MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Alisha R. Lampkin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 21, 2022

Court of Appeals Case No. 21A-CR-2429

Appeal from the Allen Superior Court

The Honorable David M. Zent, Judge

Trial Court Case No. 02D06-2003-MR-6

Najam, Senior Judge.

Statement of the Case

[1] The State charged Alisha R. Lampkin with murder, a felony,[1] after she fatally stabbed Tonisha Richardson during an altercation. Lampkin raised a claim of self-defense, but a jury determined Lampkin was guilty as charged. On appeal, she challenges the trial court's rulings on certain jury instructions and on the scope of questioning during jury selection. We affirm.

Facts and Procedural History

[2] Tonisha Richardson was in a romantic relationship with Garen Miller, which began after Miller and Alisha Lampkin had ended their romantic relationship. Miller and Lampkin had a child together. Lampkin had never met Richardson, but she was unhappy that Miller and Richardson were a couple.

[3] In January 2020, a company, Teleperformance, contacted Lampkin through a recruiter to invite her to apply for several open jobs. Lampkin declined to apply because Richardson was a Teleperformance employee. In a January 23 email to Teleperformance, Lampkin wrote, "Not interested, and as long as 'Tonisha Richardson' is employed there, it's best I stay far away from Teleperformance. I'll be nice and spare her life a bit longer :)." Tr. Ex. Vol., p. 2.

[4] On February 4, 2020, Lampkin sent several messages to Richardson via a social media app. She first stated:

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[1] Ind. Code 35-42-1-1 (2018).

> Aye bitch..imma say this ONE time%2C [sic] & one time ONLY. STOP POSTING MY FUCKING SON!!! that [sic] is NOT your child%2C [sic] nor is it your place to be posting people's children. You can continue to be his daddy's [girlfriend] but LEAVE MY SON OUT OF THE BS.

Id. at p. 10. Four minutes later, Lampkin sent Richardson the following message: "Now that you've been FAIRLY warned%2C [sic] if I see [my son] on any media of yours after today%2C [sic] that's yo [sic] head bitch.. [sic] that's a PROMISE[.]" *Id.*

[5] On or around February 14, 2020, Lampkin sent a message to Richardson's father, asking him to tell Richardson not to post pictures of her child on social media. She further stated, "[Richardson] can continue to be who my son's dad is playing wit [sic], for now, but my son is to be left out of the bs and OFF of her media. Please & thanks." *Id.* at 14. Richardson's father told Richardson and Miller about Lampkin's message. Subsequently, Richardson and Lampkin argued via several different messaging apps.

[6] On the morning of February 25, Miller returned to his apartment after getting off work earlier in the morning and visiting Lampkin to talk about their child's upcoming birthday. When he arrived, Richardson was parked outside, sleeping in her car. Miller and Richardson took his child to daycare before returning to his apartment, where they fell asleep.

[7] Later that morning, Miller and Richardson were awakened by someone knocking on a window. The knocking persisted for several minutes. Miller looked outside and saw Lampkin. Richardson was upset and wanted to go

confront her, but Miller stopped Richardson and tried to calm her down. Lampkin continued to knock on the window and the front door for twenty to thirty minutes before returning to her car to send text messages to Miller. She repeatedly demanded that he come outside, but he refused. Lampkin wrote "Come outside or I'm poppin [sic] her tires[.] All4[.]" Tr. Ex. Vol., p. 28.

[8] Meanwhile, Sabrina Hart, who was Richardson's friend and Lampkin's acquaintance, received a message from Lampkin. Lampkin had periodically messaged Hart after Richardson and Miller had begun dating. In the message, Lampkin asked Hart to give her Richardson's number. Hart stated that Lampkin said, "she wanted Tonisha to come outside . . . she told me to tell Tonisha to come outside, and if she wouldn't come outside he [sic] would slash her tires." Tr. Vol. 1, p. 239. After communicating with Richardson, Hart gave Lampkin Richardson's number, saying "I hope you're not about to fight over a guy." *Id.*

[9] Miller and Richardson stayed in the apartment, and Lampkin stayed in her car. Miller believed that Richardson was calm and would stay inside, so he went to take a shower. Soon after entering the bathroom, he heard the front door open. Miller quickly dressed and ran outside, assuming that Richardson, whom he knew to be unarmed, had gone to confront Lampkin.

