MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Brandon E. Murphy
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Esther Jane Stephen,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 12, 2021

Court of Appeals Case No. 21A-CR-873

Appeal from the Jay Circuit Court

The Honorable Brian D. Hutchinson, Judge

Trial Court Cause No. 38C01-2001-MR-1

Tavitas, Judge.

Case Summary

[1] On appeal from her conviction for murder, a felony, Esther Jane Stephen challenges the sufficiency of the evidence to convict her on an accomplice liability theory; alleges the trial court committed fundamental error in instructing the jury; and urges us to revise her fifty-five-year advisory sentence pursuant to Indiana Appellate Rule 7(B). We find that each of Stephen's claims is unavailing and, therefore, we affirm.

Issues

[2] Stephen raises three issues on appeal, which we restate as follows:

I. Whether the State presented sufficient evidence to sustain Stephen's conviction of murder under an accomplice liability theory.

II. Whether the trial court fundamentally erred in instructing the jury regarding the State's burden of proof.

III. Whether Stephen's sentence is inappropriate in light of the nature of the offense and her character.

Facts

[3] The facts most favorable to the judgment follow: Stephen[1] and Shea Michael Briar were in a romantic relationship that resulted in the birth of a daughter, A.,

[1] Stephen is often identified as "E.J." in the trial transcript.

in January 2019. After their relationship ended in October 2019, Stephen denied Briar access to A., and Briar filed petitions to establish paternity, child support, name change, and parenting time. Stephen, "upset" by Briar's efforts, "didn't want to share her child with [Briar]." Stephen's Tr. Vol. II p. 94. Stephen plotted with her friends, including her best friend and coworker, Shelby Hiestand, regarding ways to eliminate Briar from her life.

[4] The following events occurred in 2020. Around the week of January 5, Stephen and Hiestand scouted potential sites for killing Briar, including a remote bridge. On January 8, Stephen enlisted Kristi Sibray to babysit A. during the coming weekend. On Saturday, January 11, Hiestand left her vehicle in Stephen's possession. Stephen drove the vehicle to Hiestand's home and retrieved Hiestand's .22 caliber rifle.

[5] At around 10:30 p.m., Stephen and Hiestand drove A. to the babysitter, Sibray. Stephen and Hiestand then met Hannah Knapke at Stephen's daycare business location. Hiestand shot her rifle in the daycare's parking lot to gauge how loud a gunshot would be. At approximately 11:30 p.m., Stephen telephoned Sibray to say that she was delayed in returning for A.

[6] Stephen telephoned Briar and invited him to spend time with the three women; Briar agreed. The women discussed the possibility of killing Briar and rode together in Knapke's van to Briar's home. En route to Briar's home, Hiestand took over driving from Knapke, and Stephen moved from the front passenger seat to the back seat. When they reached Briar's home, he joined Stephen in

the back seat of the vehicle. The foursome drove to a remote area, where Hiestand parked on the pre-scouted bridge on County Road 125 West. As Stephen and Briar exited the vehicle and walked away together toward the opposite end of the bridge, Hiestand shot Briar in the back with the rifle.

[7] Although Briar survived the shooting, none of the women rendered aid or called the police. Instead, the women drove away, returning briefly so Stephen could retrieve and dispose of Briar's cell phone, which she threw over the bridge. The three women left Briar bleeding on the bridge. Stephen stopped to lock the daycare facility and collected A. from Sibray around 1:00 a.m. When Sibray asked where Stephen was earlier, Stephen replied that Sibray "might hear about it in a couple days." Tr. Vol. II p. 179.

[8] At approximately 1:58 a.m. on January 12, 2020, a law enforcement dispatch was issued regarding a nonresponsive subject, later identified as Briar, on a remote bridge. Officer Aaron Stronczeck of the Geneva Police Department responded to the scene; his dashboard camera captured Briar's condition at the scene. Briar died en route to the hospital. An autopsy later revealed that a .22 caliber bullet entered Briar's back and pierced Briar's heart, which killed him.

