confinement; or (2) a crime involving dishonesty or false statement, including perjury.

(Emphasis added). The Indiana Supreme Court has held Rule 609 "draws a bright line at conviction[.]" *Outback Steakhouse of Fla, Inc. v. Markley*, 856 N.E.2d 65, 84-85 (Ind. 2006). Accordingly, "[a] witness may not be impeached by specific acts of misconduct that have not resulted in criminal convictions." *Palmer v. State*, 654 N.E.2d 844, 848 (Ind. Ct. App. 1995). No Indiana court has addressed whether an Article 15 non-judicial punishment constitutes a criminal conviction under Rule 609. However, we agree with both parties it does not.

[48] "Under the Uniform Code of Military Justice, military commanders can punish service personnel through judicial proceedings—taking the form of general, special, or summary courts martial—or by imposing non-judicial punishment []." *Hoffman v. State*, 957 N.E.2d 992, 994 (Ind. Ct. App. 2011). A non-judicial punishment is deemed an administrative rather than a criminal proceeding. *Id.*; *see also Middendorf v. Henry,* 425 U.S. 25, 31-32 (1976) ("Article 15 punishment, conducted personally by the accused's commanding officer, is an administrative method of dealing with the most minor offenses.")

[49] This Court emphasized the administrative, rather than criminal, nature of non-judicial punishments in *Hoffman*, 957 N.E.2d at 994. Hoffman was convicted of operating a vehicle while intoxicated and argued the conviction constituted double jeopardy because the military had already punished him for that conduct.[5] This Court disagreed, noting Hoffman failed to show he was prosecuted by the military because his punishment may have been non-judicial, which is "administrative rather than judicial action." *Id.*; *see also United States v. Stoltz*, 720 F.3d 1127, 1128 (9th Cir. 2013) ("It is well settled that, consistent with the Double Jeopardy Clause, the government may prosecute a member of the armed forces in a civilian criminal court even though he has previously received nonjudicial punishment for the same offense under Article 15 of the Uniform Code of Military Justice."). Courts in other jurisdictions have also concluded a non-judicial punishment does not constitute a criminal conviction. *See People v. Renno*, 219 N.W.2d 422 (Mich. 1974) (stating that using Article 15 actions for impeachment is prohibited).

[50] That a non-judicial punishment does not constitute a criminal conviction is also consistent with Article 15's legislative history, which states,

> The purpose of the proposed legislation is to amend article 15 of the Uniform Code of Military Justice to give increased authority to designated commanders in the Armed Forces to impose nonjudicial punishment. Such increased authority will enable

[5] Hoffman didn't specify what type of military punishment he received.

> them to deal with minor disciplinary problems and offenses without resort to trial by court-martial.
>
> Under this article commanding officers can impose specified limited punishments for minor offenses and infractions of discipline. This punishment is referred to [as] "nonjudicial" punishment. Since the punishment is nonjudicial, **it is not considered as a conviction of a crime** and in this sense has no connection with the military court-martial system.

S. Rep. No. 87-1911 (1962), *reprinted in* 1962 U.S.C.C.A.N. 2379, 2380 (emphasis added).

[51] Therefore, our own case law, the case law of other jurisdictions, and the legislative purpose of non-judicial punishments all lead us to conclude such punishments are not criminal convictions and cannot be used to impeach witnesses under Evidence Rule 609. As such, the trial court abused its discretion in admitting evidence of Corbett's Article 15 non-judicial punishment.

B. Harmless Error Analysis

[52] Nonetheless, we need not reverse as we find this evidence harmless. Again, there was substantial independent evidence of guilt—Corbett's DNA was found at the crime scene and Linda identified him as her attacker. Nor do we believe evidence of the non-judicial punishment had a strong impact on the jury. The specific misconduct that led to the punishment was never stated, and this was the only mention of this evidence in the entire eight-day trial. Furthermore, on redirect Corbett confirmed he had been honorably discharged from the Navy,

which mitigated any prejudicial impact. Because of this, we are not convinced evidence of Corbett's non-judicial punishment contributed to the jury's conviction.

IV. Inappropriate Sentence

[53] Corbett also argues his 115-year sentence is inappropriate and asks us to revise it under Indiana Appellate Rule 7(B), which provides that an appellate court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." "Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[54] For the murder of Jim, Corbett faced a sentencing range of forty-five to sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3(a). The trial court sentenced Corbett to the maximum sixty-five years. For the Class A felony attempted murder of Linda, Corbett faced a sentencing range of twenty to fifty years, with an advisory sentence of thirty years. I.C. § 35-50-2-4(a). The trial court sentenced Corbett to the maximum fifty years, to run

consecutive to the sixty-five-year sentence for murder, for an aggregate sentence of 115 years.

[55] Corbett argues "a downward revision of his sentences to the advisory for each offense, to be served concurrently as opposed to consecutively, is appropriate." Appellant's Br. p. 42. As to his character, Corbett emphasizes his lack of criminal history, his five-year service in the U.S. Navy, and that according to the Indiana Risk Assessment System (IRAS) he was in the low-risk category to reoffend.[6] While that is all true, the brutal nature of the crime supports his sentence. As the trial court detailed extensively at the sentencing hearing, Corbett did not simply murder Jim or attempt to murder Linda—the attacks were "sadistic." Corbett invaded the Millers' home, stabbing Jim to death and attempting to do the same to Linda. He first attacked Linda while she was in the bathroom, stabbing her over and over while she screamed for help. When Jim came to her aid, Corbett turned his attention to Jim, an attack that occurred throughout the home and ended on the driveway. Jim suffered over fifty stab wounds and blunt-force trauma to the head. Corbett's actions here amounted to much more than the pull of a trigger, and the suffering he caused, especially to Linda who survived the attack in critical condition, was prolonged.

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[6] As for the IRAS score, we note the trial court considered this only a "supplemental factor," finding it difficult "to comprehend how somebody who has been convicted of murder and attempted murder and shown sociopathic tendencies can get through an IRAS score with a low risk to reoffend[.] Tr. Vol. IX p. 71.

[56] Corbett also points to his juvenile status at the time of the offenses as a reason for a downward revision. It is true we often decrease sentences for juvenile offenders, noting their immaturity and the rehabilitative nature of our judicial system. However, that is not the case for all crimes committed by juveniles, as shown in *Conley v. State*, 972 N.E.2d 864 (Ind. 2012), *reh'g denied*. In *Conley*, our Supreme Court upheld the trial court's sentence of life imprisonment without the possibility of parole for a juvenile who murdered his ten-year-old brother. In doing so, the Court noted the "brutality" of the offense—Conley strangled his brother for over twenty minutes, placed a bag over his head, and slammed his head against the stairs. *Id.* at 876. He committed the crime in their shared home, where the victim "should have felt the safest." *Id.* Finally, the court noted the crime was "drawn out," the victim suffered, and Conley had several opportunities to stop. *Id.* Given the nature of this offense, the court found the sentence was not inappropriate.

[57] The same can be said here. Corbett attacked the Millers in their own home with apparently no motive. He stabbed them both repeatedly, and the crime was drawn out—as evidenced by the number of wounds on the victims alone. Given the brutality shown here, and the two victims, we cannot say Corbett's maximum, consecutive sentences are inappropriate. *See Diaz v. State*, 158 N.E.3d 363, 371 (Ind. Ct. App. 2020) ("[T]he existence of multiple victims supports the imposition of consecutive sentences.").

[58] Affirmed.

May, J., and Molter, J., concur.