

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

William Boles,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 27, 2023

Court of Appeals Case No.
22A-CR-1304

Appeal from the Marion Superior
Court

The Honorable Angela Davis,
Judge

Trial Court Cause No.
49D27-1909-MR-36079

Memorandum Decision by Judge May
Judges Crone and Weissmann concur.

May, Judge.

- [1] William Boles appeals his conviction of murder.¹ He raises two issues on appeal: (1) whether the evidence was sufficient to support his conviction, and (2) whether statements by the prosecutor during the State’s closing argument created reversible error. We affirm.

Facts and Procedural History

- [2] Boles and Kelly Rohr had a romantic relationship and, in 2016 or 2017, began living together. On June 9, 2019, Rohr was supposed to pick up her adult daughter, Bobbi Mustard, at 11 a.m., but Rohr did not arrive. Mustard tried to phone Rohr throughout the day, but she was unable to reach Rohr.
- [3] That same day around 12:30 p.m., Rohr’s cousin, Brian Fisher, went to Rohr’s house to check on her, because Rohr’s mother was concerned. Fisher noted vehicles belonging to both Rohr and Boles were in the driveway. Fisher knocked, and Boles eventually answered the door. When Fisher asked about Rohr, Boles said she was still in bed sleeping. Fisher asked Boles to have Rohr call her mother, and Boles agreed to do so.
- [4] Around 6:15 p.m. that same day, after not hearing from her mother all day, Mustard went to Rohr’s residence. She saw vehicles belonging to Rohr and Boles in the driveway, and she knocked on the front and back doors, called out for her mother, and jiggled both doorknobs but found them locked. Mustard

¹ Ind. Code § 35-42-1-1(1).

attempted to look in the windows but did not see any lights on or hear any music playing. After calling other family members, Mustard contacted the police for a welfare check.

[5] Several officers soon arrived and proceeded to knock on the doors and windows but got no response. The officers suggested Mustard remove an air-conditioning unit from a window and attempt to enter the house. As the unit was being removed, Officer Eric Snowden of the Indianapolis Metropolitan Police Department noticed Boles standing about a foot away from a body on the floor. Officer Snowden could see only the legs of the body, which was halfway inside the bathroom. Officer Snowden then stopped Mustard from removing the air conditioner, and he forced entry through the front door.

[6] After entering the residence and placing Boles in custody, the officers noticed plants and tables knocked over, items strewn about, and dirt and cigarette butts all over the floor. There was blood on the hallway walls and a clump of Boles' hair on the floor. Rohr was unresponsive on the floor, and she was lying in a pool of vomit. Boles admitted to Sergeant Kory Dickerson that Rohr had been lying there since 2:00 a.m. that day. When paramedics arrived, they were unable to rouse Rohr to consciousness. Rohr had a big knot on her head and bruising on her neck and arms. Paramedics transported Rohr to the hospital, where testing revealed Rohr had no alcohol in her system. Rohr died the next day.

[7] An autopsy revealed 37 structural injuries,² including multiple abraded contusions³ to the forehead, nose, upper and lower lips and chin. Unabraded bruises were found below her mouth and on her scalp, neck, collar bone, abdomen, right shoulder, upper arm, wrist, hands, knees, right foot, and left breast. She had a bump on her right eyebrow, which the pathologist described as a “contusion hematoma” or a collection of blood under the skin. (Tr. Vol. IV at 65.) Rohr also suffered a laceration to her upper arm, an intercranial hemorrhage, a subarachnoid hemorrhage, duret hemorrhages,⁴ a subdural hematoma, and a fractured nasal bone. The forensic pathologist testified the duret hemorrhages would have been fatal and the subdural hematoma could have been life-threatening. He opined all of Rohr’s injuries were the result of at least one fall and one blow to the head, and the cause of death was multiple blunt force traumatic injuries to the head. The autopsy also noted Rohr did not have alcohol in her blood at the time of her death.

[8] The State charged Boles with murder. Shortly thereafter, Fisher called Boles, who told Fisher that he and Rohr had been drinking alcohol and had a fight. A

² A structural injury is an injury to an individual structure of the brain or body, and multiple structural injuries may be caused by a single blunt force impact. (Tr. Vol. IV at 67-68, 70.)

