

MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Kevin Wild
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

James T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jason Dwayne Phipps,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 22, 2023

Court of Appeals Case No.
22A-CR-1570

Appeal from the Marion Superior
Court

The Honorable Angela Dow
Davis, Judge

Trial Court Cause No.
49D27-2007-MR-21763

Memorandum Decision by Judge Kenworthy
Judges Crone and Felix concur.

Kenworthy, Judge.

Case Summary

[1] Following a bench trial, the trial court convicted Jason Phipps of voluntary manslaughter, a Level 2 felony.¹ Phipps now appeals, raising two issues for our review:

(1) Did the State present sufficient evidence to support Phipps' conviction?

(2) Did the trial court err by admitting Phipps' waiver of rights and interview?

[2] Concluding the State presented sufficient evidence to support Phipps' conviction and the trial court did not err in admission of the challenged evidence, we affirm.

Facts and Procedural History

[3] Phipps was married to Jill Phipps for twelve years. In the summer of 2020, Phipps and Jill lived together with C.P., K.M., and E. C.P. (sixteen years old at the time) is Phipps' daughter. C.P. had known Jill since C.P. was three or four years old and considered Jill her mother. Similarly, K.M. (fifteen years old at the time) is Jill's daughter and called Phipps "Dad" even though Phipps was her stepfather. E. (ten years old at the time) is the biological child of Phipps and Jill.

¹ Ind. Code § 35-42-1-3 (2018).

[4] Phipps and Jill slept in the basement of the home. Until June 21, 2020, Phipps had a pistol in the house, which he kept nearby while he slept. Phipps also kept a shotgun in the living room closet and ammunition in his room in the basement. At trial, K.M. explained Phipps often drank and threatened suicide, but she did not take those threats seriously “unless he had a gun and [was] over the top drunk.” *Tr. Vol. 2* at 145. K.M. and C.P. had seen instances where Jill pulled the pistol away from Phipps as he pointed the gun under his chin and threatened to commit suicide. On one such occasion, the pistol discharged and left a hole in the wall when Jill pulled the gun away.

[5] On June 21, 2020, Phipps and Jill were in a physical altercation at their home with all their children and K.M.’s friend present. Both Phipps and Jill were drinking alcohol that day. They were “tackling each other” in the living room. *Id.* at 113. Then Phipps “put [Jill] in a choke hold . . . against the fridge in the kitchen.” *Id.* at 114–15. At one point, Phipps pointed the pistol at himself and threatened to “shoot or kill anybody” if they “got in his way.” *Id.* at 115. K.M.’s friend called the police. When the police arrived, Phipps was chasing Jill around the yard with his hand in a “clutched fist.” *Id.* at 231. The police officer tried speaking with Jill and saw “redness on her lip and her neck.” *Id.* at 232. Jill was not forthcoming with the officer about what happened, but she took the pistol from where Phipps had left it on the counter and brought it to the officer. The officer seized the firearm and placed Phipps in immediate detention. Phipps was taken to a mental health facility, where he stayed one or two days.

[6] During the evening of July 7, 2020, Phipps, Jill, C.P., and K.M. watched movies together at home. E. was at a friend's house. C.P. and K.M. went to bed, and Phipps and Jill stayed up drinking alcohol. K.M. woke up before 4:00 a.m. feeling sick and lay awake in bed. C.P. woke up around 4:00 a.m. to the sound of Phipps and Jill arguing. Phipps sounded angry and was slurring his words. K.M. heard Jill "saying stop or no." *Id.* at 122. C.P. and K.M. would often hear Phipps and Jill argue but would usually stay in their rooms and listen until they heard something more than arguing. After listening to fifteen to thirty minutes of the argument, C.P. and K.M. heard a gunshot.

[7] C.P. and K.M. ran into the living room. C.P. saw Phipps close to Jill, holding his shotgun. Jill was on the couch, wounded and bleeding with her hand on her stomach. Phipps pumped the shotgun and said he would shoot himself. Jill had called 911, and K.M. listened to the 911 operator as she applied pressure to Jill's wound. C.P. also called 911. K.M. told C.P. to tend to Jill while she took the gun away from Phipps. K.M. talked Phipps down, took the shotgun, and hid it in her bedroom. K.M. took over for C.P., applying pressure to Jill's wound while C.P. prevented Phipps from retrieving the gun. Jill made gurgling noises "like a drowning" and K.M. tried to keep Jill awake. *Id.* at 127. Phipps demanded C.P. let him get his gun, but C.P. blocked his path to K.M.'s bedroom by pushing against him with her forearms. Phipps decided to leave, broke the latch on the front door, and left without asking about Jill or checking on her.