[10] Miller saw Richardson and Lampkin struggling next to a car in front of his apartment, and he separated them. Lampkin fell to the ground, and Richardson picked up something Miller did not immediately identify and moved to the

other side of the car. Miller told Richardson to return to the apartment and told Lampkin to leave. As he did so, he noticed Richardson was bleeding and nonresponsive to his statements. Miller shouted at Lampkin, "Why did [you] do that?" Tr. Vol. 2, p. 52. Lampkin stood up and responded, "I don't give a fuck." *Id.* Richardson fell to the ground, and Lampkin entered her car and drove away.

[11] Miller, in shock, tried to pick Richardson up, but she was gasping and continued to be nonresponsive, although her eyes were open. He then noticed that Richardson was holding a five-inch-long knife blade, and he shouted that Richardson had been stabbed. Miller retrieved a pillow and blanket to cover Richardson. One of Miller's neighbors called 911.

[12] Several officers and emergency medical personnel arrived at the scene. One of the officers saw a knife handle on the sidewalk. Another officer spoke with Miller, who appeared distraught. The officer later explained that Miller had told him "his baby mama had done it. He stated her name was Alisha Lampkin . . . ." Tr. Vol. 1, p. 230.

[13] Richardson was taken to a hospital, where she was pronounced dead. An autopsy revealed she died by homicide caused by a two-inch deep stab wound that had entered the front of her neck at the base, severing several veins. The stab wound also punctured Richardson's chest wall and perforated a lung. In the medical examiner's opinion, Richardson died mere minutes after Lampkin stabbed her.

[14] Police officers found and questioned Lampkin several hours after the stabbing. During the interview, she initially claimed that she had arrived at Miller's apartment so that they could prepare his tax documents together, but Richardson answered the door. Lampkin further claimed she did not know Richardson and was unaware that Richardson was present until she opened the door. She further told the officer that Richardson hit her in the face several times, unprovoked, and they struggled until Miller separated them, at which point Richardson attempted to slash her tires with a knife before Lampkin drove away. Lampkin denied having brought a knife or having taken a knife from Richardson.

[15] Later in the interview, Lampkin changed her story upon being confronted with her text messages to Miller. She admitted that she knew who Richardson was, had previously argued with her via messages, and knew that she was at Miller's apartment on the day of the stabbing. Lampkin further stated she had brought the knife with her from her kitchen to Miller's home and had stabbed Richardson once after being punched. When the officer asked Lampkin if Richardson had been carrying a weapon, she responded, "No, not that I know of." State's Ex. 114, File VTS_01_2, at 13:16. Lampkin further stated that she had dropped the knife after the stabbing and that Richardson picked it up when Miller separated them.

[16] A crime scene investigator, Officer Christine Armstead, was dispatched to the apartment. She found a knife blade on the ground near the back of a car and the knife's handle on the sidewalk near the front of the same car. The handle

had a plastic zip tie wrapped around it. Officer Armstead also saw what appeared to be blood spots on the hood of the car and on the pavement between the car and the sidewalk. Later, she searched Lampkin's apartment pursuant to a search warrant. Officer Armstead found several knives with handles that looked similar to the knife handle found at the scene of the stabbing. In addition, one of the knives had a zip tie wrapped around the handle.

[17] The knife blade and handle, as well as Lampkin's and Richardson's clothes, were subjected to DNA testing. A forensic biologist generated DNA profiles from samples taken from the blade and the handle and compared them to DNA profiles generated from samples taken from Lampkin and Richardson. The comparison strongly supported a conclusion that Richardson contributed DNA to the material found on the blade, and Lampkin contributed DNA to the material found on the handle.

[18] On March 2, 2020, the State filed an information charging Lampkin with murder. On March 6, 2020, Lampkin, who remained incarcerated until trial, sent a message to a friend via a tablet provided by jail officials. She told her friend, "Pissed that I have to miss my child's bday all because a stupid bitch decided to commit suicide by running up on me." Tr. Ex. Vol. p. 161.

