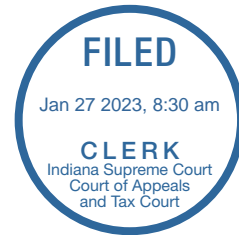


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Hugh Scott, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 27, 2023

Court of Appeals Case No.
22A-CR-1025

Appeal from the Lake Superior
Court

The Hon. Samuel L. Cappas,
Judge

Trial Court Cause No.
45G04-2107-MR-35

Bradford, Judge.

Case Summary

- [1] On or about March 22, 2018, Hugh Scott, Jr., struck his girlfriend, Davita Ward, in the mouth, knocking out a temporary filling and causing micro fractures to the tooth. Facebook messages between Ward and Scott over the next few months indicate that Ward, despite Scott's urging not to, ended their romantic relationship and that Scott was upset about it. By mid-June of 2018, Scott was accusing Ward of ignoring him and seeing other persons.
- [2] On June 16, 2018, Ward attended an anniversary party at a friend's house but became upset and left after receiving a text message around 2:00 p.m. Late in the evening of June 16 and early in the morning of June 17, authorities received numerous reports of a vehicle on fire with a body inside. Investigations revealed the body to be Ward's and the vehicle to be hers; she had been killed by a gunshot wound to the head and her vehicle had been set on fire with accelerant.
- [3] The State charged Scott with murder, Level 3 felony aggravated battery, Level 5 felony battery resulting in serious bodily injury, and Level 6 felony arson. Scott moved to sever the battery charges from the murder and arson charges, which motion the trial court denied. After a trifurcated trial, a jury found Scott guilty as charged and to be a habitual offender. The trial court merged Scott's battery convictions and sentenced him to an aggregate sentence of 103½ years of incarceration. Scott contends that the trial court abused its discretion in denying his motion to sever, the trial court abused its discretion in admitting certain pieces of evidence during the guilt and habitual-offender phases of his

trial, the State failed to produce sufficient evidence to sustain his murder and arson convictions, and the trial court erred in merging his battery convictions. Because we disagree with Scott's first three contentions but agree with his fourth, we affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[4] On March 22, 2018, Ward had a root canal performed on one of her front teeth by Dr. Chanbo Sim and was scheduled to return the following day for additional work. When Ward returned, she reported that she had been hit in the mouth by her abusive boyfriend. The temporary filling that had been placed by Dr. Sim the day before had fallen out, and there were micro fractures around the tooth that had not previously been present.

[5] On March 23, 2018, Scott asked Ward over Facebook how her appointment had gone. Ward responded that she still had to have more work done on her teeth. Scott apologized, asked her to come over to his house, and said that he loved her. Ward responded by saying, "I know we all make mistakes but no man has ever punched me liked that before and my neck is still sore I just cant [sic] except [sic] that[.]" Ex. Vol. I p. 14. Scott again asked for Ward's forgiveness and to let him "build dat trust[.]" Ex. Vol I p. 15. Ward told him that she no longer wanted to be in a relationship with him because she wanted to feel safe in a relationship and "not abused[.]" Ex. Vol. I p. 16. Scott said that it "will neva happen again[.]" but Ward responded that she did not trust him. Ex. Vol. I p. 16. Scott ended the conversation by repeating his claim that

he had “made a mistake[,]” that Ward would be safe with him, and a request for her to contact him again. Ex. Vol. I p. 17.

[6] In mid-May of 2018, Scott sent Ward messages complaining that she had not been to see him and requesting that she come over for sexual activity. In messages between June 15 and June 18, 2018, Scott complained that Ward had been ignoring him. Scott accused Ward of lying and texting other persons and said that if she did not respond to him in five minutes he would “solidify the break up[.]” Ex. Vol I p. 30. On June 17, 2018, Scott sent a message to Ward asking if she had the time to see him.

[7] Meanwhile, on June 16, 2018, Ward had attended an anniversary party at her friend Janice Williams’s house. Ward first arrived around 12:15 p.m., left briefly to change her clothes, and returned around 12:45 p.m. When Ward first arrived, she was “jolly” and acting as she normally did, however, around 2:00 p.m. her behavior changed after she received a text. Tr. Vol. IV p. 37. At that point Ward “just wasn’t herself. She was shaking. She was nervous. It wasn’t her.” Tr. Vol. IV p. 38. Less than an hour later, Williams noticed that Ward had left without saying goodbye.

