MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Sabrina L. Dunn,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 23, 2023

Court of Appeals Case No. 22A-CR-2416

Appeal from the Orange Circuit Court

The Honorable Steven L. Owen, Judge

Trial Court Cause No. 59C01-2010-MR-720

Memorandum Decision by Judge Brown
Judges Crone and Felix concur.

Brown, Judge.

[1] Sabrina L. Dunn appeals her conviction and sentence for murder. Dunn claims the court erred in giving certain jury instructions and that her sentence is inappropriate. We affirm in part, reverse in part, and remand.

Facts and Procedural History

[2] Dunn was born in August 1977. In December 2005, Dunn and William Dunn were married. On April 30, 2019, Dunn filed a petition for an order of protection, alleging that, on April 28, 2019:

> [William] was angry at me for staying with a friend. When I got home that morning he was standing at the door and wouldn't let me in. I was trying to get in and he grabbed me and caused bruising on the arm. I also hit the door facing and this cause[d] additional bruising to my right elbow. Once I was in the house he was cussing me and calling me terrible names while my daughter was in her bedroom. After this happened, I was so tired of the bulling [sic] and the taunting that I went to stay in the guest house. I have now been locked out of the guest house. I ended up having to sleep in my car.

Exhibits Volume I at 146-147. She alleged that on April 29, 2019, William placed locks on the bedroom door, screamed at her, and told her that if she took their daughter that he would kill her.

[3] On April 30, 2019, the court issued an order of protection, finding that Dunn had shown by a preponderance of evidence that domestic or family violence had occurred, and that William represented a credible threat to Dunn's safety. Between May 2019 and October 2020, there were approximately 108 phone calls to 911 by Dunn or William. Dunn called 911 and reported on multiple

occasions in June 2019 that William had violated the protective order and had once in July 2019 made "threats to her." Exhibits Volume II at 110 (capitalization omitted). William called 911 in July 2019 to report that Dunn was violating a protective order that did not exist.

[4] On June 18, 2019, Dunn called 911 and reported that William had sent her "a video message that had her in an intimate nature." *Id.* On June 19, 2019, under cause number 59D01-1906-CM-0426 ("Cause No. 426"), the State charged William with invasion of privacy and alleged he violated the protective order on June 18, 2019, and he was arrested on July 8, 2019, after which he was released on bond.[1] *Id.* at 38.

[5] On July 9, 2019, Dunn requested dismissal of the April 30, 2019 protection order. On July 17, 2019, Dunn filed another petition for an order of protection, and the trial court found Dunn had shown:

> f. [William] represents a credible threat to the safety of [Dunn] or a member of [Dunn's] household.
>
> g. [Dunn] has shown, by a preponderance of the evidence, that domestic or family violence, a course of conduct involving repeated or continuing contact with [Dunn] that is intended to prepare or condition [Dunn] for sexual activity . . . or repeated harassment has occurred sufficient to justify the issuance of this Order.
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> * * * * *

[1] Cause No. 426 was dismissed on September 21, 2020.

> i. The following relief [issuance of the protective order] is necessary to bring about a cessation of the violence or the threat of violence.

Id. at 43.

[6] Dunn filed for divorce, which was granted in August 2019, and the two continued to live in separate homes approximately forty to fifty yards from each other on property in Paoli, Indiana.

[7] Dunn reported in March 2020 that someone had broken into her house, which police could not confirm. From May through October 2020, the 911 calls from William and Dunn increased in frequency. On May 18, 2020, William reported "females were yelling & screaming" and that "someone watches for [police] units to come and then are quiet," he called again claiming that Dunn was "yelling for help," and he requested a welfare check for her but officers "could not confirm any type of problem." *Id.* at 34 (capitalization omitted). On May 20, 2020, William called 911 saying he had seen "a couple guys . . . dragging [Dunn] into her res[idence] and believed [it] sounded like they were raping her and harming her," and officers established the "female subject [was] ok." *Id.* (capitalization omitted).

[8] On May 28, 2020, the State filed a Petition to Retain Firearm, stating that "based on the Officers' observations and experience, William Dunn is believed to be a dangerous person," and "various firearms were discovered and seized . . . ." *Id.* at 75. On July 15, 2020, the court ordered the Paoli Police Department

to retain the seized handgun and shotgun, enjoined William from possessing a firearm, and found the State had "proven by clear and convincing evidence that [William] is dangerous." *Id.* at 81.