[9] Detective Mitch Sutton of the Jay County Sheriff's Department notified Briar's family and close acquaintances, including Stephen, of his death. Stephen reported her last contact with Briar was on January 6, 2020, which was A.'s birthday. Stephen denied knowing of anyone who wished Briar harm. Investigators recovered Briar's cell phone from the scene. The phone records

contradicted Stephen's statements to the police by revealing Briar and Stephen spoke on the phone at 12:02 a.m. on January 12th.

[10] Detectives Sutton and Ben Schwartz formally interviewed Stephen on January 14, 2020. Stephen initially denied having contact with the decedent on January 11th or 12th. As the videotaped interview progressed, however, Stephen admitted that she had often thought her life would be better without Briar; she often joked and vented with friends about killing Briar; and she was present when Hiestand shot Briar on January 12th.

[11] On January 15, 2020, the State charged Stephen with murder, a felony. Stephen was tried before a jury from March 15 through March 18, 2021. The trial court gave preliminary jury instructions. During the State's case-in-chief, various witnesses testified to the foregoing facts. Additionally, the trial court admitted Stephen's videotaped police interview, as well as Officer Stronczeck's in-car camera footage. Also, Sibray testified as follows: (1) Stephen was angry about Briar's petitions for child custody and visitation; (2) Hiestand and Stephen discussed ways to get rid of Briar in Sibray's presence and researched "[d]ifferent ways to kill somebody[,]" *id*. at 96; (3) Stephen told Sibray that, before the killing, Stephen and Hiestand drugged Briar to see the effects of medication on Briar; (4) Sibray heard Hiestand say that "[s]he could easily kill [Briar,]" *id*. at 97; and (5) when Sibray learned that Briar was killed on January 12th, she contacted the police.

[12] Stephen testified in her own defense. Her testimony included the following: (1) Stephen and Hiestand once crushed ten ibuprofen pills into Briar's iced tea in "like a chemistry experiment[,]" Stephen's Tr. Vol. II p. 242; (2) Hiestand "got jealous . . . a lot" and was possessive of Stephen, Stephen's Tr. Vol. III p. 17; (3) Hiestand often mused about harming Briar, which Stephen never took seriously; (4) Stephen never plotted with Hiestand to kill Briar, but "vented" about Briar's interference and "joke[d]" about killing him, *id*. at 27, 28; (5) Stephen was in shock and confused when she lied to the police; and (6) Stephen "did not know that [the murder] was going to happen when [they] went [to the bridge]." *Id*. at 39.

[13] At the close of the evidence, the trial court gave final jury instructions. The jury deliberated and found Stephen guilty as charged. In imposing sentence on May 4, 2021, the trial court identified the following aggravating factors: (1) Stephen's lack of remorse; (2) Stephen's planning of the crime; (3) that Stephen lured Briar to his death; and (4) the existence of multiple victims.[2] The trial court also found, as mitigating circumstances, that: (1) Stephen lacked any prior criminal history; and (2) the murder resulted from circumstances unlikely to recur. The trial court imposed a fifty-five-year sentence. Stephen now appeals.

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[2] The trial court identified Briar's family, Stephen's family, and A. as victims of Stephen's crime. *See* Tr. Vol. III p. 119. Additionally, the trial court found that Hiestand and Knapke, whom Stephen "recruited . . . [we]re also victims of [Stephen's] actions." *Id*.

Analysis

I. Sufficiency of the Evidence

[14] Stephen challenges the sufficiency of the evidence to sustain her conviction for murder under an accomplice liability theory. Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Powell,* 151 N.E.3d at 262 (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018)).

[15] "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Brantley,* 91 N.E.3d at 570. We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007), *trans. denied*).

[16] Stephen argues that the State failed to prove that she "anticipated that [ ] Hiestand would shoot and kill [ ] Briar"; and, thus, the State presented no evidence to sustain her murder conviction under an accomplice liability theory.

See Stephen's Br. p. 12. Indiana Code Section 35-41-2-4, regarding accomplice liability, provides:

> A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person:
>
> (1) has not been prosecuted for the offense;
>
> (2) has not been convicted of the offense; or
>
> (3) has been acquitted of the offense.

