MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jordan M. Knudson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 20, 2023

Court of Appeals Case No. 22A-CR-1758

Appeal from the Ripley Circuit Court

The Honorable Ryan J. King, Judge

Trial Court Cause No. 69C01-2103-MR-1

Memorandum Decision by Judge Tavitas
Judges Vaidik and Foley concur.

Tavitas, Judge.

Case Summary

[1] Jordan Knudson appeals his conviction for murder and his maximum sentence of sixty-five years. Knudson argues that: 1) the trial court abused its discretion by denying his request for a mistrial; 2) the trial court abused its discretion by improperly finding two sentencing aggravators; and 3) Knudson's maximum sentence is inappropriate. We find Knudson's arguments without merit and, accordingly, affirm.

Issues

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

I. Whether the trial court committed reversable error by denying Knudson's request for a mistrial.

II. Whether the trial court committed reversable error by considering two of its sentencing aggravators.

III. Whether Knudson's sentence is inappropriate.

Facts

[3] Knudson and Christina Jones were partners in a "volatile" sexual, and sometimes romantic, relationship dating back to the summer of 2019. Tr. Vol. VIII p. 72. Knudson was concerned that Jones was becoming "more distant from him" and "felt like [Jones] was seeing other people [and] having sex with other [] men." Tr. Vol. V p. 207.

[4] In the late summer or fall of 2020, Knudson and Jones were arguing. At some point, Jones drove Knudson's ATV, "obvious[ly] . . . wanting to get away from" Knudson, and Knudson shot a firearm at the back of the ATV from a close range. *Id*. at 120.

[5] On December 11, 2020, Knudson wrote a post on Facebook that stated, "Oh just thinking about how much I hate you [Jones,] hope you die you fake mf! . . . Don't ever come near me mf ever again!" Ex. Vol. XI p. 64 (errors in original). Several days later, Jones's father, Alois Asche, received a text from Jones's mother, which claimed that Knudson was keeping Jones at the Knudson property against her will. Asche brought Jones home where she was "scared" of Knudson and "wanted to make sure the windows [were] all bolted[.]" Tr. Vol. III pp. 193-194. Jones later presented to the hospital with concussion-like symptoms and complained of a history of physical abuse from Knudson, including "multiple episodes of being knocked out." Tr. Vol. VI p. 28. Jones also sought a protection order, of which Knudson refused to accept service on two occasions.

[6] Between January 7, 2021, and January 10, 2021, Knudson texted Jones, "[Y]our day is coming[,] it's cumming baby[,] it's f*****g cumming fast"; "[H]ope you get burned alive"; "Die Bitch"; and "DOA[.]" Ex. Vol. XI pp. 77-78, 83, 85 (errors in original). On January 9, 2021, Knudson drove Jones to the Holton Food Mart where Jones hid from Knudson in a stranger's car. The next day, Knudson called Jones twenty times and sent her twenty-one texts.

[7] On January 10, 2021, Jones was staying at the residence of Rodney McEvoy, a mutual friend of Jones and Knudson. On or about midnight that night, McEvoy discovered Jones's body in his bathtub. McEvoy and his parents contacted the police, who arrived shortly thereafter.

[8] An autopsy determined that Jones had been shot three times with a shotgun—twice in the right side of her mouth and once in her left temple. The laboratory technicians recovered "wads"[1] in Jones's mouth, throat, and skull and over 200 pellets disbursed throughout her head, neck, and torso. Tr. Vol. IV p. 84. Laboratory analysis revealed that the shotgun shells were likely manufactured by Remington, and the technicians could not rule out that the pellets were #4 shot. The coroner ruled Jones's death a homicide.

[9] Law enforcement identified Knudson as a person of interest. Police learned that, approximately one hour before Jones's body was discovered, Knudson had traveled in the direction of McEvoy's house. Knudson initially told police that he was heading to a different friend's house, which was in the same direction as McEvoy's house, and Knudson insisted that he took the same route home. When confronted with video footage, which showed Knudson traveling one route in the direction of McEvoy's house but not returning by the same

[1] Wadding, also referred to as the shot colander, is the plastic component in a shotgun cartridge that contains the pellets.

route, however, Knudson "claimed he had remember[ed]" taking a different route home. Tr. Vol. VI p. 3.