[9] In June and July 2020, William called 911 multiple times and reported people on his property and roof, but these calls were not substantiated by police. On June 23, 2020, William called claiming there were "two males at his res[idence] and he [could] hear them talking about killing him and one [was] on the front porch," and he was "told that if these calls continue and there is nothing on camera he will be charged." *Id.* at 99. (capitalization omitted). Dispatch logs from June 23rd noted that William "bought a couple of guns since PPD took his other guns," advised officers to use "extreme caution," and stated that "he has several knives and cutting instruments and is very unstable." *Id.* (capitalization omitted). That same day, William called 911 stating that "his neighbor broke in last night to his property and ran away and [said] he is hallucinating." *Id.* (capitalization omitted).

[10] On August 5, 2020, the State filed another Petition to Retain Firearm, stating that "based on the Officers' observations and experience, [William] is believed to be a dangerous person," and "a handgun was discovered and subsequently seized based on the observations and belief that [he] is a Dangerous Person." *Id.* at 66. After a hearing held on August 17, 2020, the court ordered the State to retain custody of the seized firearm and found that William was dangerous by clear and convincing evidence.

[11] On August 30, 2020, Dunn reported that William "will not leave," but he eventually left. *Id.* at 35 (capitalization omitted). On September 16, 2020, she reported that William "was bothering her again and [she] wanted someone to politely ask him to stop bothering her." *Id.* (capitalization omitted).

[12] On October 21, 2020, Dunn and William returned early from a trip to Orleans, Indiana. They returned around 5:30 a.m., and once alone on his porch, William was apparently unable to find his keys, and, as recorded on his porch video camera, he stated:

> I ain't got fu----' time for this mother fu-----. I will fu----- cut you in half. I will fu----- kill you, all three. Give me my fu----- keys and quit touching my fu----- stuff. You want me to come to your fu----- house, is that what you need? Huh? Will that make you feel better? Is that what you want? Then so fu----- be it mother fu-----. You want me in jail? I will kick your fu----- door down, and you can have me fu----- arrested. And I don't give a fu-- and it won't matter to you will it? And I don't want to go to jail neither, I want my fu----- keys. Okay mother fu-----. Okay?

State's Exhibit 70 at 6:08:20-6:09:40.

[13] William later came back to Dunn's house searching for his keys, and he spoke with Dunn before returning to his own home. At approximately 7:30 a.m., William left his porch carrying a bag and returned to Dunn's house equipped with a black flashlight, knocked multiple times, and stated, "[h]ey Sabrina. Sabrina please come talk to me for a minute," and he entered the house with his flashlight on. State's Exhibit 69 at 7:36:20-7:37:00. Dunn fired a gun seven times, William shouted, stating in part, "Sabrina oh (inaudible) Sabrina

(inaudible)," and Dunn fired three more times. Transcript Volume IV at 4; State's Exhibit 69 at 7:37:08. She called 911 and stayed with William until police arrived to administer aid. William was pronounced dead at the scene, and police recovered items including two pocketknives, one sheath knife, a lockpick kit, and a bag of suspected methamphetamine on or near Williams' person.

[14] On October 22, 2020, the State charged Dunn with murder. From August 3rd until August 9, 2022, the court held a jury trial. Dispatcher Garland Eubank of the Orange County Sheriff's Department testified that, between May 2020 and October 2020, the 911 calls from Dunn and William had increased dramatically and agreed that a "number of those calls . . . related to allegations of violation of the Protective Order." Transcript Volume III at 127.

[15] Paoli Police Chief Randall Sanders testified on cross-examination that "on multiple occasions" he took William to the hospital "to evaluate if he needed any kind of psychiatric treatment" because he was "extreme[ly] paranoid." *Id.* at 198-199.

[16] Dunn testified that William had changed beginning in 2018 when he started using methamphetamine, and he became "aggressive, more short tempered, short attention span, recluse, be, withdrew himself a lot instead of interacting with" her and their daughter, drug usage "changed everything with him," he "wasn't the same person anymore," and he became "angry and violent, short tempered, [and] aggravated all the time." Transcript Volume V at 61-62.

