MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Scott H. Duerring
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney Staton
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Knesha T. Carruthers,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 20, 2022

Court of Appeals Case No. 21A-CR-1807

Appeal from the Elkhart Circuit Court

The Honorable Michael A. Christofeno, Judge

Trial Court Cause No. 20C01-1907-MR-3

Brown, Judge.

[1] Knesha T. Carruthers appeals her conviction for murder. Carruthers argues the trial court abused its discretion in not instructing the jury as to the offense of voluntary manslaughter. We affirm.

Facts and Procedural History

[2] On July 26, 2019, Carruthers and her husband Jimmy Gillam had several people at their house in Elkhart County, including Cornell Sanders and Chris Tate, and they were drinking on the back porch. Carruthers also used cocaine. Sanders heard Carruthers and Gillam arguing over cigarettes and noticed that Carruthers was slurring her words. They were "going back and forth," and Gillam "said harmful stuff." Transcript Volume II at 242. They were yelling at each other in raised voices. Sanders asked Gillam to take a walk, and they walked to a 7-Eleven to purchase cigarettes.

[3] At the 7-Eleven, a woman approached Gillam and asked "to buy something off of him," and Gillam, Sanders, and the woman walked back to the house. *Id*. at 245. Carruthers and Gillam began to argue about the woman who had returned to the house with Gillam and Sanders, and the woman left. Gillam "was trying to tell [Carruthers] that he wasn't doing nothing . . . that he had no business doing" and was not cheating. *Id*. at 250. At some point during the argument, there "was . . . a suggestion of . . . her sleeping with one of his friends." Transcript Volume III at 48. Carruthers "was aggressive . . . towards everybody," "[s]he was just like f everybody," and said "[y]'all can leave."

Transcript Volume II at 250. Gillam said that nobody had to leave and told Carruthers "[y]ou can just go in the house and lay down" and "[y]ou a little bit too drunk." Transcript Volume III at 3. Carruthers "was getting in [Gillam's] face" and "smacked him" in the face. *Id*. Carruthers went in the house, exited the house, and smacked Gillam in the face again, and Gillam pushed Carruthers. Carruthers "kind of fell" and "didn't really completely hit the floor," but "he pushed her enough to scoot her back." *Id*. at 7. Carruthers "got up enraged, trying to charge back towards him," "that's when . . . she says something, like, I'm going to go get a knife," "she was screaming at him," "she was, like, I got something for you," and she went inside the house. *Id*. at 6-7. Sanders told Gillam "[l]et's just leave for the night and go to my sister's house," but Gillam did not want to leave. *Id*. at 9.

[4] Carruthers exited the house, and "she had her hand behind her back." *Id*. at 10. She approached Gillam and started "swiping towards him" with a knife. *Id*. at 11. Gillam was "jumping back and forth . . . trying to . . . get out of the way." *Id*. at 12. Carruthers said "[s]he was going to kill him." *Id*. at 13. According to Sanders, Gillam did not have any weapons on him and was not advancing toward Carruthers in any way. Carruthers stabbed Gillam in the chest with the knife. She then ran inside the house. Gillam walked toward the front of the house and collapsed. Sanders kept his hands over Gillam's wound, and Tate called 911. Carruthers exited the front door of the house, asked "is he dead," and went back inside. *Id*. at 23. The police arrived and saw Gillam on the

ground in a large pool of blood, a man on the ground trying to render aid, and Carruthers standing over them. Gillam died from his injuries. A detective discovered the knife in a tub in the laundry room.

[5] The State charged Carruthers with murder. The court held a jury trial at which Sanders and Tate testified. Carruthers's defense counsel proposed that the trial court give the jury the option of finding that Carruthers committed voluntary manslaughter. He noted Carruthers's consumption of alcohol and cocaine and argued "this argument ensued going back and forth both with raised voices." Transcript Volume IV at 109. He argued that Sanders indicated that "a mysterious woman from 7-Eleven came back to the residence with [Gillam], and that's essentially what set these . . . wheels in motion . . . for [Gillam] getting stabbed." *Id*. He also pointed to the testimony regarding Gillam pushing Carruthers and the argument in the moments leading up to the stabbing. He argued, "from our perspective [Gillam] made the first physical contact, and then [Carruthers] reacted by stabbing him" and "we're suggesting . . . the stabbing occurred in the sudden heat after [Carruthers] was provoked by anger, rage, or resentment." *Id*. at 110.