[17] As our Supreme Court has previously opined:

> Generally there is no distinction between the criminal liability of an accomplice and a principal, although evidence that the defendant participated in every element of the underlying offense is not necessary to convict a defendant as an accomplice. *Vitek v. State*, 750 N.E.2d 346, 352 (Ind. 2001). "There is no bright line rule in determining accomplice liability; the particular facts and circumstances of each case determine whether a person was an accomplice." *Id*. at 353. We consider four factors to determine whether a defendant acted as an accomplice: (1) presence at the scene of the crime; (2) companionship with another at scene of crime; (3) failure to oppose commission of crime; and (4) course of conduct before, during, and after occurrence of crime. That a defendant was present during the commission of a crime and failed to oppose the crime is not sufficient to convict her. *Id*. But, "presence at and acquiescence to a crime, along with other facts and circumstances" may be considered. *Id*. at 352-53.

Castillo v. State, 974 N.E.2d 458, 466 (Ind. 2012) (citations omitted).

[18] We turn to a consideration of the four *Vitek* factors. The first factor—Stephen's presence at the scene of the crime—is not reasonably in dispute. Stephen lured Briar into Knapke's vehicle; rode with Briar, Hiestand, and Knapke to the pre-scouted remote bridge; exited the vehicle; and accompanied Briar to the spot in which Hiestand shot him on the bridge.

[19] Evidence of the second factor, companionship with another person at the scene of the crime, is likewise irrefutable. The record also reveals that Stephen and Hiestand were best friends and coworkers, who kept close company on the date of the murder.[3] Stephen had access to Hiestand's home, vehicle, and rifle. Hiestand frequently babysat A. Stephen could speak freely with Hiestand, even regarding the commission of an extreme criminal offense.

[20] We proceed to the third factor: Stephen's failure to oppose the commission of the crime. The State presented evidence that Stephen's conduct *advanced*, rather than opposed, the commission of the crime. It was Stephen, not Hiestand, who retrieved the rifle from Hiestand's home and made it available for Hiestand's test-shot outside Stephen's workplace. Stephen's workplace supplied the setting in which she and her accomplices discussed killing Briar and where Hiestand

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[3] On the date of the murder, the events unfolded as follows: (1) Hiestand left her vehicle in Stephen's possession when she attended a family function; (2) Stephen drove the vehicle to Hiestand's home, from which Stephen collected Hiestand's rifle; (3) Stephen and Hiestand attended a sporting event with A. and, together, they delivered A. to the babysitter; (4) Stephen, Hiestand, and their mutual acquaintance, Knapke, met at Stephen's workplace; (5) Hiestand fired her apparent test-shot of the firearm outside Stephen's workplace, where the threesome discussed killing Briar; and (6) Stephen and Hiestand, joined by Knapke, rode together to and from the bridge on which Hiestand shot Briar.

conducted her rifle test-shot. Stephen secured and extended her babysitting coverage to facilitate the offense. Further, Stephen lured Briar to join the three women on the fateful drive; she exited the vehicle with Briar, which placed him in position to be shot by Hiestand. Lastly, despite her access to at least one cell phone, Stephen did not seek medical assistance for Briar, who initially survived the shooting.

[21] As to the final factor—Stephen's course of conduct before, during, and after the murder—the State presented evidence that, before the crime, Stephen: (1) partook in an ongoing and evolving scheme to map out the killing; (2) discussed killing Briar in front of Sibray; (3) joined Hiestand in drugging Briar before the killing; (4) mused about killing Briar with a hammer or shooting him; and (5) scouted the bridge location beforehand. Stephen also solicited Hiestand and Knapke as her accomplices and secured the murder weapon. During the crime, Stephen lured Briar into the vehicle, engaged him in the back seat until the vehicle reached the bridge, and accompanied Briar from the vehicle to the area of the bridge where Hiestand shot him. After the shooting, Stephen did not seek medical help for Briar, disposed of his cell phone, and repeatedly lied to the police. The *Vitek* factors amply support a finding that Stephen was an accomplice to the murder.

[22] Based on our review of the foregoing facts and circumstances and reasonable inferences drawn therefrom, we cannot say that "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Brantley*, 91 N.E.3d at 570. The State presented substantial evidence of

probative value that would lead a reasonable jury to conclude, beyond a reasonable doubt, that Stephen knowingly or intentionally aided, induced, or caused Hiestand to kill Briar and, thereby, committed murder as an accomplice. Accordingly, we conclude that sufficient evidence supports Stephen's conviction for murder.