³ An abraded contusion is “a scraped bruise.” (Tr. Vol. IV at 64.)

⁴ Duret hemorrhages are damage to the midbrain and brain stem, which control vital functions like breathing and heartbeat, that occurs hours after an initial injury to another area of the brain because of swelling in the initially injured areas of the brain. (Tr. Vol. IV at 69-70.)

jury found Boles guilty of murder. The trial court imposed a sixty-year sentence.

Discussion and Decision

1. Sufficiency of the Evidence

[9] Boles first asserts the evidence was insufficient to support his conviction of murder.⁵ Sufficiency-of-the-evidence assertions

implicate a deferential standard of review, in which this Court will neither reweigh the evidence nor judge witness credibility, but lodge such matters in the special province and domain of the jury, which is best positioned to make fact-centric determinations. In reviewing the record, we examine all of the evidence and reasonable inferences supporting the verdict and thus will affirm the conviction if probative evidence supports each element of the crime beyond a reasonable doubt.

Carmack v. State, 200 N.E.3d 452, 459 (Ind. 2023) (internal quotations and citations omitted). “[T]he task for us, as an appellate tribunal, is to decide whether the facts favorable to the verdict represent substantial evidence probative of the elements of the offense.” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007).

⁵ Murder occurs when one person “knowingly or intentionally kills another human being.” Ind. Code § 35-42-1-1(1).

[10] Boles claims he is entitled to reversal of his conviction because the evidence demonstrates he “could have caused Rohr’s death. However, it does not exclude every reasonable hypothesis that he did not cause her death.” (Appellant’s Br. at 13.) In support, Boles cites *Hampton v. State*, in which our Indiana Supreme Court held that a jury instruction on the requirement that the State prove a crime beyond a reasonable doubt “does not obviate the necessity” of a jury instruction informing the jury “that proof by circumstantial evidence must be so conclusive and sure as to exclude every reasonable theory of innocence” when a defendant’s charge is based entirely on circumstantial evidence. 961 N.E.2d 480, 482 (Ind. 2012). While that legal statement from *Hampton* remains good law, it is a standard for the fact-finder at trial, not for appellate review. See *Wahl v. State*, 98 N.E.2d 671, 675 (Ind. 1951) (“The rule that circumstantial evidence must be of so conclusive a character, and point so surely and unerringly to the guilt of the accused, as to exclude every reasonable hypothesis of innocence, is solely for the guidance of trial courts and juries, and not courts of review.”).

[11] Instead, on appeal, “[i]t is enough if an inference reasonably tending to support the verdict can be drawn from the circumstantial evidence.” *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995). As our Indiana Supreme Court recently reiterated: “It is sufficient that a reasonable jury could have inferred that the defendant committed the crimes charged. We leave the weighing of all the evidence and resolution of conflicts in it to the jury.” *Young v. State*, 198 N.E.3d 1172, 1182 (Ind. 2022). As Boles acknowledges, and as the facts we set out above

demonstrate, Boles could have caused the blunt force injuries that resulted in Rohr's death, and we may not reverse the jury's determination of guilt. *See, e.g., id.* ("Because a reasonable inference that Young was guilty as charged may be drawn from the whole picture of the evidence in this case, the judgment of the trial court is affirmed.").

2. Prosecutorial Misconduct

[12] Boles also argues the prosecutor committed misconduct when he made "improper comments during summation regarding Boles's failure to testify." (Appellant's Br. at 16.) To preserve a claim of prosecutorial misconduct, "a defendant must not only raise a contemporaneous objection, he must also request an admonishment and, if the admonishment is not given or is insufficient to cure the error, then he must request a mistrial." *Washington v. State*, 902 N.E.2d 280, 289-90 (Ind. Ct. App. 2009), *trans. denied*. Herein, Boles did not object to the prosecutor's statement during closing argument. When a defendant fails to object to allegedly improper comments, the issue is waived unless the defendant can demonstrate fundamental error. *Id.* at 290. Prosecutorial misconduct constitutes fundamental error if the conduct "constitute[s] a clearly blatant violation of basic and elementary principles of due process, present[s] an undeniable and substantial potential for harm, and make[s] a fair trial impossible." *Id.* Moreover, the conduct had to subject the defendant "to grave peril and [have] a probable persuasive effect on the jury's decision." *Id.* When judging a prosecutor's remarks, we consider the comments "in the context of the argument as a whole." *Id.*