[19] A witness, Samantha Ward, testified that in late May or early June 2021, she overheard Lampkin arguing about Richardson's death with another inmate. Lampkin said, "if she wouldn't of [sic] come outside she wouldn't of [sic] been stabbed." Tr. Vol. 2, p. 172. She further said, "I stabbed her right in the neck,

didn't I, bitch?" *Id.* at 173. Finally, Lampkin stated, "I would do it again if I had to. That was my baby daddy, that was my man." *Id.*

[20] The court presided over a jury trial on August 16-19, 2021, at the close of which the jury determined Lampkin was guilty as charged. The court subsequently imposed a sentence, and this appeal followed.

Discussion and Decision

Issue One: Jury Instructions

[21] Lampkin argues the trial court committed several errors in the course of selecting jury instructions. Generally, we review a trial court's decisions on jury instructions for an abuse of discretion. *Miller v. State*, 188 N.E.3d 871, 874 (Ind. 2022). Lampkin argues she is raising questions of law, to which a de novo standard of review would apply. But, as we discuss below, Lampkin's jury instruction claims ultimately turn on questions of evidence, not law, and an abuse of discretion standard applies here. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Eberle v. State*, 942 N.E.2d 848, 861 (Ind. Ct. App. 2011), *trans. denied*. We will reverse a conviction for an instructional error only if the appellant demonstrates that the error prejudiced substantial rights. *Treadway v. State*, 924 N.E.2d 621, 636 (Ind. 2010).

[22] The first of Lampkin's two categories of instructional error addresses self-defense. The trial court instructed the jury on self-defense, but Lampkin claims the court's instructions were incorrect as a matter of law and should have

included language she had proposed. When evaluating jury instructions, this Court looks to whether the tendered instructions correctly state the law, whether there is evidence in the record to support giving the instruction, and whether the substance of the proffered instruction is covered by other instructions. *Id.* Lampkin addresses only whether the court's instructions correctly stated the law, but we resolve this claim on the evidence presented at trial.

[23] The trial court read two instructions to the jury on self-defense, as follows:

> COURT'S INSTRUCTION NO. 9
>
> It is an issue whether the Defendant acted in self-defense.
>
> 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 a duty to retreat, only if she reasonably believes that deadly force is necessary to prevent serious bodily injury to herself.
>
> However, a person may not use force if:
>
> 1. She is committing a crime, but only if there is an immediate causal connection between that crime and the confrontation,
>
> 2. She is escaping after the commission of a crime, but only if there is an immediate causal connection between that crime and the confrontation,
>
> 3. She provokes a fight with another person with intent to cause bodily injury to that person, or
>
> 4. She has willingly entered into a fight with another person or started the fight, unless she withdraws from the fight and communicates to the other person her intent to withdraw and the

other person nevertheless continues or threatens to continue the fight.

The State has the burden of proving beyond a reasonable doubt that the Defendant did not act in self-defense.

INSTRUCTION NUMBER 10

When the Defendant claims self-defense, the following facts must exist:

1. That she was in a place where he [sic] had a right to be;

2. That she acted without fault; and

3. That she had a reasonable fear or apprehension of death or great bodily harm.

Once self defense [sic] has been asserted, the State bears the burden of showing the absence of one of these elements beyond reasonable doubt.

Appellant's App. Vol. 2, pp. 144-45; Tr. Vol. 3, pp. 56, 97.

[24] Instruction number nine mostly follows the language of Indiana Code section 35-41-3-2 (2019), which governs self-defense. One difference, cited by Lampkin, is that the statute provides that a person may use deadly force if they reasonably believe the force is necessary to prevent serious bodily injury to the person "or the commission of a forcible felony." *Id.* Lampkin argues that the evidence presented would support a claim that she used deadly force against Richardson to prevent the commission of a forcible felony against her, specifically felony battery resulting in moderate bodily injury, and instruction number nine should have informed the jury about the forcible felony provision.

[25] A "forcible felony" is defined as "a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being." Ind. Code § 35-31.5-2-138 (2012). The offense of battery is generally a Class B misdemeanor, but it is classified as a Level 6 felony if, among other circumstances, the battery results in moderate bodily injury. Ind. Code § 35-42-2-1 (2020). And moderate bodily injury "means any impairment of physical condition that includes substantial pain." Ind. Code § 35-31.5-2-204.5 (2014).

