MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Patrick E. Doyle,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 31, 2024

Court of Appeals Case No.
23A-CR-886

Appeal from the Bartholomew Circuit Court

The Honorable Kelly S. Benjamin, Judge

Trial Court Cause No.
03C01-2109-MR-4862

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

[1] Patrick Doyle beat and strangled Heather Steuver to death, buried her body in a remote location, and concealed her death for two weeks by sending text messages from her cellphone. The State charged Doyle with murder and alleged he was a habitual offender. A jury found Doyle guilty of murder, and after Doyle admitted he was a habitual offender, the trial court sentenced him to the maximum sentence of 85 years imprisonment.

[2] Doyle appeals his conviction, arguing that the trial court erred by: (1) allowing a substitute pathologist to testify about Heather's autopsy when the pathologist who performed the autopsy was unavailable for trial; (2) denying Doyle's motion for mistrial when the substitute pathologist testified to a supplemental cause of death—asphyxiation; and (3) denying Doyle's motion for continuance to locate a missing rebuttal witness. Doyle also appeals his 85-year sentence as inappropriate. We affirm.

Facts

[3] In 2021, Doyle lived with Heather, who was his girlfriend, and her father, Jerry Lowe, in Lowe's Columbus, Indiana home. Lowe worked long hours at a local gravel pit where Doyle also worked thanks to Lowe's recommendation. In late August, Lowe noticed he had not seen or heard from Heather in several days and had only seen Doyle at work. Meanwhile, Heather's dog, which usually slept with her, "moped around" Lowe's house. Tr. Vol. II, p. 185.

[4] Lowe's only contact with Heather that week was a text message she purportedly sent from her phone on August 25, 2021. The next day Lowe noticed Doyle drove Heather's car to work. Lowe left work to see if Heather was at his home. After finding the house empty, Lowe returned to work, called Heather's mother to ask that she check on Heather. Heather's mother also did not find Heather at Lowe's home, but she discovered Heather's cell phone on Heather's bed. Knowing that Heather customarily kept her phone close, Heather's mother called 911.

[5] A police officer was dispatched to Lowe's home and was still there when Doyle arrived in Heather's car. Doyle told the officer that he had seen Heather before he left for work that morning and that she had texted him at 6:30 a.m. He also told the officer that Heather had been talking about a man who lived nearby. Doyle then took the officer to a nearby location where Doyle suggested Heather might be. When they returned, Lowe told Doyle to leave his home. That upset Doyle, who said he had done nothing.

[6] Before Doyle left in Heather's car, Heather's mother removed Heather's wallet from the front passenger seat. Later that evening, while looking in Heather's room, Heather's mother discovered a spray bottle of bleach with blood on it, a blood spot on the floor, and a chair cushion with a blood stain. She called 911 again, and responding officers found blood stains on Heather's mattress. After discovering some text messages had been deleted from Heather's cell phone, police interviewed Doyle the next day.

[7] Doyle told police that he and Heather had been drinking on the evening of August 21 when he fell asleep. When he awoke, he had bloodied hands and genitals, and Heather was on the bedroom floor cursing at him with a black eye. Doyle said he cleaned himself up and then blacked out. When Doyle woke up, he found Heather lying face down in their bed. Her black eye was closed, and her other eye was open.

[8] Doyle told police that he panicked and "did what I had to do to survive." State's Exhibit 3, 12:41-12:51. To "make it look convincing," Doyle locked Heather's dog in the bathroom, wrapped Heather's body in a bed sheet, and took her body outside to her car. *Id.* at 16:58. Doyle told police that he then drove to the gravel pit with the intent to weigh her body down and dump it in a lake, similar to the way he had disposed of his dead dog. But he later realized he could not drag or carry Heather's body to the lake, so he placed her body under rocks and dirt near the lake.

[9] According to Doyle, he then returned to Lowe's home, re-made the bed, and staged the bathroom to look as if Heather had showered. Next, Doyle impersonated Heather by sending text messages to himself and Lowe using Heather's phone. Doyle later returned to the shallow grave with a shovel taken from Lowe's home and threw more dirt and debris on Heather's body to better conceal it.