[8] Late in the evening on June 16, 2018, and into early morning the next day, authorities received a total of five 911 calls reporting a vehicle on fire at 24th and Noble Streets, and then that a body was inside the vehicle. Gary Police Detective Jeffrey Minchuk investigated at approximately 2:00 p.m. Ward had been reported missing earlier that day, and because her address was not far from where the burned car was located, Detective Minchuk retrieved Ward’s

BMV records. Detective Minchuk learned that the VIN on the burned car matched the VIN on the vehicle registered to Ward and the name of Ward's dentist, from whom he collected Ward's dental records.

[9] Dr. John Feczko conducted an autopsy on Ward's body on June 17, 2018. Ward's body had been severely burnt, some of her skin was missing, her bones were beginning to fracture because of the heat, and it was experiencing a condition called pugilistic posturing. Pugilistic posturing occurs when a body is burned and pulls into a fetal position. There was a "little bit of soot in the lower throat area, the larynx," which indicated that she had been breathing when the fire started. Tr. Vol. IV p. 82. Because of the condition of Ward's body, it had to be identified using her dental x-rays. Dr. Feczko also identified an entry wound caused by a bullet on the top of her head and an exit wound on the right side of her skull. Dr. Feczko determined that the gunshot wound to Ward's head was the cause of death. Mike Vogely, who was the assistant chief investigator for the Indiana State Fire Marshal's Office, began an investigation into the cause of the vehicle fire on June 17, 2018. Investigator Vogely concluded that the fire had been deliberately set and that gasoline had been used as an accelerant.

[10] On June 18, 2018, Scott went to the emergency room at Community Hospital in Munster, presenting with burns to his lower legs and right deltoid. The burn on Scott's right leg wrapped around his leg, while only the shin of his left was burned. Because of the severity of Scott's burns, he was transferred to Loyola Hospital in Chicago. Scott reported to both hospitals that he had sustained the

burns on June 14, 2018, when a box of fireworks had fallen over with sparks hitting his legs and igniting because of possible lighter fluid residue on his legs. As it happened, Scott had sent a photograph of himself to Ward in shorts on June 15, 2018, and there were no signs of any burns visible. Moreover, in a police interview conducted on July 29, 2021, Scott alleged that the burns he had suffered were from a fireworks accident that had occurred around Memorial Day.

[11] Special Agent Nicole Robertson of the Federal Bureau of Investigation conducted an analysis on Ward's and Scott's telephones for the date that Ward went missing. Special Agent Robertson's analysis of Ward's telephone established that it had been using a tower near the Williams's residence on June 16, 2018, until about 2:45 p.m., when it had started to use a tower and sector of a cellular telephone tower that could provide coverage to Scott's house and to where her car was found. Special Agent Robertson also analyzed the location of Scott's telephone from 2:30 p.m. until 11:00 p.m. on June 16, 2018, and concluded that from about 2:30 p.m. until 11:00 p.m. on June 16, 2018, Ward's and Scott's telephones had been in the same vicinity.

[12] On July 20, 2021, the State charged Scott with murder, Level 3 felony aggravated battery, Level 5 felony battery resulting in serious bodily injury, and Level 6 felony arson. On August 10, 2021, Scott moved to sever the battery counts from the murder and arson counts, alleging that the offenses were not of the same or similar character or based upon the same conduct or a series of

connected acts and that trying the offenses together was unduly prejudicial.

The trial court denied Scott's request to sever the counts.

[13] Prior to the start of trial, the trial court held a hearing regarding the admission of the Facebook messages. Scott objected to the admission of any of the messages. The trial court concluded that statements Ward had made about being afraid of Scott were inadmissible, but that statements Ward had made about her alleged injury or being afraid of Scott in the context of talking about her injury were admissible. The trial court also excluded comments that Ward had made calling Scott mad or crazy.

[14] At trial, the State presented testimony from Detective Minchuk, who testified that he had spoken with a co-worker of Ward's, who had given him information that Ward had gone to a dentist in Merrillville. Scott objected to the testimony concerning what the co-worker had said as hearsay. The trial court overruled the objection, permitting the testimony to explain the next steps of Detective Minchuk's investigation.