[26] As noted, it is insufficient to claim only that an instruction must track a statute in all respects. The person claiming error must also demonstrate that a missing statutory element is supported by the evidence presented. For example, Indiana Code section 35-41-3-2 provides that a person may use deadly force to protect third persons from harm in certain circumstances, but the parties in this case agreed that there were no third persons at risk from Richardson and Lampkin's fight, and that provision was left out of instruction number nine. Similarly, there is no evidence that Richardson was committing, or at risk of committing, battery resulting in moderate bodily injury on Lampkin when Lampkin stabbed her. Lampkin told an officer that Richardson struck her twice in the face, but there is no evidence that Lampkin experienced an impairment of a physical condition, such as substantial pain, from being hit. Further, Richardson was unarmed, and Lampkin had threatened her prior to the confrontation. After stabbing Richardson, Lampkin fled the scene, lied to police, and later bragged about stabbing Richardson, all of which is inconsistent with a claim of self-

defense. In the absence of any evidence to support Lampkin's claim that she was at risk of a forcible felony, the trial court did not abuse its discretion in refusing to instruct the jury on that aspect of the self-defense statute.

[27] In addition, Lampkin cites *Gammons v. State*, 148 N.E.3d 301 (Ind. 2020), in support of her claim that the trial court should have instructed the jury on the forcible felony aspect of self-defense. *Gammons* is distinguishable because it addressed a different portion of Indiana Code section 35-41-3-2, specifically the circumstances under which one may claim self-defense while committing a crime.

[28] Lampkin also challenges the Court's instruction number ten, claiming that it was erroneous as a matter of law because its language does not track Indiana Code section 35-41-3-2. She further claims that instruction was confusing to the jury. We disagree. The three elements set forth in that instruction track with the long-established elements of self-defense as stated by the Indiana Supreme Court. *See Lampkins v. State*, 778 N.E.2d 1248, 1253 (Ind. 2002) (describing elements of self-defense). Lampkin has failed to demonstrate the trial court abused its discretion in giving the self-defense instructions.

[29] For her second category of instructional error, Lampkin argues the trial court should have instructed the jury on reckless homicide as a lesser included offense of murder. During a criminal trial, either party can request a jury instruction on a lesser included offense. *Larkin v. State*, 173 N.E.3d 662, 668 (Ind. 2021).

When a party requests such an instruction, the trial court must apply the following analysis:

> First, the trial court must compare the statute defining the crime charged with the statute defining the alleged lesser-included offense to determine if the alleged lesser-included offense is inherently included in the crime charged. Second, if the trial court determines that an alleged lesser-included offense is not inherently included in the crime charged under step one, then it must determine if the alleged lesser-included offense is factually included in the crime charged. If the alleged lesser-included offense is neither inherently nor factually included in the crime charged, the trial court should not give an instruction on the alleged lesser-included offense. Third, if a trial court has determined an alleged lesser-included offense is either inherently or factually included in the crime charged, 'it must look at the evidence presented in the case by both parties' to determine if there is a serious evidentiary dispute about the element or elements distinguishing the greater from the lesser offense and if, in view of this dispute, a jury could conclude that the lesser offense was committed but not the greater. It is reversible error for a trial court not to give a requested instruction on inherently or factually included lesser offenses if there is such an evidentiary dispute.

Schneider v. State, 155 N.E.3d 1268, 1283 (Ind. Ct. App. 2020), *trans. denied* (internal citations omitted).

[30] The existence of a lesser included offense is a question of law, which we review de novo, unless the trial court "makes an express finding on the existence of an evidentiary dispute between the charged and lesser included offenses or does not make such a finding when the specific issue was not raised." *Larkin*, 173 N.E.3d at 667. Lampkin argued to the trial court that there was an evidentiary

dispute on the question of her state of mind to commit reckless homicide, as opposed to murder. But, here, the trial court did not make an express finding concerning evidence of a dispute, so our review on this question is de novo.

[31] The parties' arguments on the question of a lesser included offense focus on whether there is a serious evidentiary dispute about the elements distinguishing murder from reckless homicide. A person commits murder when they "knowingly or intentionally" kill another person. Ind. Code § 35-42-1-1. By contrast, a person who "recklessly kills another human being" commits reckless homicide. Ind. Code § 35-42-1-5 (2014). These three mental states are defined as follows:

> (a) A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so.
>
> (b) A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so.
>
> (c) A person engages in conduct 'recklessly' if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.