[13] Boles asserts the prosecutor committed misconduct by inviting the jury to draw an adverse inference from Boles's failure to testify. As Boles notes, the Fifth Amendment of the United States Constitution gives criminal defendants a right to remain silent during trial. "The Fifth Amendment privilege against compulsory self-incrimination is violated when a prosecutor makes a statement that is subject to reasonable interpretation by a jury as an invitation to draw an adverse inference from a defendant's silence." *Boatright v. State*, 759 N.E.2d 1038, 1043 (Ind. 2001) (quoting *Moore v. State*, 669 N.E.2d 733, 739 (Ind. 1996)). "If in its totality, however, the prosecutor's comment is addressed to other evidence rather than the defendant's failure to testify, it is not grounds for reversal." *Id.*

[14] During its closing argument, the State argued:

As a special trying prosecutor, I'm usually talking about victims all the time. What they did, what they didn't. I'm usually talking to them. I did not talk to her. I have no idea what she would say, because she is not here today. But you know what? You know what does speak for her? Her body. 37 blunt force injuries.

(Tr. Vol. IV at 164.) Then, during closing argument for the defense, counsel suggested there were alternative explanations for Rohr's death, including Boles acting in self-defense or Rohr falling while intoxicated. Defense counsel also suggested Rohr might have been taking a medication that caused a "trivial incident" to result in catastrophic injury. (*Id.* at 180-81.) On rebuttal, the prosecutor responded to defense counsel's arguments:

If the Defense's theory of the offense makes no sense, there's a good reason. It's because it makes no sense. Self-defense. She was drunk and fell. She was on blood thinner. They want you to focus on anything except the evidence that is right in front of your face. There were two people in that room and only two of them knew what happened and one of them is dead. But as [my co-counsel] said, [Rohr's] body tells the story.

(*Id.* at 187.)

[15] Boles compares his case to *Herron v. State*, 801 N.E.2d 761, 765 (Ind. Ct. App. 2004), in which this court held a prosecutor's statement during closing argument constituted fundamental error because the prosecutor referenced Herron's silence at trial. There, the State charged Herron with attempted murder and alleged he was the person who shot Ray Rivera numerous times with a handgun, which was not located before trial. During closing argument, the prosecutor said: "[A]s for not presenting the gun to you, that actually fired those bullets, members of the jury, right over there at that table, that's the only one in the courtroom that can certainly tell us where that gun is[.]" *Id.* at 765. We held that statement was an improper comment on Herron's silence, and we held the State could not demonstrate the improper comment was harmless in light of the "seriously contradictory testimony as to the shooter's identity[.]" *Id.* at 767.

[16] The prosecutor's statement in this case was not like the statement in *Herron*, which pointed the jury to the defendant as the only person who could explain what happened to the murder weapon. Here, instead, the prosecutor's

statement directed the jury to find the explanation for how Rohr died from looking at the evidence about injuries to Rohr's body. Moreover, it is a fair characterization of the circumstantial evidence pointing toward Boles's guilt to note that Rohr died from multiple blunt force trauma wounds to the head and the only other person in the house with Rohr when she received those wounds was Boles. Accordingly, no error occurred. *See Boatright*, 759 N.E.2d at 1043 (holding no error occurred from prosecutor's closing argument that responded to defendant's closing argument without focusing on defendant's decision not to testify).

Conclusion

[17] Boles has failed to convince us that the evidence is insufficient to support his conviction. Nor has Boles convinced us that the prosecutor's closing argument improperly invited the jury to draw a negative inference from Boles's decision not to testify at trial. Accordingly, we affirm.

[18] Affirmed.

Crone, J., and Weissmann, J., concur.