- [8] The police were dispatched to the house around 4:30 a.m. Jill was moaning in pain and unable to speak when the officers arrived. Medics then arrived and took Jill to the hospital. C.P. and K.M. went to a friend's house. Homicide Detective Stephen Smalley arrived at the Phipps' house around 5:00 a.m., and Phipps returned to the house and police took him into custody around 5:20 a.m.
- [9] Jill eventually died from the gunshot wound to her upper left interior abdomen. The forensic pathologist who performed Jill's autopsy found the wound indicated a close-range shot which caused rapid blood loss. The forensic pathologist also found Jill suffered injuries consistent with being hit by a hard object around the day of her death. The injuries included scrapes to the abdomen and left breast and bruises to the left upper arm, left forearm, left elbow, both thighs, left buttock, and right shoulder blade.
- [10] Before interviewing Phipps, Detective Smalley spoke with crime scene specialists and the Department of Child Services. Phipps waited several hours in the interrogation room before his interview began. When the detectives entered the room, Phipps smelled of alcohol and was nervous, friendly, and chatty. Detective Smalley believed Phipps "may have been drinking" but "not that he was necessarily intoxicated." *Tr. Vol. 3* at 6. The detectives read Phipps his *Miranda* rights,² and Phipps signed a waiver of rights. Phipps was "awake

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

and alert” throughout the interview and seemed “willing to talk.” *Id.* at 7.

Detective Smalley testified he would not have questioned Phipps if Phipps was too intoxicated to talk because “it wouldn’t have been productive, and it wouldn’t have benefitted the case.” *Id.* at 6–7.

[11] In the video-recorded interview, Phipps told the detectives he went for a walk after arguing with Jill. He complained Jill was a “typical woman” who “wants to get pissy so, [he] wanted to get away.” *Id.* at 8. Phipps admitted he owned the shotgun. He told the detectives he took the shotgun from the living room closet, brought the gun downstairs to load it, and turned off the safety while downstairs. *Tr. Ex. Vol. 2* at 1 (State’s Exhibit 2 at 4:16). He then took the gun back upstairs into the living room. During the interview, Phipps did not ask the detectives about Jill or his daughters.

[12] The State arrested Phipps and charged him with murder, a felony. Phipps moved to suppress the video-recorded interview and written waiver of rights. After hearing, the trial court denied this motion. Phipps waived his right to a jury trial. During the bench trial, Phipps renewed his objections to admission of the interview and waiver. The trial court admitted the exhibits over Phipps’ objections. The trial court found Phipps guilty of the lesser included offense of voluntary manslaughter as a Level 2 felony. The trial court sentenced Phipps to twenty-two years in the Department of Correction with two years suspended to probation.

[13] Phipps now appeals.

Sufficient Evidence Supports Phipps' Voluntary Manslaughter Conviction

- [14] Phipps claims the State presented insufficient evidence to prove he committed voluntary manslaughter. “Sufficiency-of-the-evidence arguments invoke a deferential standard of review, in which we neither reweigh the evidence nor judge witness credibility, instead reserving those matters to the province of the [fact-finder].” *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018). We consider “the evidence and reasonable inferences supporting the [judgment]” and affirm the conviction “if probative evidence supports each element of the crime beyond a reasonable doubt.” *Id.*
- [15] Voluntary manslaughter occurs when a person knowingly or intentionally kills another human being while acting under sudden heat. I.C. § 35-42-1-3(a). “The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder” to voluntary manslaughter. I.C. § 35-42-1-3(b). Once sudden heat is “‘injected’ into the heart of the case, ‘the burden is on the State to negate its existence.’” *Carmack v. State*, 200 N.E.3d 452, 459 (Ind. 2023) (quoting *Bane v. State*, 587 N.E.2d 97, 100 (Ind. 1992)). Sudden heat is an evidentiary predicate and requires the fact-finder to decide whether the record evidence supports it. *Id.* at 459. Sudden heat exists when a defendant is “provoked by anger, rage, resentment, or terror, to a degree sufficient to obscure the reason of an ordinary person, prevent deliberation and premeditation, and render the defendant incapable of cool reflection.” *Isom v.*

State, 31 N.E.3d 469, 486 (Ind. 2015) (quoting *Conner v. State*, 829 N.E.2d 21, 24 (Ind. 2005)).

[16] Phipps argues the evidence produced at trial is insufficient to prove beyond a reasonable doubt Phipps *knowingly* killed Jill by shooting her. Phipps claims the shooting was accidental and the evidence proves—at worst—reckless homicide. Phipps provides no legal authority to support his interpretation of the evidence. Rather, Phipps asks us to compare his prior suicide threats with the events on the day he killed Jill. Phipps emphasizes the June 21 incident in which he pointed a pistol under his chin and Jill wrestled the gun away from him, resulting in the gun firing a bullet into the wall. Phipps argues the events on the day of Jill’s death were the same, namely that his intent was to commit suicide, not to kill Jill. In essence, Phipps asks us to accept his self-serving version of events. This is an invitation to reweigh the evidence, which we will not do.