Ind. Code §35-41-2-2 (1977).

[32] The evidence presented at Lampkin's trial fails to demonstrate a serious dispute about whether she acted recklessly, rather than knowingly or intentionally, when she stabbed Richardson. The stabbing was preceded by a month of hostile communications between Lampkin and Richardson, including threats of violence by Lampkin. On the day of the stabbing, Lampkin arrived at Miller's

apartment uninvited, with a knife. She knocked on Miller's door and window for over twenty minutes and repeatedly demanded that Miller or Richardson come outside, or she would slash Richardson's tires. Lampkin was agitated and spoiling for a fight. Richardson eventually went outside, unarmed, in response to Lampkin's provocations. Richardson struck Lampkin with her fist, and Lampkin responded by stabbing Richardson in her neck, a vital area, with brutal force. The cut punctured Richardson's chest wall, severed veins, and collapsed a lung, resulting in her swift death.

[33] Further, after the stabbing Lampkin immediately fled the scene, and she repeatedly lied to an officer about her actions, changing her story several times. Finally, Lampkin bragged to another jail inmate about having stabbed Richardson in the neck, stating that, "I would do it again if I had to," which supports an inference that Lampkin acted knowingly or intentionally when she stabbed Richardson. Tr. Vol. 2, p. 173.

[34] In support of her argument, Lampkin points to her statement to the officer that she was unsure of how she stabbed Richardson. This vague remark is inadequate to establish an evidentiary dispute as to recklessness. In the end, based on the evidence presented, the jury could not have concluded that Lampkin committed the lesser offense of reckless homicide rather than murder. Lampkin stabbed Richardson when Richardson was unarmed. *See Dearman v. State*, 743 N.E.2d 757, 760 (Ind. 2001) (trial court did not err in rejecting lesser included offense instruction for reckless homicide; evidence demonstrated Dearman struck victim on head with a heavy concrete block during a scuffle

while the victim was unarmed). The trial court did not err in rejecting Lampkin's lesser included offense instruction. Lampkin has failed to demonstrate error in the trial court's jury instruction rulings.

Issue Two: Jury Selection

[35] Lampkin contends the trial court erred in preventing her from questioning members of the jury pool about their understanding of lesser included offenses. She argues that she should have been allowed to pursue that line of questioning because it was her job to "educat[e] the potential jurors about a second set of elements" they could be asked to consider at trial. Appellant's Br. p. 32.

[36] The purpose of jury selection, also known as voir dire, is to determine whether a prospective juror can render a fair and impartial verdict in accordance with the law and the evidence. *Games v. State*, 535 N.E.2d 530, 538 (Ind. 1989). The trial court has broad discretionary powers to regulate the form and substance of jury selection, and it will be reversed only upon a showing of manifest abuse of such discretion and a denial to the defendant of a fair trial. *Id.*

[37] Proper examination of potential jurors may include questions designed to disclose the jurors' attitudes about the type of offense charged. *Gregory v. State*, 885 N.E.2d 697, 707 (Ind. Ct. App. 2008), *trans. denied*. The parties may also attempt to uncover the jurors' preconceived ideas about a defense the defendant intends to use. *Id.* Questions by litigants that seek to educate potential jurors or seek to shape a favorable jury by deliberate exposure to the substantive issues in the case are improper. *Von Almen v. State*, 496 N.E.2d 55, 59 (Ind. 1986).

[38] In Lampkin's case, she was permitted to question potential jurors about their thoughts on the offense of murder and on the subject of self-defense, both of which would indisputably be at issue. By contrast, it was unknown at that point in the trial whether the jury would be instructed on lesser included offenses of murder, and our precedent forbids any effort to educate potential jurors. Further, even if it were permissible to question the jury pool about lesser included offenses, the trial court later decided not to instruct the jury on that subject, meaning that Lampkin was not harmed by the trial court's order that Lampkin not discuss potential lesser included offenses with potential jurors.

[39] We conclude that the trial court did not misapply the law or otherwise abuse its discretion, and that Lampkin was not deprived of a fair trial.

[40] Affirmed.

Altice, J., and Tavitas, J., concur.