[10] Police recovered Heather's body after Doyle showed them on a map where they could find it. According to Doyle, Heather, after her death, looked as if he had

choked her, and he wondered if he had accidentally killed her. Doyle said the "only conclusion" is that he "choked" Heather, but it would not have happened absent his drunkenness. State's Exhibit III, 37:13, 48:06. Police recovered from Lowe's home the shovel that Doyle used to bury Heather.

[11] Three weeks after Heather's death, the State charged Doyle with murder and alleged he was a habitual offender. An autopsy performed by Dr. Thomas Sozio, who later left the country and was unavailable for Doyle's trial, determined Heather's cause of death to be blunt force trauma. A substitute pathologist testified about the autopsy at Doyle's jury trial. And over Doyle's objection, the substitute pathologist testified to an additional contributing cause of death not mentioned in Dr. Sozio's autopsy report: asphyxiation.

[12] A jury found Doyle guilty of Heather's murder, after which Doyle admitted being a habitual offender. The trial court entered judgment of conviction and sentenced Doyle to 85 years imprisonment.

Discussion and Decision

[13] Of the four issues that Doyle raises on appeal, we consolidate the first two: whether the trial court erred in admitting the substitute pathologist's testimony and in denying a mistrial when the substitute pathologist allegedly revealed a new contributing cause of death. Doyle next contends he was denied his right to present a defense when the trial court refused to continue his trial to allow him to locate a missing rebuttal witness. Finally, Doyle claims his sentence is

inappropriate under Indiana Appellate Rule 7(B). We find no trial error and conclude that Doyle is not entitled to a sentencing revision.

I. The Trial Court Did Not Err by Admitting the Substitute Pathologist's Testimony or by Denying a Mistrial

[14] Doyle challenges the admission of the substitute pathologist's testimony on three grounds. First, he claims the substitute pathologist was never qualified as an expert. Doyle next argues that the admission of the substitute pathologist's testimony supplementing the cause of death violated Doyle's constitutional right to confront witnesses. Finally, Doyle asserts the trial court erred in denying his motion for a mistrial when the substitute pathologist offered the asphyxiation testimony. Doyle's claims fail.

A. The Substitute Pathologist Was Qualified as an Expert and a Mistrial Was Unwarranted

[15] Doyle argues the substitute pathologist was never qualified as an expert witness before first offering his opinion that asphyxiation contributed to Heather's death. Doyle therefore claims the trial court erred in denying a mistrial after that first reference to asphyxiation.

[16] We review under an abuse of discretion standard both a trial court's qualification of an expert and its denial of a motion for mistrial. *Martinez v. State*, 192 N.E.3d 1021, 1024 (Ind. Ct. App. 2022) (mistrial); *Johnston v. State*, 69 N.E.3d 507, 510 (Ind. Ct. App. 2017) (qualification of expert). An abuse of discretion occurs when "the decision is clearly against the logic and effect of the

facts and circumstances" before the trial court. *Ziebell v. State*, 788 N.E.2d 902, 909 (Ind. Ct. App. 2003). "To prevail on appeal [from denial of a motion for mistrial], an appellant must show that he was so prejudiced that he was placed in a position of grave peril to which he should not have been subjected." *Mack v. State*, 736 N.E.2d 801, 803 (Ind. Ct. App. 2000).

[17] As Doyle acknowledges, the testimony that he challenges—the substitute pathologist's initial testimony as to Heather's asphyxiation—was stricken by the trial court because the pathologist had not been qualified as an expert witness. The court admonished the jury to disregard this testimony. The trial court then allowed the State to lay a foundation under Indiana Evidence Rule 702 to qualify the substitute pathologist as an expert witness under Indiana Evidence Rule 702.[1] After that foundation was established, the court found the substitute pathologist was "qualified as an expert to testify in forensic pathology." Tr. Vol. III, p. 130.

[18] The substitute pathologist then testified to the same opinion expressed in his earlier stricken testimony—that blunt force trauma alone did not cause Heather's death and that asphyxiation was a contributing factor. Although

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[1] Indiana Evidence Rule 702 specifies:

(a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

(b) Expert scientific testimony is admissible only if the court is satisfied that the expert testimony relies on reliable scientific principles.