[10] The investigation also revealed that Knudson had access to two shotguns, either of which could have been the murder weapon: his own sawed-off .410 shotgun and one purchased by his father, Norman, a Mossberg 500 .410 shotgun, which was stored in the den of the house Knudson shared with his parents. The day after Jones's murder, Norman reported the Mossberg shotgun and a box of #4 Remington shot missing. Several days later, police received an anonymous letter that alleged Jones stole the Mossberg shotgun and sold it to the author, who then sold it to McEvoy. Police identified Knudson's fingerprint on the letter, but Knudson accused police of fabricating the letter.

[11] As for Knudson's sawed-off shotgun, Knudson told police that he sold it to a man named Jeff Smith. Police took Knudson to Smith's residence, where Smith denied purchasing the shotgun. Some time later, Knudson returned to Smith's home without police and asked Smith to tell police that Smith did purchase the shotgun and that Smith "thr[ew] it in the river." Tr. Vol. VIII p. 16.

[12] On March 23, 2021, the State charged Knudson with murder, a felony. The trial court held a six-day jury trial in April 2022. Several law enforcement officials testified regarding the murder investigation. A firearms expert testified that, in order for shotgun wads to penetrate the target, the shotgun would have to be fired from "very close range." Tr. Vol. V p. 143. In addition, McEvoy

testified regarding the night of the murder. During this testimony, Knudson requested a mistrial, which the trial court denied. More facts regarding the mistrial request will be provided below.

[13] Knudson testified in his own defense and denied killing Jones**.** Knudson admitted to firing a weapon at Jones from a distance of ten feet while she was driving the ATV in 2020 and admitted to fabricating the letter that alleged Jones stole the Mossberg shotgun. Knudson further admitted to violating the protection order because, he claimed, Jones told him she was "not going to go to court" over it. Tr. Vol. VIII p. 129.

[14] The jury found Knudson guilty of murder, and the trial court entered judgment of conviction. The trial court held a sentencing hearing on June 28, 2022. Jones's brother, Dustin Asche, read a victim's impact statement in which he alleged that Knudson abused Jones by beating, dragging, and raping her; firing guns at her; throwing hot coffee in her face; and forcing her to "strip down naked and get into this ditch full of water in a thunderstorm, where he would push her head underwater until she almost drowned." Tr. Vol. VIII p. 228. Dustin further alleged that Knudson stalked and spied on Jones and threatened to burn down her parents' house and kill her son if she left him.

[15] The trial court found seven aggravators: 1) Knudson was released on bond when he committed the murder; 2) Knudson violated the protection order; 3) Knudson's criminal history consisted of one felony, six misdemeanors, and four probation violations; 4) Knudson committed domestic violence against Jones;

5) the nature and circumstances of the offense demonstrated that Knudson acted with premeditation and attempted to mislead police; 6) Knudson expressed no remorse and blamed the victim; and 7) the impact on Jones's family. The trial court explained that it weighed the first three aggravators "extremely heavy," the fourth and fifth aggravators "heavy as well," and the final two aggravators as "not as heavy as the other aggravating factors." Tr. Vol. IX p. 5. The trial court found no mitigators.

[16] The trial court further found that Knudson was one of the worst offenders and sentenced Knudson to the maximum sentence of sixty-five years in the Department of Correction. The trial court explained that it "[c]ertainly . . . would have sentenced [Knudson] to the maximum sentence even without the final two [aggravators]." *Id*. at 8. Knudson now appeals.

Discussion and Decision

I. Abuse of Discretion—Mistrial

[17] Knudson first argues that the trial court committed reversable error by denying his request for a mistrial based on two "outbursts" during the cross-examination of McEvoy and "a pattern throughout the trial of the State's witnesses being combative with the defense." Appellant's Br. pp. 18, 22. We disagree.