[15] The jury found Scott guilty as charged in the first phase of the trifurcated trial. In the second phase, the jury rejected the firearm enhancement. In the third phase, the State presented the certified booking information from the current offense, along with certified documents for Scott's prior convictions for escape, battery causing serious bodily injury, and assisting a criminal. Gary Police Sergeant Juan Velazquez conducted a comparison of the fingerprints in the booking information for the current offense, the escape, and the battery and concluded that all three sets of fingerprints were from the same person.

Sergeant Velazquez also testified that he works for the Lake County Crime Scene Unit and had been the fingerprint examiner for seventeen years. The State sought the admission of the report that Sergeant Velasquez had prepared, to which Scott objected, contending that the report contained hearsay. The trial court admitted the report over Scott's objection because the report was mostly an itemization of what Sergeant Velasquez had considered. The jury found Scott to be a habitual offender. At sentencing, the trial court merged the aggravated battery charge with the murder conviction and imposed an aggregate sentence of 103½ years of incarceration.

Discussion and Decision

I. Joinder

[16] Review of a trial court's decision to sever charges depends on the type of entitlement to severance the defendant claims. *Pierce v. State*, 29 N.E.3d 1258, 1264 (Ind. 2015). If he argues that he was entitled to severance as a matter of right, this Court's review is *de novo*. *Id.* If the claim for severance, however, is not as a matter of right, review is merely for an abuse of discretion. *Id.* (citing *Craig v. State*, 730 N.E.2d 1262, 1265 (Ind. 2000)). We "will reverse denial of a discretionary severance motion only for clear error." *Robinson v. State*, 56 N.E.3d 652, 656 (Ind. Ct. App. 2016) (citing *Ben-Yisrayl v. State*, 690 N.E.2d 1141, 1145 (Ind. 1997)), *trans. denied*.

[17] Pursuant to Indiana Code section 35-34-1-9, joinder of offenses can be on two bases. Subsection (a)(1) allows joinder when the offenses "are of the same or

similar character, even if not part of a single scheme or plan.” Ind. Code § 35-34-1-9(a)(1). Subsection (a)(2) provides that multiple offenses can be joined when they “are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.” Ind. Code § 35-34-1-9(a)(2). Defendants are entitled to severance as a matter of right if charges are joined pursuant to subsection (a)(1); severance is discretionary if charges are pursuant to subsection (a)(2). *Ennik v. State*, 40 N.E.3d 868, 875–76 (Ind. Ct. App. 2015) (citing *Pierce*, 29 N.E.3d at 1264), *trans. denied*. If charges are joined under subsection (a)(2), then the trial court’s discretionary decision to sever is guided by three considerations: “the number of offenses charged,” “the complexity of the evidence to be offered,” and “whether the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.” *Id.*; Ind. Code § 35-34-1-11(a). Generally, subsection (a)(1) of the joinder statute “refers to the nature of the charged offenses,” while subsection (a)(2) “refers to the operative facts underlying those charges.” *Pierce*, 29 N.E.3d at 1265.

[18] Scott was not entitled to mandatory severance because the offenses were not joined solely on the basis that they were of the same character. Instead, the record demonstrates that the crimes were part of the same scheme or plan. “Offenses can also be linked by a defendant’s efforts to take advantage of his special relationship with the victims” or by an “interconnected police investigation into the crimes.” *Id.* at 1266. The trial court correctly recognized that Scott’s offenses were linked in both manners. The trial court found first

that the battery and subsequent murder of Ward were part of a “string of events.” Severance Tr. Vol. II p. 25. The trial court also found that the investigations were overlapping. The State alleged that in both instances it was Ward and Scott’s relationship that provided the motivation for Scott to harm her, in that Ward attempted to end her relationship with Scott after suffering the attack that broke her tooth, and her apparent resolve to do so led Scott to murder her.

[19] Moreover, the investigations into both offenses were overlapping. Law enforcement became aware of the aggravated battery after receiving Ward’s dental records. There is no indication that Ward ever reported the battery to police before she died. Instead, Detective Minchuk retrieved Ward’s dental records because they had been necessary to identify Ward’s body, which records included Ward’s admission to the dentist that her abusive boyfriend had struck her mouth and broken the temporary filling that had been placed the day before. Because the charges were not solely joined on the basis that they were of the same or similar nature, the trial court was not required to sever the offenses. *See Vasquez v. State*, 174 N.E.3d 623, 630 (Ind. Ct. App. 2021) (concluding that there was no error in the trial court’s decision to deny the defendant’s motion to sever where the defendant had exploited his position as a trusted family member to sexually abuse his victims and it resulted in overlapping investigations) *trans. denied*.