Doyle contemporaneously objected to the pathologist's renewed testimony, the grounds for his objection are unclear from the record.[2]

[19] Doyle contends that "[s]triking [the substitute pathologist's] testimony and admonishing the jury was insufficient to un-ring the bell," and therefore, the jury was prejudiced by the substitute pathologist's initial testimony offered before he was qualified as an expert witness. Appellant's Br., p. 17. But the trial court's admonition requiring the jury to disregard the substitute pathologist's initial asphyxiation testimony is deemed to have cured any alleged error. *Martinez*, 192 N.E.3d at 1024.

[20] Moreover, the substitute pathologist's stricken testimony did not contain any information that his later testimony as a qualified expert lacked. Doyle has not shown how the jury was prejudiced by the stricken testimony when it was repeated by the pathologist after his qualification as an expert. *See Pavey v. State*, 764 N.E.2d 692, 703 (Ind. Ct. App. 2002) (ruling that even erroneously admitted evidence is not prejudicial if the evidence is merely cumulative of other evidence in the record). Without evidence of prejudice, Doyle was not

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[2] The transcript of Doyle's trial contained many inaudible portions including one involving a sidebar at which Doyle objected to the substitute pathologist's renewed testimony about asphyxiation. Neither party on appeal sought correction of the transcript. This Court remanded for transcription of the inaudible sections by the court reporter and, if any of the inaudible portions were not transcribable, proceedings under Indiana Appellate Rule 31. The court reporter was able to transcribe only part of the inaudible sections. Pursuant to this Court's order, Doyle filed a statement of the evidence under Appellate Rule 31, but he mentioned only the general topic of discussion and not the specific objections that were made during the inaudible proceedings. The prosecutor responded that he had little recall of the inaudible portions of the transcript. The trial court certified Doyle's statement of the evidence under Appellate Rule 31. Due to the lack of specificity in Doyle's Statement of the Evidence, we cannot ascertain the nature of his objection made at the largely inaudible sidebar during the substitute pathologist's testimony.

entitled to a mistrial. *See Mack,* 736 N.E.2d at 803 (requiring proof that the defendant was placed in grave peril before mistrial is required).

B. The Substitute Pathologist's Testimony Did Not Violate Doyle's Confrontation Right

[21] Doyle claims the admission of the substitute pathologist's testimony about Heather's autopsy violated his Sixth Amendment right to confront witnesses because Doyle did not have an opportunity to cross-examine the original pathologist, Dr. Sozio. Dr. Sozio conducted the autopsy and prepared an autopsy report that the substitute pathologist reviewed and testified about when expressing his opinion as an expert witness about the cause of Heather's death. The autopsy report was never admitted into evidence, but the substitute pathologist testified both as to the autopsy findings and his own conclusions about the cause of death.

[22] The Confrontation Clause in the Sixth Amendment specifies that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. CONST. amend. VI. This right is made applicable to the states through the Fourteenth Amendment. *Pointer v. Texas*, 380, U.S. 400, 406 (1965). We review constitutional challenges de novo. *Ackerman v. State*, 51 N.E.3d 171, 177 (Ind. 2016), *cert. denied*.

[23] The federal Confrontation Clause prohibits the "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had a prior opportunity for cross-examination."

Crawford v. Washington, 541 U.S. 36, 53-54 (2004). The *Crawford* Court ruled that the "core class of 'testimonial statements'" includes: (1) "ex parte in-court testimony or its functional equivalent—that is, affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially"; (2) "extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions"; and (3) "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Id.* at 51-52.

[24] Statements are testimonial when the "circumstances objectively indicate" that they are being made for the primary purpose of establishing or proving past events potentially relevant to later criminal prosecution. *Davis v. Washington*, 547 U.S. 813, 822 (2006). This "primary purpose test" has been the central analysis for determining whether a statement not within *Crawford's* "core class" of testimonial statements is nonetheless testimonial. *Ackerman*, 51 N.E.3d at 178.

[25] But Doyle has waived his confrontation claim in two ways. First, Doyle did not raise a Sixth Amendment objection at trial. Second, on appeal, his confrontation argument is perfunctory at best and insufficient to merit appellate review.