II. Jury Instruction

[23] Stephen argues that the trial court committed fundamental error in instructing the jury regarding the State's burden of proof. This Court typically reviews the alleged improper instructions of a trial court for an abuse of discretion. *Hubbard v. State*, 742 N.E.2d 919, 920-21 (Ind. 2001). Here, however, Stephen failed to object below. A defendant who fails to object to a jury instruction at trial waives any challenge to that instruction on appeal, unless giving the instruction was fundamental error. *Wright v. State*, 730 N.E.2d 713, 716 (Ind. 2000).

[24] "The 'fundamental error' exception is extremely narrow. Fundamental error is defined as an error so prejudicial to the right of a defendant a fair trial is rendered impossible. *White v. State*, 846 N.E.2d 1026, 1033 (Ind. Ct. App. 2006), *trans. denied.* This exception applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. *Isom v. State*, 31 N.E.3d 469, 490 (Ind. 2015) (quoting *Halliburton v. State*, 1 N.E.3d 670, 678 (Ind. 2013)). "'The error claimed must either make a fair trial impossible or constitute clearly blatant violations of basic and elementary principles of due process." *Brown v. State*, 929 N.E.2d 204, 207

(Ind. 2010). We will find fundamental error in the giving of jury instructions "only if the instructions read together as a whole fail to alleviate any harm that might have occurred from one erroneous instruction." *Emerson v. State*, 695 N.E.2d 912, 916 (Ind. 1998).

[25] Stephen argues that Final Instruction No. 5 "g[ave] the jury discretion to convict a person that the State did not prove guilty beyond a reasonable doubt . . . ," which was fundamental error. Stephen's Br. p. 12. Stephen maintains:

> Instruction No. 5 failed to command the jurors to honor [Stephen's] rights and as such prejudiced her substantial rights. The instructions when taken as a whole were confusing, misstated the law and misled the jury because it could have found that it could convict [ ] Stephen on evidence which did satisfy them of each and every element of the crime charged beyond a reasonable doubt.

Stephen's Br. p. 17.

[26] Final Instruction No. 5 provided as follows:

> In order to commit Murder by aiding inducing or causing another to commit Murder, a person must have knowledge that she is aiding, inducing or causing the commission of the Murder. To be guilty, she does not have to personally participate in the crime nor does she have to be present when the crime is committed. Merely being present at the scene of the crime is not sufficient to prove that she aided, induced or caused the crime. Failure to oppose the commission of the crime is also insufficient to prove aiding, inducing or causing another to commit the crime. But presence at the scene of the crime, failure to oppose the crime's commission, and the defendant's course of conduct

> before, during, and after the occurrence of the crime are factors which may be considered in determining whether there was aiding, inducing or causing another to commit the crime.
>
> To convict the defendant of Ct. l- Murder, a felony, the State must prove each of the following elements:
>
> 1. On or about January 12, 2020:
> 2. The defendant
> 3. Knowingly or intentionally
> 4. Aided, induced, or caused another person
> 5. To knowingly or intentionally
> 6. Kill Shea Briar, another human being.
>
> *If the State failed to prove each of these elements beyond a reasonable doubt, you should find the defendant not guilty.* If the State proved each of these elements beyond a reasonable doubt, you should find the Defendant guilty of Ct. l- Murder, a felony.

Id. at 163-64 (emphasis added).

[27] "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." *Batchelor v. State*, 119 N.E.3d 550, 562 (Ind. 2019). Here, the record reveals that the trial court, in both its preliminary and final jury instructions, sought to inform the jury of the State's burden of proof, which was proof of guilt beyond a reasonable doubt.

[28] As an initial matter, we find that Final Instruction No. 5 adequately informed the jury that the State was required to prove each element of the charged offense beyond a reasonable doubt. Admittedly, the instruction could have been more

artfully worded and, with a minor refinement, could have been more explicit by stating, instead: *If the State failed to prove **any** of these elements beyond a reasonable doubt, you should find the defendant not guilty*.

