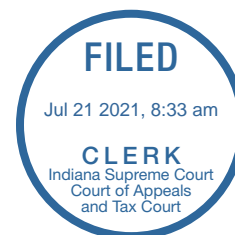


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Sarah K. Andry,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

July 21, 2021

Court of Appeals Case No.  
20A-CR-2173

Appeal from the Dubois Circuit  
Court

The Honorable Nathan A.  
Verkamp, Judge

Trial Court Cause No.  
19C01-1806-MR-626

**Altice, Judge.**

### Case Summary

[1] Following a bench trial, Sarah K. Andry was convicted of murder, a felony, and Level 3 felony aggravated battery. The trial court subsequently sentenced Andry to an aggregate term of fifty-five years executed. On appeal, Andry challenges the sufficiency of the evidence by arguing that a witness's testimony was incredibly dubious. Additionally, Andry argues that her sentence is inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

### **Facts & Procedural History**

[3] In the months leading up to July 19, 2017, Andry dated both Darin Atkins and Jason Atkins (unrelated), living with each at times. On the evening of July 18, 2017, Darin hosted a small gathering that included Andry and three other friends, and the group used methamphetamine throughout the night. Around midnight, Andry left Darin's house with two others to visit Jason. During the visit, she repeatedly asked Jason why he refused to stand up for her after she told him that Darin had been "putting his hands" on her, *Transcript Vol. III* at 37, and a witness overheard the two arguing about Darin. Jason eventually agreed to accompany Andry to Darin's house to confront him.

[4] Around 4:00 a.m., Jason and Andry drove to Darin's house. Andry went inside while Jason stayed near his car. Jason eventually entered the residence and found Andry and Darin in the bedroom. According to Jason, Darin then

approached with a baseball bat and swung the bat at him. Jason disarmed Darin and then he struck Darin in the side of the head with the bat. Darin fell back onto his bed. Jason dropped the bat and told Andry “let’s go.” *Id.* at 38. As he began to leave, Jason saw Andry walk toward the bat. Jason testified that Andry “must have picked up the bat because I heard another loud thud . . . and then as I turned the corner to go out of the residence, I was walking through the door and heard another thud.” *Id.* After about five minutes, Andry came out of the residence carrying clothing. Andry drove them back to Jason’s house in his car. While arguing around 6:45 a.m., Jason asked Andry “why she did what she did” and she responded that “Darin deserved to be punished.” *Id.* at 73.

[5] Later that morning, Jason attended his grandmother’s funeral and returned home at about 11:00 a.m. to find Andry and another friend, Ruth Eckert, inside. Eckert heard Andry and Jason argue, and, according to Jason, they were arguing about Andry wanting to take Darin’s car to Oakland City. Around noon, Andry, carrying two empty laundry baskets, was picked up at Jason’s house by Richalyn Hopkins, who drove Andry to Darin’s house. Hopkins left Andry at Darin’s house around 12:11 p.m., along with the laundry baskets.

[6] At 12:20 p.m., Jason received a call from Darin’s phone, which Andry later admitted that she took from Darin’s bedside. After answering the call, Jason went to pick up Andry at Darin’s house. Andry called her mother from Jason’s phone at 12:39 p.m. and told her that Darin was dead and that she needed a

ride to visit her friend, Dusty, in Oakland City. At 12:57 p.m., Darin’s phone received a Facebook message stating, “You best write me back. I’ve got people saying you’re dead.” *Id.* at 105. One minute later, Darin’s account responded, “[W]ho told you that?” *Id.*

[7] After arranging to meet Andry and Jason at a park, Andry’s mother picked up Andry and told her that she needed to call the police. Andry called 911 at 1:59 p.m., and when the 911 operator asked whether Darin had been shot, Andry stated that someone had beaten Darin with a bat or a stick. In a meeting with police that day, Andry said that she visited Darin earlier that morning but did not discover his body until she returned around 12:30 p.m. She claimed that she suspected that a man named Frank Fry killed Darin because Fry was “so weird” and had argued with Darin on another occasion. *Plaintiff’s Exhibit No. 2* at 5:55-6:05. Later in the same interview, Andry stated that a man named Jason “was the guy that I was talking about who is so weird because he really got upset like psycho crazy.” *Id.* at 7:20-7:31.