[26] For instance, Doyle does not analyze whether Dr. Sozio's autopsy report is testimonial. Doyle also offers no valid basis for finding inadmissible the substitute pathologist's testimony about the autopsy report, which was never admitted into evidence. Doyle simply argues that he could not cross-examine Dr. Sozio so the substitute pathologist's testimony about Dr. Sozio's autopsy—including the substitute pathologist's opinion that asphyxiation was a contributing factor in Heather's death—violated Doyle's confrontation right.

[27] We will not become an advocate for an appellant by supplementing an argument lacking essential analysis. *Rodts v. Heart City Auto., Inc.*, 933 N.E.2d 548, 554 (Ind. Ct. App. 2010); *see also Keller v. State*, 549 N.E.2d 372, 373 (Ind. 1980) (observing that a court runs the risk of being an advocate rather than an adjudicator when it searches the record and makes up its own arguments because a party presented them in a perfunctory manner). Given the dearth of Doyle's Confrontation Clause analysis, he has waived this claim. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring the appellant's brief "to contain the contentions of the appellant on the issues presented, supported by cogent reasoning . . . and citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal").

II. The Trial Court Did Not Abuse Its Discretion in Denying Doyle's Motion to Continue on the Eve of Trial

[28] Doyle next contends that the trial court violated his due process right to present witnesses in his defense by refusing to continue Doyle's trial so that he could locate a missing witness. Every criminal defendant has the fundamental right to

present witnesses in his defense. *Tolliver v. State*, 922 N.E.2d 1272, 1282 (Ind. Ct. App. 2010). While of the utmost importance, this right to present witnesses is not absolute. *Id.*; *see Ungar v. Sarafite*, 376 U.S. 575, 589-90 (1964) ("[N]ot every denial of a request for more time . . . violates due process even if the party fails to offer evidence . . . ."). As Doyle's missing witness was never directly excluded by the trial court, Doyle's due process claim hinges on the propriety of the trial court's denial of his motion for a continuance. We review the denial of a non-statutory[3] motion to continue for an abuse of discretion. *Harbert v. State*, 51 N.E.3d 267, 279 (Ind. Ct. App. 2016).

[29] According to Doyle, the missing witness would have rebutted the testimony of State's witness Jackie Taylor, who reported that Doyle had admitted to him while both were jailed that Doyle had strangled Heather on their bed. The State tardily added Taylor to the State's witness list in September 2022. In late January 2023, Doyle subpoenaed the missing witness and two other witnesses to rebut Taylor's expected testimony.

[30] Near the end of January 2023, the State informed Doyle that it was not planning to call Taylor as a trial witness. On February 3, 2023, the trial court denied Doyle's motion to exclude Taylor as a witness. Six days after that ruling and four days before Doyle's trial began, the State reversed its position and notified Doyle that it might call Taylor as a witness. Doyle objected and sought

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[3] Indiana Code § 35-36-7-1 authorizes a criminal defendant's motion to postpone a trial based on a witness's absence. Doyle does not rely on this statute. Therefore, we do not address it.

a hearing. The hearing the next day ended with the trial court taking the matter under advisement. But the court provided Doyle with potential contact information for Doyle's prospective witness. The next day, after efforts to locate the elusive defense witness proved unsuccessful, Doyle moved to continue his trial set for three days later. The trial court denied the continuance on the first day of trial after Doyle stated, in an offer to prove, that the missing witness would testify that Taylor admitted he made up the story about Doyle's admission to strangling Heather.

[31] Doyle objected to Taylor's trial testimony. The trial court overruled the objection, noting that the period during which the State had withdrawn Taylor as a witness was brief and that Doyle had months to locate the missing witness before that.

[32] On appeal, Doyle claims the denial of his continuance essentially deprived him of his due process right to present a witness who would have challenged the veracity of an important State witness. We conclude the trial court did not abuse its discretion in denying the continuance and that Doyle has failed to show that the State's indecision regarding Taylor's testimony impacted his ability to present the missing witness's testimony.