According to her testimony, on March 31, 2018, he "pace[d] the room hollering and screaming at [her] about how [she] was a dirty wife and nobody wanted [her] and that [she] was fat and disgusting and always a coward and uh, he took [her] and put his arms around [her] and squeezed [her] until [she] couldn't breathe, leaving bruises around [her] rib cage." *Id.* at 62. She testified that, when he used methamphetamine, "[h]e was out in la-la land, seeing things, hearing things, shadow monsters." *Id.* She stated that she did not report his behavior to police throughout 2018. She claimed that his behavior then deteriorated, he would "be up for three (3) weeks at a time in the end," he would "[n]ot eat, not sleep," and he would "bang on [her] windows and [her] doors all hours of the night, steal [her] car, messed with [her] car to [where] . . . [her] tire would fall off if [she] drove it." *Id.* at 63. She testified that he would make threats and that similar behavior continued through October 2020. As to William's previous intrusions into her house, she stated that he came into her house uninvited at least once a month, and she would often call police for assistance. She stated that she sought dismissal of the first protective order because William suggested he would go to prison if she did not, and they were attempting to "work things out" but failed, and she filed for another protective order. *Id.* at 67. She described continuing physical and verbal abuse. After receiving the second protective order, William continued contacting her, and he was not charged or arrested for those violations. She testified that he had firearms removed from him on two occasions but had acquired more firearms.

She stated that William's mental health continued to decline and he would extract sexual acts from her in order for her to see their child.[2]

[17] Dunn testified further that, on October 20, 2020, William seemed suicidal after witnessing Dunn and her boyfriend have sex in her boyfriend's truck. According to her, William found her sleeping on the porch of her house and woke her up early the next morning, he told her that "he wanted to get back together again and that he would do the therapy or whatever. He'd get rid of his girlfriend," and they began driving to Orleans. *Id.* at 76. On the drive, "[h]e c[h]anged his mind and [they] turned around," he became "aggravated" and "agitated," called her "a bunch of names," and when they arrived home they sat in the car in the driveway for a while, and he stated that he would kill her and her boyfriend by cutting them in two. *Id.* at 77. They had a "fifteen (15) minute argument out the . . . north door," William called her a "fu----- bi---," and her boyfriend left. *Id.* at 80. She testified that she knew William to always carry a weapon on his person. *Id.* at 82. She stated that she did not call the police on October 20th because she "never [had] gotten any assistance" and police would not "do anything about it," unless William was "on the property." *Id.* at 86. She stated she had been doing dishes at 7:30 a.m. when she noticed a flashlight, William walked in carrying a "big machete," she shot him, called 911, and attempted to give him CPR. *Id.* at 88.

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[2] Their child did not live with either William or Dunn on October 21, 2020. *See* Transcript Volume V at 74, 109, 135.

[18] Dunn submitted four proposed jury instructions, which the trial court rejected, stating that it had "basically used" Dunn's proposed final instruction in its instruction for self-defense and defense of property. *Id.* at 123. Final Instruction No. 7 stated:

> It is an issue whether the Defendant acted in self-defense and/or in defense of her dwelling.
>
> A person may use reasonable force against another person to protect herself from what she reasonably believes to be the imminent use of unlawful force. A person is justified in using deadly force, and does not have the duty to retreat, only if she reasonably believes that deadly force is necessary to prevent serious bodily injury to herself.
>
> A person may use reasonable force, including deadly force, against another person, and does not have the duty to retreat, if she reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on her dwelling or land adjoin[ing] her dwelling.
>
> The State has the burden of proving beyond a reasonable doubt that the Defendant did not act in self-defense and/or act in defense of her dwelling or land adjoining her dwelling.

Appellant's Appendix Volume III at 194. Dunn's counsel objected to Final Instruction No. 7 and stated:

> I think the only evidence that we've heard in this case relates to entry into Miss Dunn's home so I don't know that the first paragraph with in that, or I guess it's the second paragraph after the introductory paragraph, I, I don't know that it's appropriate to include that.

Transcript Volume V at 125. The court "noted" the objection. *Id.* at 126.

[19] The jury found Dunn guilty of murder. The court found mitigators, including William's conduct that "he used drugs, seems like he used methamphetamine, that he made lots of sort of crazy calls to the police, that the police had to respond to, he had firearms that he had taken away um, by a judge here in Orange County." *Id.* at 221-222. The court gave "average weight" to mitigating factors including Dunn's family history and "psychological issues." *Id.* at 224. The trial court noted aggravating circumstances including her criminal history of "a couple misdemeanors," that she had been on pre-trial release for a misdemeanor at the time she committed the instant offense, and that she was not "law-abiding." *Id.* at 223-224. It described the number of shots fired as "overkill." *Id.* at 228. It found "the aggravating circumstances in this case outweigh[ed] any mitigating circumstances," and it sentenced her to the maximum of sixty-five years. *Id.* at 229.