[17] Further, sufficient evidence supports the trial court’s finding that Phipps knowingly or intentionally—rather than accidentally—shot Jill while acting under sudden heat. First, Phipps was angry with Jill. C.P. and K.M. heard Phipps and Jill arguing, with Phipps sounding angry and slurring his words. At one point, Jill said “stop” or “no.” *Tr. Vol. 2* at 122. Phipps revealed to the detectives he was angry with Jill, calling her a “typical woman” who “wants to get pissy.” *Tr. Vol. 3* at 8. Second, autopsy results show that Jill suffered several scrapes and bruises consistent with being hit with a hard object around the day of her death. Third, Phipps admitted to the detectives he took the shotgun from the living room closet to the basement, where he loaded the

shotgun and switched off the safety. He then returned to the living room where he had been arguing with Jill. This evidence, and reasonable inferences therefrom, support the trial court's conclusion.

No Error in Admission of Phipps' Waiver and Interview

[18] Phipps asserts the trial court committed reversible error by denying his Motion to Suppress his interview and waiver of rights. But because his case proceeded to trial where he renewed his objection to the admission of the evidence, his appeal is essentially a request to review the trial court's ruling on the admissibility of these items. *See Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). "The trial court has broad discretion to rule on the admissibility of evidence." *Id.* We review for abuse of discretion "and reverse only when admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Id.* (quoting *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013)).

[19] The Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the Indiana Constitution give defendants the right against self-incrimination. These constitutions also give defendants the rights to remain silent and to be represented by an attorney. U.S. Const. amends. V, XIV; Ind. Const. art. 1, §§ 13, 14. But a defendant may waive these rights so long as the defendant waives them "voluntarily, knowingly, and intelligently." *Miranda*, 384 U.S. at 444. Although the defendant has the right not to be forced

to speak, “there is no right to bar a confession freely given after appropriate warnings and waivers.” *Ajabu v. State*, 693 N.E.2d 921, 930 (Ind. 1998).

[20] A defendant’s statement is voluntary if, in light of the totality of the circumstances, the statement “is the product of a rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant’s free will.” *Ringo v. State*, 736 N.E.2d 1209, 1212 (Ind. 2000). In assessing voluntariness under the totality of the circumstances, the court may consider police coercion; the length of interrogation; the location and continuity of the interrogation; and the defendant’s maturity, physical condition, and mental health. *Miller v. State*, 770 N.E.2d 763, 767 (Ind. 2002). Phipps claims his waiver of rights and interview “were involuntary, incompetent, and unreliable because Phipps was intoxicated to the point they were the product of an irrational mind, he was not fully conscious of what he was doing, and his intoxication produced a state of mania.” *Appellant’s Br.* at 20–21. But the Indiana Supreme Court has held “[n]either the influence of drugs nor severe mental problems is sufficient to require the exclusion of a statement. Intoxication or mental illness are merely factors that are included in the totality of circumstances that a trial court considers in ruling on whether to admit a statement.” *Brewer v. State*, 646 N.E.2d 1382, 1385 (Ind. 1995).

[21] Although Detective Smalley thought Phipps may have been drinking before the interview, he did not believe Phipps was too intoxicated to talk, which “wouldn’t have been productive” and “wouldn’t have benefitted the case.” *Tr.*

Vol. 3 at 6–7. Police took Phipps into custody at 5:20 a.m., which was around fifty minutes after the 911 call and any evidence of Phipps’ last alcoholic drink. Another four hours passed before the interview began; Phipps slept much of this time. Phipps was not only “awake and alert” but also “willing to talk” as the detectives began the interview. *Id.* at 7. Further, the trial court noted Phipps “stated that he had three (3) drinks. He was able to answer questions.” *Tr. Vol. 2* at 57. The trial court also observed Phipps’ nap before the interview did not “render him unconscious of what he was doing or produce any state of mania.” *Id.* Finally, the trial court found Phipps’ “slurred speech also had to do with the fact that he did not have any dentures in at the time.” *Id.* The trial court did not err in admitting Phipps’ waiver and interview.

[22] Even if we agreed the trial court erred by admitting this evidence, any error would be harmless at most. An error is harmless when it results in no prejudice to the substantial rights of a party. *Hall v. State*, 177 N.E.3d 1183, 1197 (Ind. 2021). “At its core, the harmless-error rule is a practical one, embodying ‘the principle that courts should exercise judgment in preference to the automatic reversal for error and ignore errors that do not affect the essential fairness of the trial.’” *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018) (quoting *United States v. Harbin*, 250 F.3d 532, 546 (7th Cir. 2001)). Phipps’ interview with the detectives consists largely of Phipps’ self-serving statements and claimed lack of memory. If the interview contributed to Phipps’ conviction at all, it helped the trial court find Phipps guilty of the lesser-included offense of voluntary

manslaughter rather than murder. Therefore, any error in admitting the interview did not prejudice Phipps and was harmless.

Conclusion

[23] Concluding there was sufficient evidence to support Phipps' voluntary manslaughter conviction and the trial court did not err in admission of evidence, we affirm.

[24] Affirmed.

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