[8] In another statement to police, Andry said, “My God, what have I —.” *Transcript Vol. III* at 175. Across multiple interviews spanning about a year, Andry suggested several other potential killers, and she also told police that on the evening of July 18, 2017, she was sick at Darin’s house and felt that her gall bladder was going to explode. However, a witness testified that Andry did not appear sick, but rather was moving around in a “hyperactive” way. *Transcript Vol II* at 170.

- [9] Jason initially denied involvement in Darin's murder. But after entering into a plea agreement in October of 2019, he admitted to his role in the events of July 19, 2017. On June 8, 2018, the State charged Andry with aiding murder and Level 3 felony aggravated battery. The matter proceeded to a bench trial, which commenced on September 22, 2020.
- [10] Jason testified that when he struck Darin with the bat, Darin landed across the bed. An expert in blood stain pattern analysis testified that the fatal blows occurred when Darin's head was on a pillow near the top of the bed because of the large saturation stain near the headboard. However, the expert could not ascertain Darin's body position, and he explained that it was possible that Darin's head could have been atop the pillow even if his body was perpendicular across the bed. The pathologist testified that Darin was struck at least three times.
- [11] At trial, Jason affirmed his earlier admission as to his involvement and detailed Andry's role in the killing. He explained that he previously told investigators that somebody else killed Darin because he was worried that he would be killed if he testified against Andry.
- [12] The trial court convicted Andry of both murder and aggravated battery. At the subsequent sentencing hearing, the State presented evidence of Andry's criminal record. Andry's prior convictions in Indiana include neglect of a dependent, possession of marijuana, and theft. Andry had convictions in Florida of multiple felonies and misdemeanors related to methamphetamine

and marijuana, and she had probation violations. In Virginia, she was convicted of grand larceny and failure to appear. The trial court imposed an aggregate sentence of fifty-five years fully executed in the Indiana Department of Correction.

## Discussion & Decision

### 1. Sufficiency

[13] Our standard of review when addressing sufficiency of the evidence claims is well settled: we neither reweigh the evidence nor judge the credibility of the witnesses. *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018). Rather, we consider only the evidence supporting the conviction and the reasonable inferences drawn therefrom. *Purvis v. State*, 87 N.E.3d 1119, 1124 (Ind. Ct. App. 2017). “Convictions should be affirmed unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *T.H. v. State*, 92 N.E.3d 624, 626 (Ind. 2018).

[14] Andry challenges the sufficiency of the evidence by arguing that Jason’s testimony was incredibly dubious. The incredible dubiousity rule is applied in extremely limited circumstances. Under this rule, we will impinge on the trier of fact’s responsibility to judge the credibility of the witnesses only when confronted by “‘inherently improbable’ testimony or coerced, equivocal, wholly uncorroborated testimony of ‘incredible dubiousity.’” *Moore v. State*, 27 N.E.3d 749, 755 (Ind. 2015) (quoting *Tillman v. State*, 642 N.E.2d 221, 223 (Ind. 1994)). The testimony must be “so convoluted and/or contrary to human experience

that no reasonable person could believe it.” *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001). Although the incredible dubiousity standard is not impossible to satisfy, it is a “difficult standard to meet, [and] one that requires great ambiguity and inconsistency in the evidence.” *Id.* Application of the rule is only warranted when: (1) a sole witness testifies; (2) the testimony is inherently contradictory, equivocal, or the result of coercion; and (3) circumstantial evidence is completely absent. *Smith v. State*, 34 N.E.3d 1211, 1221 (Ind. 2015). Where a court determines that a defendant has failed to prove any of the three factors, it may end its analysis. *Moore*, 27 N.E.3d at 756.

[15] Here, Andry contends that no reasonable person could believe Jason’s testimony, arguing: (1) the blood stain expert testified that Darin’s head was on a pillow near the headboard when he was killed, whereas Jason testified that Darin fell across the bed; (2) Jason previously gave misleading statements to authorities prior to his trial testimony; and (3) Jason’s testimony about seeing Andry grab the bat and hearing two additional strikes amounted only to an implication that she hit Darin.