[18] "'[A] mistrial is an extreme remedy that is only justified when other remedial measures are insufficient to rectify the situation.'" *Isom v. State*, 31 N.E.3d 469, 481 (Ind. 2015) (quoting *Mickens v. State*, 742 N.E.2d 927, 929 (Ind. 2001)). "'[T]he denial of a mistrial lies within the sound discretion of the trial court,

and reversal is required only if the defendant demonstrates that he was so prejudiced that he was placed in a position of grave peril.'" *Inman v. State*, 4 N.E.3d 190, 198 (Ind. 2014) (quoting *Gill v. State*, 730 N.E.2d 709, 712 (Ind. 2000)).

[19] "'The gravity of the peril turns on the probable persuasive effect of the misconduct on the jury's decision, not on the degree of impropriety of the conduct.'" *Id*. (quoting *Clark v. State*, 695 N.E.2d 999, 1004 (Ind. Ct. App. 1998)). Where the trial court has admonished the witness and instructed the jury not to consider the challenged testimony, we presume that the jury followed the trial court's instructions and that the admonishment cured any error. *Isom*, 31 N.E.3d at 481. Moreover, we will not reverse a trial court for failing to order a mistrial when the error is harmless due to "overwhelming independent evidence" of a defendant's guilt. *See Coleman v. State*, 750 N.E.2d 370, 375 (Ind. 2001).

[20] Here, during McEvoy's cross-examination, the following exchange took place:

[Defense Counsel] Did you smoke marijuana that day?

[McEvoy] I smoke marijuana all the time.

[Defense Counsel] Do you-

[McEvoy] **You smoke marijuana all the time. Now you wanna hang me up for it.**

[Defense Counsel] Your Honor, may we approach?

[McEvoy] **I mean, you [were] my lawyer in nineteen ninety (1990)-**

Tr. Vol. VI p. 243 (emphasis added). Knudson requested a mistrial. The trial court admonished McEvoy not to "attack, or editorialize, or . . . throw barbs" and to respond only to the questions asked of him. *Id*. at 246-47. The trial court then instructed the jury to disregard McEvoy's comments regarding Defense Counsel and, noting that Defense Counsel's prior representation of McEvoy was "absolutely not an issue," denied Knudson's motion for a mistrial. *Id*. at 249.

[21] Later during the cross-examination, McEvoy made another statement to which Knudson objected:

[Defense Counsel] Is there a difference[,] Mr. McEvoy, between I don't remember, and [ ] saying something happened and then admitting, well, maybe that didn't happen. Those are different things, aren't they?

[McEvoy] Yeah, [they are] probably different things if you want to get [] serious about it.

[Defense Counsel] Don't you want to be serious about it, Mr. McEvoy?

[McEvoy] **I mean, we all know what's going on around here, we all know who did it. We can play this dance all day long, but . . . I mean we're gonna come up with the same answer.**

Tr. Vol. VII p. 4 (emphasis added). The trial court again admonished McEvoy and instructed the jury to disregard McEvoy's last statement. Knudson did not request a mistrial.

[22] Knudson contends that McEvoy's challenged testimony placed Knudson in grave peril because the testimony "impugned" the credibility of Knudson's attorney and undermined the trial. Appellant's Br. p. 17. Knudson also cites instances where the trial court admonished several other State's witnesses for providing non-responsive testimony. We do not, however, find that this testimony warranted a mistrial.

[23] First, the trial court timely admonished the witnesses and instructed the jury to disregard the witness's non-responsive testimony. We presume that the jury followed those instructions and that the admonishments cured any error. *See Collins v. State*, 464 N.E.2d 1286, 1290 (Ind. 1984) (affirming trial court's denial of request for mistrial when trial court instructed jury to disregard police officer's non-responsive testimony).

[24] Moreover, even if we assume that the trial court should have granted the motion for mistrial, any error would be harmless in light of the overwhelming evidence against Knudson. Around the time of the murder, Knudson was concerned that Jones was "seeing other people [and] having sex with . . . other men," and Jones was afraid of Knudson. Tr. Vol. V p. 207. Knudson also communicated numerous threats to Jones and had a history of physically abusing and firing a gun at her.