[20] We also conclude that the trial court did not abuse its discretion in denying Scott’s motion to sever. First, the sheer number of offenses does not require

severance, with there being only four in total. (App. Vol. II 18). *See Philson v. State*, 899 N.E.2d 14, 17–18 (Ind. Ct. App. 2008) (upholding denial of discretionary severance motion when there were five charges), *trans. denied*. Second, the evidence here was not overly complicated. Evidence of the battery was limited to testimony from Dr. Sim, his dental assistant, Ward’s medical records, and the first set of Facebook messages. Moreover, while the remaining evidence contained testimony from multiple witnesses and forensic testimony, the testimony was straightforward and there was no real dispute about the evidence, other than the identity of the murderer. We have little trouble concluding that the jury was able to “distinguish the evidence and apply the law intelligently as to each offense.” Ind. Code § 35-34-1-11(a)(3). The trial court did not abuse its discretion in denying Scott’s motion to sever the battery charges from the murder and arson charges.

II. Admission of Evidence

[21] The admissibility of evidence is within the sound discretion of the trial court. *Curley v. State*, 777 N.E.2d 58, 60 (Ind. Ct. App. 2002), *trans denied*. We will reverse a trial court’s decision on the admissibility of evidence only upon a showing of an abuse of that discretion. *Id.* An abuse of discretion may occur if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.* We may affirm the trial court’s ruling if it is sustainable on any legal basis in the record, even though it was not the reason enunciated by the trial court. *Moore v. State*, 839 N.E.2d 178, 182 (Ind. Ct. App. 2005), *trans. denied*. We do not

reweigh the evidence and consider only the evidence most favorable to the trial court's ruling. *Hirsey v. State*, 852 N.E.2d 1008, 1012 (Ind. Ct. App. 2006), *trans. denied*.

- [22] Scott contends that the trial court abused its discretion in admitting several pieces of inadmissible hearsay.

Hearsay is evidence of a statement made out of court that is offered in a judicial proceeding to prove the truth of a fact asserted in the statement. Ind. Evidence Rule 801(c); *Timmons v. State* (1992), Ind., 584 N.E.2d 1108; *McConnell v. State* (1984), Ind., 470 N.E.2d 701. Hearsay does not include a statement made out of court by a witness who testifies in court and under the several circumstances outlined in Evid. R. 801(d) and *Modesitt v. State* (1991), Ind., 578 N.E.2d 649. [...]

Hearsay is not admissible unless it fits within some exception to the hearsay rule. Evid. R. 802 and 803; *Miller v. State* (1991), Ind., 575 N.E.2d 272. A trial error in the admission of hearsay evidence warrants remedial action on appeal, where such error caused prejudice to the substantial rights of the defendant. *Harvey v. State* (1971), 256 Ind. 473, 269 N.E.2d 759.

Craig v. State, 630 N.E.2d 207, 209 (Ind. 1994).

- [23] Scott contends that the trial court abused its discretion in admitting several Facebook messages from Ward to Scott. The statements identified by Scott are as follows and are similar to many more that were also admitted: "I still have to have more work done to my mouth; my teeth are really f[*****] up[,]" Ex. Vol. I p. 13; "I know we all make mistakes but no man has ever punched me like that before and my neck is still sore I just cant except [*sic*] that[,]" Ex. Vol. I p. 14; "I just can't trust it I am actually afraid of you sorry moe moe[,]" Ex.

Vol. I p. 16; and “This is just for my safety because I’m trying to protect myself I don’t take abuse lightly.” Ex. Vol. I p. 16.

[24] It is undisputed that any part of the conversation authored by Scott is admissible as a statement by a party-opponent, *see* Evid. R. 801(d)(2), and we conclude that Ward’s statements could have been properly admitted on at least two bases: to explain Ward’s then-existing state of mind and to provide context for Scott’s statements. The trial court admitted several messages (including the ones above) authored by Ward pursuant to Evidence Rule 803(3) as “statement[s] of [Ward’s] then-existing state of mind (such as motive, design, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health)[.]” The situations in which such testimony is admissible are to show the intent of the victim to act in a particular way, when the defendant puts the victim’s state of mind at issue, and sometimes to explain physical injuries suffered by the victim. *Hatcher v. State*, 735 N.E.2d 1155, 1161 (Ind. 2000).