[16] The incredible dubiousity rule is only satisfied when the witness’s trial testimony is “inconsistent within itself, not [when] it [is] inconsistent with other evidence or prior testimony.” *Smith*, 34 N.E.3d at 1221. Such is not the case here. Any difference between Jason’s testimony about where Darin fell on the bed and the blood spatter expert’s testimony does not mean that Jason’s testimony was inconsistent within itself. While Jason did give previous statements to police that contradicted his trial testimony, he explained that he had initially lied to

police out of fear for his life. Jason unequivocally testified that he heard Andry strike Darin twice, with the strikes making the same sound as when he previously hit Darin. Indeed, Jason's testimony aligned with the pathologist's testimony that Darin was struck at least three times. In any event, it was the factfinder's task to weigh each witness's credibility. For these reasons, the incredible dubiousity rule does not apply.

[17] Furthermore, there exists circumstantial evidence to support Jason's testimony and Andry's involvement in the killing. Andry returned to the crime scene with laundry baskets, waited several hours before being convinced to call the police, and possessed Darin's phone after he was killed. Andry admitted to police that she had Darin's phone, and it could be reasonably inferred that Andry used Darin's phone to try to cover up the killing. Jason drove to pick her up from Darin's house after he received a call from Darin's phone, and Darin's phone was used to deny that he was dead through Facebook messages. Moreover, Andry's precise statement to the 911 operator that Darin had been hit by a bat or stick rather than shot supports her guilt. Even after cleaning and examining the body, the pathologist could only suspect that Darin's wound was caused by a round object, as the bat was not found at the scene. Lastly, Jason's testimony provided a motive for the killing because Andry had alleged some level of prior domestic violence by Darin. Other witness testimony corroborated Jason's testimony that he and Andry argued about Darin before and after the killing. This circumstantial evidence supports Andry's guilt and makes the incredible



dubiosity rule inapplicable. Accordingly, we reject Andry's sufficiency challenge.

## 2. *Inappropriate Sentence*

[18] Andry also argues that her sentence should be revised pursuant to Indiana Appellate Rule 7(B) because her sentence is inappropriate in light of the nature of the offense and the character of the offender. Sentencing decisions fall within the sound discretion of the trial court and are reviewed on appeal for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Trial courts tailor an appropriate sentence to the circumstances presented and the trial court's judgment "should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The role of appellate review is to attempt to "leaven the outliers." *Id.* at 1225. Whether we regard a sentence as appropriate turns on "our sense of culpability of the defendant, the severity of the crime, the damage done to others, and . . . other factors that come to light in a given case." *Id.* at 1224. Deference to the trial court "prevail[s] 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). The burden is on the defendant to persuade

us that her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[19] Andry received a fully executed advisory sentence of fifty-five years for murder. *See* Ind. Code § 35-50-2-3(a) (sentencing range for murder is between forty-five and sixty-five years, with the advisory sentence being fifty-five years). Her sole argument regarding sentencing is that even if the evidence warranted her conviction, her culpability is no more than that of Jason and thus her sentence should be reduced to match his sentence.

[20] Here, in exchange for his plea and testimony against Andry, Jason received a sentence of forty-five years at the Indiana Department of Correction, with twenty years suspended to supervised probation. Andry's argument that her sentence should be the same as Jason's is baseless. When an accomplice pleads guilty and a defendant proceeds to trial, "the sentences need not be identical and there is no requirement of consistency." *Herron v. State*, 808 N.E.2d 172, 179 (Ind. Ct. App. 2004), *trans. denied*. Additionally, we have long held that defendants who plead guilty deserve to have mitigating weight extended to the guilty plea in return. *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005).

[21] While Andry does not otherwise address the nature of her offense or her character, we do so briefly and find that neither supports a reduction to her advisory sentence. Regarding the nature of her offense, we observe that Andry instigated the encounter with Darin, told Jason that Darin deserved the violent death, used Darin's phone to cover up the death, and spent time alone at the

crime scene hours after the death before calling police. Similarly, Andry's character does not support a reduced sentence. She has a plethora of felony and misdemeanor convictions across multiple states and a history of violating probation. Andry has failed to establish that her sentence is inappropriate.

[22] Judgment affirmed.

Kirsch, J. and Weissmann, J., concur.