[25] In addition, approximately one hour before Jones's body was discovered at the McEvoy residence, Knudson was traveling in the direction of the McEvoy residence, and Knudson later changed his story about how he returned home that evening. Knudson had access to two shotguns and ammunition, either of which could have been used in the murder. Knudson also attempted to mislead the investigation by fabricating a letter that accused Jones of stealing one of the shotguns and encouraging Smith to tell police that Smith threw the other shotgun in a river.

[26] In light of the overwhelming evidence against Knudson, we cannot say that the challenged testimony placed Knudson in grave peril. *See, e.g.*, *Coleman v. State*, 750 N.E.2d at 375. Accordingly, the trial court did not commit reversable error in denying Knudson's request for a mistrial.

II. Abuse of Discretion—Sentencing

[27] Knudson next argues that the trial court committed reversable error by finding as aggravators: 1) Knudson lacked remorse and blamed the victim; and 2) the impact on the victim's family. We disagree.

[28] Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007); *Phipps v. State*, 90 N.E.3d 1190, 1197 (Ind. 2018). "An abuse occurs only if the decision is clearly against the logic and effect of the facts and circumstances before the court, or

the reasonable, probable, and actual deductions to be drawn therefrom." *Schuler v. State*, 132 N.E.3d 903, 904 (Ind. 2019) (citing *Rice v. State*, 6 N.E.3d 940, 943 (Ind. 2014)).

[29] A trial court abuses its discretion in a number of ways, including:

> (1) "failing to enter a sentencing statement at all"; (2) entering a sentencing statement in which the aggravating and mitigating factors are not supported by the record; (3) entering a sentencing statement that does not include reasons that are clearly supported by the record and advanced for consideration; or (4) entering a sentencing statement in which the reasons provided in the statement are "improper as a matter of law."

Ackerman v. State, 51 N.E.3d 171, 193 (Ind. 2016) (quoting *Anglemyer*, 868 N.E.2d at 490-91), *cert. denied*.

[30] "This Court presumes that a court that conducts a sentencing hearing renders its decision solely on the basis of relevant and probative evidence." *Schuler*, 132 N.E.3d at 905. "When an abuse of discretion occurs, this Court will remand for resentencing only if 'we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.'" *Ackerman*, 51 N.E.3d at 194 (quoting *Anglemyer*, 868 N.E.2d at 491).

[31] We need not decide whether the trial court erred in considering the two challenged aggravators because we are confident that the trial court would have imposed the same maximum sentence even if it did not consider those

aggravators. We have repeatedly held that "[a] single aggravating circumstance may be sufficient to enhance a sentence." *Kedrowitz v. State*, 199 N.E.3d 386, 404 (Ind. Ct. App. 2022) (quoting *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016), *trans. denied*). Here, the trial court found no mitigators and seven aggravators, and Knudson only challenges two of the aggravators. Moreover, the trial court stated that the two challenged aggravators were weighed "not as heavy as the other aggravating factors" and explained that it "[c]ertainly . . . would have sentenced [Knudson] to the maximum sentence even without" considering those aggravators. Tr. Vol. IX pp. 5, 8. Because the challenged aggravators would not have affected Knudson's sentence, we cannot say that the trial court erred.

III. Inappropriate Sentence

[32] Lastly, Knudson argues that his maximum sentence is inappropriate in light of the nature of the offense and his character. We disagree.

[33] 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."[2] 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) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[34] "'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

[2] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Ind. Ct. App. 2021) (Tavitas, J., concurring in result).

character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[35] 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). In the case at bar, Knudson was convicted of murder, a felony. Murder carries a sentencing range of forty-five and sixty-five years, with the advisory sentence set at fifty-five years. Ind. Code § 35-50-2-3. Knudson was sentenced to the statutory maximum of sixty-five years.