[29] Nevertheless, because is well-settled that jury instructions are to be considered as a whole, not in isolation, *O'Connell v. State*, 970 N.E.2d 168, 172 (Ind. Ct. App. 2012), we examine whether the instructions, "taken as a whole, [ ] misstate the law or otherwise mislead the jury." *Id*. at 175. Here, the trial court cautioned the jury to consider all of the jury instructions as a whole alongside the court's other instructions to the jury. Stephen's App. Vol. II pp. 160, 163 (Preliminary Instruction No. 3, Final Instruction No. 1).

[30] In its instructions regarding the presumption of innocence and overcoming the same, the trial court admonished: (1) "The defendant has entered a plea of not guilty and the burden rests upon the State of Indiana to prove to each of you, *beyond a reasonable doubt*, every essential element of the crime charged[,]" *id*. at 160, 164 (Preliminary Instruction No. 6, Final Instruction No. 7), emphasis added; and (2) "[t]o overcome the presumption of innocence, the State must prove the Defendant guilty of each element of the crime charged, *beyond a reasonable doubt*." *Id*. (Final Instruction No. 7, Preliminary Instruction 8), emphasis added. Further, in the context of explaining the concept of reasonable doubt, the trial court instructed the jury as follows: "If you find that there is a reasonable doubt that the defendant is guilty of the crime charged, you must give the defendant the benefit of the doubt and find the defendant not guilty of the crime under consideration." *Id*. at 160 (Preliminary Instruction 8).

[31] Based on our review of the trial court's jury instructions, read together and taken as a whole, the jury instructions adequately informed the jury of the State's burden of proof. We are not persuaded that the jury was misled or that Stephen suffered prejudice to her substantial rights. Stephen has not demonstrated that the trial court committed fundamental error.

III. Inappropriateness of Sentence

[32] Lastly, Stephen maintains that her sentence is inappropriate in light of the nature of her offense and her character. The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender." Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[33] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895

N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id*. "Whether a sentence should be deemed inappropriate 'turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.'" *Id*. (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[34] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for murder, a felony, is between forty-five and sixty-five years, with an advisory sentence of fifty-five years. I.C. § 35-50-2-3(a). Here, Stephen faced a maximum sentence of sixty-five years, however, the trial court imposed the advisory fifty-five-year sentence.

[35] Our analysis of the "nature of the offense" requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. *See Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021) (when reviewing the nature of the offense we look to the details and circumstances of the offense and the defendant's participation therein).

[36] Here, Stephen discussed killing Briar with Hiestand, scouted the murder scene, secured a babysitter, secured Hiestand's rifle, and planned carrying out the plot with Hiestand and Knapke. Soon thereafter, Stephen lured Briar to join them at the pre-scouted bridge. Stephen exited the vehicle with Briar and accompanied him on the bridge until Hiestand shot Briar in the back. Stephen, Hiestand, and Knapke drove away, returning only so that Stephen could dispose of Briar's cell phone. Briar subsequently died from the gunshot. We cannot say that the trial court's imposition of an advisory sentence was inappropriate based on the nature of Stephen's offense.

[37] Our analysis of the character of the offender involves a "broad consideration of a defendant's qualities," *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007). To be sure, thirty-one-year-old Stephen lacks prior contacts with the justice system; however, she organized Briar's killing with the depravity of a hardened criminal, undeterred by second thoughts. Once Stephen decided that she would rather kill Briar than coparent, she plotted with accomplices to eliminate him from her life as well as her child's. Stephen lured Briar to the bridge, where Hiestand fatally shot him with the firearm that Stephen procured. As Briar bled to death, Stephen left the scene and only returned briefly to dispose of Briar's cell phone as casually as she had disposed of him. Stephen repeatedly lied to the police about her involvement in the murder. Stephen has shown no remorse and has taken no responsibility for Briar's death.

[38] Based on our review of the nature of Stephen's premeditated offense and her remorseless character, she has not carried the heavy burden to convince us that her fifty-five-year advisory sentence is inappropriate.

Conclusion

[39] Sufficient evidence exists to support Stephen's conviction for murder, a felony. The trial court did not commit fundamental error in instructing the jury regarding the State's burden of proof. Stephen's advisory sentence is not inappropriate in light of the nature of the offense or her character. We affirm.

[40] Affirmed.

[41] Mathias, J., and Weissmann, J., concur.