Discussion

[20] Dunn argues the trial court abused its discretion by giving an incorrect and misleading jury instruction about the State's burden of proof and refusing to give her proposed jury instruction, and even if she waived her argument, giving the improper jury instruction constituted fundamental error. She claims Final Instruction No. 7, by using the phrase "and/or," suggested the State did not have the burden of proof to demonstrate that she did not act in self-defense or in defense of her dwelling. She further claims the sentence is inappropriate in light of the nature of the offense and her character.

[21] With respect to Dunn's claim the trial court erred in refusing to give her proposed instruction on defense of dwelling, we note that the purpose of an instruction is "to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict." *Overstreet v. State*, 783 N.E.2d 1140, 1163 (Ind. 2003), *cert. denied*, 124 S. Ct. 1145 (2004). Instruction of the jury is generally within the discretion of the trial court and is reviewed only for an abuse of that discretion. *Id.* at 1163-1164. To constitute an abuse of discretion, the instruction given must be erroneous, and the instructions taken as a whole must misstate the law or otherwise mislead the jury. *Benefiel v. State*, 716 N.E.2d 906, 914 (Ind. 1999), *reh'g denied*, *cert. denied*, 121 S. Ct. 83 (2000). A trial court erroneously refuses to give a tendered instruction, or part of one, if: (1) the instruction correctly sets out the law; (2) evidence supports the giving of the instruction; and (3) the substance of the tendered instruction is not covered by the other instructions given. *See Overstreet*, 783 N.E.2d at 1164. Before a defendant is entitled to a reversal, he or she must affirmatively show that the erroneous instruction prejudiced his or her substantial rights. *Lee v. State*, 964 N.E.2d 859, 862 (Ind. Ct. App. 2012), *trans. denied*. An error is to be disregarded as harmless unless it affects the substantial rights of a party. *Id.*

[22] The record reveals that Final Instruction No. 7 stated it was an issue whether Dunn acted in defense of herself or her dwelling, included correct statements of the law for self-defense and defense of property, and noted the State's burden of "proving beyond a reasonable doubt that [Dunn] did not act in self-defense

and/or act in defense of her dwelling," and the court stated that it had incorporated Dunn's proposed jury instruction. Appellant's Appendix Volume III at 194. Because the substance of Dunn's proposed instruction was covered by other given instructions, we conclude the trial court did not abuse its discretion. *See Lewis v. State*, 898 N.E.2d 429, 434 (Ind. Ct. App. 2008) (holding the substance of the defendant's tendered instructions were covered by other instructions), *trans. denied*.

[23] Further, Ind. Trial Rule 51(C) provides that "[n]o party may claim as error the giving of an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection." The purpose of this trial rule is to protect the trial court's inadvertent error. *Hill v. Rhinehart*, 45 N.E.3d 427, 440 (Ind. Ct. App. 2015) (citing *Terre Haute Reg'l Hosp., Inc. v. El-Issa*, 470 N.E.2d 1371, 1376 (Ind. Ct. App. 1984), *reh'g denied, trans. denied*). Thus, the objection to the instruction must be sufficiently specific to make the trial court aware of the alleged error before it reads the instruction to the jury. *Id.* at 439-440. Objections to instructions must state why the instruction is misleading, confusing, incomplete, irrelevant, not supported by the evidence, or an incorrect statement of the law. *Id.* An objection which is not specific preserves no error on appeal. *Id.* (citing *Johnson v. Naugle*, 557 N.E.2d 1339, 1341 (Ind. Ct. App. 1990)). A party claiming error in the giving of an instruction is limited to his stated objection at trial. *Id.* (citing *Weller v. Mack Trucks, Inc.*, 570 N.E.2d 1341, 1343 (Ind. Ct. App. 1991)).

[24] We cannot say that Dunn objected at trial on the grounds that the jury instructions were an incorrect statement of the law on self-defense or that they were confusing and misleading, and Dunn has waived this issue. The doctrine of fundamental error is an exception to the general rule requiring a contemporaneous objection to a trial court ruling. *Pattison v. State*, 54 N.E.3d 361, 365 (Ind. 2016). "Error is fundamental if it is 'a substantial blatant violation of basic principles' and where, if not corrected, it would deny a defendant fundamental due process." *Id.* (citing *Wright v. State*, 730 N.E.2d 713, 716 (Ind. 2000)). This exception to the general rule requiring a contemporaneous objection is narrow, providing relief only in "egregious circumstances" that made a fair trial impossible. *Id.* (citing *Halliburton v. State*, 1 N.E.3d 670, 678 (Ind. 2013)). In considering a claim of fundamental error with respect to jury instructions, we look to the instructions as a whole to determine if they were adequate. *Barthalow v. State*, 119 N.E.3d 204, 211 (Ind. Ct. App. 2019) (citing *Munford v. State*, 923 N.E.2d 11, 14 (Ind. Ct. App. 2010)).