[36] Our analysis of the character of the offender involves a broad consideration of a defendant's qualities, including the defendant's age, criminal history, background, past rehabilitative efforts, and remorse. *See Harris v. State*, 165 N.E.3d 91, 100 (Ind. 2021); *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020). The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense. *Pierce*, 949 N.E.2d at 352-53; *see also Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[37] Here, Knudson's criminal history, which consists of at least one felony, six misdemeanors, and four probation violations, is extensive, and Knudson committed the instant offense while released on bond in two pending felony cases. Knudson argues that his criminal history does not evince poor character because it contains remote convictions, which are "of a different nature than murder in the extent of violence associated with them." Appellant's Br. p. 33. We cannot agree. Knudson was convicted of domestic battery, a Class A misdemeanor, in 2010, and Knudson demonstrated similar violent conduct by repeatedly battering Jones. Specifically, testimony at the sentencing hearing indicated that Knudson stalked, spied on, beat, raped, shot at, and threatened Jones, all of which reflect poorly on his character.

[38] In addition, when asked if he would confess to murdering Jones, Knudson stated, "[I]t's not gonna make anyone sleep any better." Tr. Vol. V p. 246. When asked at trial if he stole things, Knudson admitted that he would "steal anything [he] could put in [his] pants." Tr. Vol. VIII p. 91.

[39] Knudson argues that he demonstrated good character by volunteering in the community and assisting family. He further argues that his violations of the protection order do not evince poor character because Jones was complicit in those violations. Whether or not Jones was complicit in Knudson's violations of the protection order, Knudson flagrantly violated that order by continuing to threaten, harass, and ultimately murder Jones. As for Knudson's character in the community, we note that even those who wrote letters on Knudson's behalf hardly extolled his character. Knudson's ex-wife requested the trial court's

leniency at sentencing "[n]ot for [Knudson] but for [their] two children." Appellant's App. Vol. IV p. 127. Knudson's sister stated that Knudson's "behavior in the community has been somewhat like yin and yang. There has been unlawful and hateful behavior but also serving and loving behavior." *Id.* at 126. Knudson fails to point to compelling evidence of positive character, and, therefore, we cannot say that Knudson's sentence is inappropriate in light of his character.

[40] Neither do we find Knudson's sentence inappropriate in light of the nature of the offense. Our analysis of the "nature of the offense" requires us to look at the nature, extent, heinousness, and brutality of the offense. *See Brown v. State*, 10 N.E.3d 1, 5 (Ind. 2014). Here, Knudson, without provocation, shot Jones three times in the face with a shotgun from such close range that three wads and hundreds of pellets were lodged throughout her body. The State presented evidence that Jones inhaled blood and pellets before she died. Moreover, after murdering Jones, Knudson attempted to mislead the investigation by fabricating a letter that blamed Jones for stealing one of the shotguns and encouraging Smith to tell police that Smith disposed of the other.

[41] Knudson argues that a maximum sentence is inappropriate because he is not one of the worst offenders and suggests that we "must compare [his] offense to other murders." Appellant's Br. p. 35. We have explained, however, that when considering whether a maximum sentence is deserved, "[w]e should concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the

offense for which the defendant is being sentenced, and what it reveals about the defendant's character." *Brown v. State*, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), *trans. denied*. As we have explained, Jones's death was gruesome, brutal, and unprovoked. Moreover, our Supreme Court has explained that "cases constituting the worst of the worst are such that we trust our trial courts will know them when they see them." *Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011).

[42] Here, the trial court thoughtfully considered the facts and circumstances of this case and concluded that Knudson was one of the worst offenders. We find no reason to disagree. Accordingly, we do not find that the nature of the offense warrants a reduced sentence. We, therefore, decline to revise Knudson's sentence.

Conclusion

[43] The trial court did not commit reversable error by denying Knudson's request for a mistrial, nor did it commit reversable error in sentencing Knudson. Knudson's sentence also is not inappropriate. Accordingly, we affirm.

[44] Affirmed.

Vaidik, J., and Foley, J., concur.