[25] Here, Ward’s statements that her neck was still sore and that Scott had caused that injury by punching her were admissible to explain the injuries that she had suffered. *See D.R.C. v. State*, 908 N.E.2d 215, 226 (Ind. 2009) (hearsay exception for then-existing state of mind includes the admission of remarks to demonstrate the victim’s explanation of prior injuries inflicted by the defendant). Moreover, the statements, which consisted of half of a two-person conversation, were admissible to provide context for Scott’s statements. *See, e.g., Sylvester v. State*, 698 N.E.2d 1126, 1130 (Ind. 1998) (“[T]he victim’s half of

a conversation with defendant is relevant as it places defendant's statements in context."); *Mack v. State*, 23 N.E.3d 742, 753–54 (Ind. Ct. App. 2014) (concluding that a confidential informant's statements in a recording of a controlled buy were not hearsay because they were not being admitted for the truth of the matter asserted by to provide context for the defendant's statements), *trans. denied*. The trial court did not abuse its discretion in admitting Ward's statements in her Facebook conversation with Scott.

- [26] Scott also challenges the admission of Detective Minchuk's testimony regarding how he learned the identity of Ward's dentist from a friend of hers and Sergeant Velazquez's fingerprint report. Even if we assume, *arguendo*, that the admission of the challenged evidence was an abuse of discretion, it can only be considered harmless.

“[E]rrors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party.” [*McClain v. State*, 675 N.E.2d 329, 331 (Ind. 1996)]; *see also* Ind. Trial Rule 61. “In determining whether error in the introduction of evidence affected the defendant's substantial rights, this Court must assess the probable impact of the evidence upon the jury.” *McClain*, 675 N.E.2d at 331. “Admission of hearsay evidence is not grounds for reversal where it is merely cumulative of other evidence admitted.” *Id.* at 331–32.

VanPatten v. State, 986 N.E.2d 255, 267 (Ind. 2013).

- [27] Here, because the challenged evidence from Detective Minchuk and Sergeant Velazquez was merely cumulative of other admitted evidence, its admission, even if erroneous, can only be considered harmless. By the time Detective Minchuk testified about his conversation with Ward's friend, during which he

had learned the identity of her dentist, Ward's dental records had already been admitted and Dr. Sim's dental assistant had already testified that Ward was a patient of his. Because other evidence establishing Dr. Sim as Ward's dentist had already been admitted, any error that might have occurred in admitting Detective Minchuk's testimony to that effect was harmless. As for Sergeant Velazquez's fingerprint report, by the time the State sought to introduce his report, he had already testified that the fingerprints of the offender from this case, the escape case, and the battery case were from the same person and that he had been the fingerprint examiner for the Lake County Crime Scene Unit for seventeen years. Because the report contained only the items that Sergeant Velazquez had examined and the conclusions of his investigation, it was, at best, cumulative of already-admitted evidence and its admission, even if erroneous, was harmless.

III. Sufficiency of the Evidence

[28] Scott contends that the State failed to produce sufficient evidence to sustain his convictions for murder and arson. "When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We will neither assess witness credibility nor "weigh the evidence to determine whether it is sufficient to support a conviction." *Id.* When presented with conflicting evidence, the court "must consider it most favorably to the trial court's ruling." *Id.* The appellate court will affirm the conviction "unless no reasonable fact-finder could find the

elements of the crime proven beyond a reasonable doubt.” *Id.* “It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence.” *Id.* “The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Id.*

[29] In order for a jury to convict Scott of murder, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally killed Ward. Ind. Code § 35-42-1-1. In order to convict Scott of Level 6 felony arson, the State was required to prove that he knowingly or intentionally damaged the property of another person without the other person’s consent so that the resulting pecuniary loss was at least \$250.00 but less than \$5000.00. Ind. Code § 35-43-1-1(d). “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” Ind. Code § 35-41-2-2(a). A person engages in conduct “knowingly” if the person is aware of a high probability that he is doing so. Ind. Code § 35-41-2-2(b). Scott argues only that the State failed to sufficiently prove that he was the person who killed Ward and burned her vehicle.