[33] Doyle subpoenaed the missing witness in October 2022 and did not locate him before Taylor's testimony four months later. The trial court even provided the court system's most current contact information for the witness and specifically requested law enforcement help locate him. Despite all these efforts, the

witness, who had an outstanding warrant, was not found. Doyle offers no argument or evidence suggesting that a continuance, after all these unsuccessful efforts to locate the elusive witness, would have revealed the witness's whereabouts.

[34] The trial court did not abuse its discretion in refusing to delay Doyle's trial further to devote more time to this likely fruitless task. *See*, *e.g.*, *Tolliver*, 922 N.E.2d at 1284 (finding no abuse of discretion when the likelihood of locating the long-missing witness was remote, given that the witness "likely knew the high probability of immediate arrest upon cooperating with requests to appear" and both police and civilians had been unable to find the witness). Although Doyle focuses on the State's vacillation as to whether it would call Taylor as a witness, Doyle does not reveal how that irregularity impacted his ability to locate his missing rebuttal witness.

[35] As the trial court did not abuse its discretion in denying Doyle's motion for continuance and Doyle's due process claim rests on a claim that the continuance was essential to his defense, we reject his claim.

III. Doyle's Sentence Is Not Inappropriate

[36] Lastly, Doyle contends his 85-year sentence is inappropriate under Indiana Appellate Rule 7(B), which permits us to "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." App. R. 7(B).

[37] Our principal role in reviewing sentence appropriateness is to "attempt to leaven the outliers . . . not to achieve a perceived 'correct' sentence." *Knapp*, 9 N.E.3d at 1292. We thus defer substantially to the trial court's sentencing decision, which prevails unless "overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[38] Our Rule 7(B) analysis begins with consideration of the advisory sentence, which "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). The sentencing range for murder is 45 to 65 years, with an advisory sentence of 55 years. Ind. Code § 35-50-2-3. The habitual offender enhancement ranges from 6 to 20 years. Ind. Code § 35-50-2-8. Doyle's 85-years sentence is therefore the maximum sentence allowed by statute.

[39] Doyle claims his sentence is inappropriate because he is not the worst offender and his crime is not the worst offense. In *Brown v. State*, 760 N.E.2d 243, 245 (Ind. Ct. App. 2002), a panel of this Court ruled that maximum sentences are reserved for the worst offenders and the worst offenses. But we proceeded to note in *Brown*, "If we were to take this [worst offender/worst offense] language literally, we would reserve the maximum punishment for only the single most heinous offense." *Id.* at 247. Instead, "we should concentrate less on comparing the facts of [a] case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the

defendant is being sentenced, and what it reveals about the defendant's character." *Id.*

[40] Neither Doyle's offense nor his character fare well under this analysis. As to the nature of the offense, Doyle merely argues that he did not intentionally kill Heather. Yet, the jury found otherwise, and the trial court convicted him of an intentional killing. Doyle went to great lengths to avoid discovery of his crime during the 18 days between the murder and his arrest. His charade caused even greater anguish for Heather's parents, who suspected foul play but had to wait weeks for confirmation of their daughter's death.

[41] As to the character of the offender, Doyle focuses solely on his expression of remorse, which the trial court rejected as insincere. Doyle, in fact, showed a shocking lack of empathy. Doyle killed Heather in the home in which Heather's father allowed Doyle to live and then reported to work as usual at a job Heather's father helped him obtain. When attempting to dispose of Heather's body, Doyle first tried the same approach that he had used to bury his dog. When that effort failed, he created a makeshift grave at Heather's father's worksite—a choice that ensured Heather's father would be reminded of his daughter's violent death whenever he reported to work. Doyle even used a shovel belonging to Heather's father to cover Heather's body with debris and dirt.

[42] Doyle's criminal record also reflects his poor character. Doyle, who was 40 years old at sentencing, has accumulated 23 convictions over 23 years. At least

10 of his convictions resulted in prison sentences, and several were for violent felonies. Doyle was on probation when he murdered Heather and had several earlier probation violations. His seeming inability to follow societal rules and to curb his violent behavior renders him a dangerous threat to society.

[43] Given these circumstances, Doyle has failed to meet his burden of showing his maximum sentence is inappropriate in light of the nature of the offense and his character.

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

Altice, C.J., and Kenworthy, J., concur.