[25] The record reveals the trial court's instructions informed the jury of the elements of the crime, the State's burden to prove those elements beyond a reasonable doubt, that "[t]o overcome the presumption of innocence, the State must prove [Dunn] guilty of each element of the crime charged, beyond a reasonable doubt," and that Dunn was "not required to present any evidence to prove [her] innocence or to prove or explain anything." Appellant's Appendix Volume III at 196. Final Instruction No. 7 stated, "[i]t is an issue whether the Defendant acted in self-defense and/or in defense of her dwelling," separately

set forth correct statements of the law for self-defense and defense of property, and stated that the State's burden of proof with respect to the defenses was beyond a reasonable doubt. *Id.* at 194. In light of the instructions as a whole, we do not believe the jury was misled and cannot say fundamental error occurred. *See Ringham v. State*, 768 N.E.2d 893, 898 (Ind. 2002) (finding no fundamental error where trial court failed to instruct jury on the State's burden to disprove Ringham's mistake of fact defense but instructed jury on the elements of the crime, the State's burden of proving those elements beyond a reasonable doubt, Ringham's mistake of fact defense, and explained that Ringham did not have to explain or prove anything) (citing *Harlan v. State*, 479 N.E.2d 569, 571 (Ind. 1985) (where trial court refused to instruct jury the State had burden of disproving self-defense, but jury was instructed on State's burden to prove elements of the crime beyond a reasonable doubt and on the elements of self-defense, no separate instruction regarding burden of proof of self-defense was necessary)).

[26] Dunn further claims her maximum sentence of sixty-five years is inappropriate in light of the nature of the offense and her character. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The Indiana Supreme Court has noted that

"the maximum possible sentences are generally most appropriate for the worst offenders." *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002). Ind. Code § 35-50-2-3 provides that a person who commits murder shall be imprisoned for a fixed term of between forty-five and sixty-five years, with the advisory sentence being fifty-five years.

[27] Our review of the nature of the offense reveals that William and Dunn returned from their drive, and William stated that he would kill Dunn and her boyfriend by cutting them in half. At approximately 7:36 a.m., he returned to Dunn's home, knocked on her door, and entered Dunn's home in the dark with a flashlight without turning on lights. The trial court described Dunn and William's relationship as "contentious." Transcript Volume V at 225. The court had found on separate occasions that there was evidence of domestic or family violence sufficient to justify issuance of protective orders, William represented a credible threat to the safety of Dunn, and the orders were necessary to stop violence or the threat of violence. Moreover, the State petitioned on two separate occasions to relieve William of various firearms, both petitions alleged he was a dangerous person, and as to both petitions, the court found by clear and convincing evidence that he was a dangerous person.

[28] Our review of the character of the offender reveals that Dunn's minimal criminal history was unrelated to the crime for which she was convicted and includes a charge of disorderly conduct for unreasonable noise as a class B misdemeanor in 2019 that was dismissed after a pre-trial diversion program; and a charge of operating a vehicle with an alcohol concentration between .08

and .15 as a class C misdemeanor, which was pending when the presentence investigation report ("PSI") was prepared. With respect to substance use, the PSI indicated that Dunn reported she began using alcohol at age fifteen, had tried methamphetamine, cocaine, and acid, had used marijuana, Xanax, and alcohol at some point in the prior five years, and had never participated in any drug or alcohol treatment. She stated that she had been molested as a child, but the abuse was never reported. The PSI stated that Dunn reported that her past employer was located in French Lick where she was employed for seven years. It also stated that Dunn's overall risk assessment score using the Indiana Risk Assessment System placed her in the low risk to reoffend category.

[29] After due consideration, we conclude that Dunn has met her burden of establishing that the maximum sentence of sixty-five-years is inappropriate in light of the nature of the offense and her character. Pursuant to Appellate Rule 7(B), we exercise our authority to revise her sentence to the advisory sentence of fifty-five years with five years suspended to probation and remand with instructions to resentence her accordingly.

[30] For the foregoing reasons, we affirm Dunn's conviction and reverse and remand to revise her sentence.

[31] Affirmed in part, reversed in part, and remanded.

Crone, J., and Felix, J., concur.