[30] We conclude that the State produced ample evidence to prove that Scott was the person who had killed Ward and set fire to her vehicle. First, the State’s evidence established that Scott had had a motive for killing Ward. Just before Ward went missing, Scott sent numerous Facebook messages accusing her of ignoring him, lying to him, and seeing other persons. Scott also made a video call to Ward, telling her that he was outside her home. Moreover, the State’s evidence established that Scott had previously assaulted Ward and that the two

had had a hostile relationship. *See Hicks v. State*, 690 N.E.2d 215, 222 (Ind. 1997) (hostility is a paradigmatic motive for committing a crime). The evidence supports a reasonable inference that Scott was angry with Ward for ending their romantic relationship and jealous that she might be seeing other persons, leading him to escalate his level of violence.

[31] Moreover, because the State's evidence also places Scott in close proximity to Ward in the hours before her death, it tends to establish that, in addition to motive, Scott had had the opportunity to kill Ward and burn her vehicle. The location data from Ward's and Scott's telephones established that they had been in the same vicinity from 2:30 p.m. until 11:00 p.m. on June 16, 2018. Data from Ward's telephone also indicates that there had been two calls between Scott and Ward at 2:34 p.m. and 2:37 p.m.

[32] Additionally, evidence of the severe burns Scott had suffered to his lower legs around the time of Ward's murder and the arson of her vehicle—and the fact that his accounts about how he had been burned had been inconsistent—was probative evidence of Scott's guilt. The nature of Scott's injuries was obviously consistent with having used an accelerant to light something on fire (as was the case with Ward's vehicle) and being burned when some of the accelerant splashed onto him. Scott's stories about how he suffered the burns were also inconsistent, not only with each other but also with other evidence in the record. On June 18, 2018, Scott reported that he had suffered the burns as a result of a fireworks accident on June 14. On June 15, 2018, however, Scott had sent a picture of himself to Ward in which his legs were visible, and no

burns had been evident. Moreover, in a police interview conducted on July 29, 2021, Scott alleged that the burns he had suffered were from a fireworks accident that had occurred around Memorial Day, approximately two weeks before the original claimed date of June 14. The jury was free to infer from these inconsistencies that Scott had lied about how he had been burned and that the actual circumstances of his injuries were incriminating. *See Grimes v. State*, 450 N.E.2d 512, 521 (Ind. 1983) (“Any testimony tending to show an accused’s attempt to conceal implicating evidence to manufacture exculpatory evidence may be considered by the trier of fact as relevant since revealing a consciousness of guilt.”).

[33] Finally, the State presented evidence that Ward was still breathing when the fire was set, supporting a reasonable inference that whoever had shot her in the head (which almost certainly would have led to a fairly quick death) had also been the person who had set fire to her vehicle. In summary, the jury was free to infer from the above that Scott, having had a motive and the opportunity to kill Ward, had set fire to Ward’s vehicle shortly after having done just that and accidentally burned himself in the process. In the end, Scott’s argument in this regard is nothing more than an invitation to reweigh the evidence, which we will not do. *See, e.g., Drane*, 867 N.E.2d at 146.

IV. Merger

[34] Scott contends, and the State concedes, that the trial court erred in merging Scott’s aggravated battery conviction (for punching Ward in the mouth) with his battery resulting in serious bodily injury (for the same act). The Indiana

Supreme Court has made clear that “[a] double jeopardy violation occurs when a court enters judgment twice for the same offense ‘and cannot be remedied by the “practical effect” of concurrent sentences or by merger after conviction has been entered.’” *Hines v. State*, 30 N.E.3d 1216,1221 (Ind. 2015) (quoting *Jones v. State*, 807 N.E.2d 58, 67 (Ind. Ct. App. 2004), *trans. denied*). The proper remedy for a double jeopardy violation is to vacate the lower-level felony. *See Wadle v. State*, 151 N.E.3d 227, 255–56 (Ind. 2020) (finding the appropriate remedy for a double jeopardy violation was to vacate the lower-level felony). We remand with instructions to vacate Scott’s conviction for battery resulting in serious bodily injury.

[35] We affirm the judgment of the trial court in part, reverse in part, and remand with instructions.

Pyle, J., and Weissmann, J., concur.