[6] The prosecutor opposed the defense's request for a voluntary manslaughter instruction. She argued the testimony indicated that Carruthers was the initial aggressor and struck Gillam. She argued Sanders testified that Carruthers "fell over -- fell on the ground in response to [Gillam] pushing her and she charged at him," "[s]he got up on her feet and said I got something for you and turned

around and went into the house," "[a]t that point, . . . even if there was an argument for sudden heat, her premeditation, her cool reflection on what just occurred and going back into the house for that knife has eliminated any assemblance [sic] of sudden heat," "a murder motivated by and in the midst of mirror [sic] anger is never going to rise to the level of voluntary manslaughter," and "[i]t must be a sudden heat that completely obscures rational thought and perception." *Id*. at 111-112.

[7] The trial court found there was no evidence of sudden heat, there was not a serious evidentiary dispute as to whether Carruthers was acting under sudden heat, and she was not entitled to an instruction on voluntary manslaughter. The court stated "I would agree that [] Gillam and [] Carruthers were arguing in raised voices," "[t]hat alone is insufficient," and "[t]he female who returned to the residence with [] Gillam and [] Sanders, the evidence presented about that no way rises to the level of sudden heat." *Id*. at 114-115. The court stated there was "some evidence that [] Gillam shoved the defendant to the ground" and "may have slapped the defendant," there was "evidence from which a jury could determine that [] Carruthers was the aggressor," and "[n]one of which brings the Court to the conclusion that there has been sufficient evidence to take the words that were spoken and rise to the level of sudden heat such that a voluntary manslaughter instruction should be given." *Id*. at 115.

Discussion

[8] Carruthers claims the trial court abused its discretion in not instructing the jury on voluntary manslaughter. She argues that Sanders saw Gillam push Carruthers "causing her to fall against a table and almost hit the floor," "[t]his resulted in Carruthers becoming very angry," and "Sanders further witnessed immediately after this Carruthers getting up and screaming at the decedent 'I got something for you' after which Carruthers ran into the house and got a knife." Appellant's Brief at 8. She argues the situation was very chaotic and happened very fast. She argues there was appreciable evidence of sudden heat. The State argues, "[a]t best, the evidence showed that Carruthers was heavily intoxicated and jealous that [Gillam] had brought a woman home from 7-Eleven." Appellee's Brief at 14. It argues "Carruthers was composed enough to distance herself from the argument, walk into the kitchen, and retrieve a knife" and, "though she was angry, [she] had the wherewithal to hide the knife behind her back as she walked out onto the porch." *Id*.

[9] A person commits murder when the person knowingly or intentionally kills another human being. Ind. Code § 35-42-1-1. A person commits voluntary manslaughter when the person knowingly or intentionally kills another human being "while acting under sudden heat." Ind. Code § 35-42-1-3(a). Sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter. Ind. Code § 35-42-1-3(b).

[10] "Sudden heat occurs when a defendant is provoked by anger, rage, resentment, or terror, to a degree sufficient to obscure the reason of an ordinary person, prevent deliberation and premeditation, and render the defendant incapable of cool reflection." *Conner v. State*, 829 N.E.2d 21, 24 (Ind. 2005). Also, sudden heat can be negated by a showing that a sufficient "cooling off period" elapsed between the provocation and the homicide. *Morrison v. State*, 588 N.E.2d 527, 531-532 (Ind. Ct. App. 1992). Anger alone is not sufficient to support an instruction on sudden heat. *Suprenant v. State*, 925 N.E.2d 1280, 1282 (Ind. Ct. App. 2010) (citing *Wilson v. State*, 697 N.E.2d 466, 474 (Ind. 1998)), *trans. denied*. Nor will words alone "constitute sufficient provocation to warrant a jury instruction on voluntary manslaughter," and this is "especially true" when the words at issue "are not intentionally designed to provoke the defendant, such as fighting words." *Id.* (citing *Allen v. State*, 716 N.E.2d 449, 452 (Ind. 1999)).

[11] "In addition to the requirement of something more than 'mere words,' the provocation must be 'sufficient to obscure the reason of an ordinary man,' an objective as opposed to subjective standard." *Id.* at 1282-1283 (citing *Stevens v. State*, 691 N.E.2d 412, 426 (Ind. 1997), *reh'g denied*, *cert. denied*, 525 U.S. 1021 (1998)). Finally, voluntary manslaughter involves an "impetus to kill" which arises "suddenly." *Id.* at 1283 (citing *Stevens*, 691 N.E.2d at 427).

[12] Voluntary manslaughter is an inherently included lesser offense of murder. *Washington v. State*, 808 N.E.2d 617, 625 (Ind. 2004). An instruction on

voluntary manslaughter as a lesser included offense to a murder charge is warranted only if the evidence reflects a serious evidentiary dispute regarding the presence of sudden heat. *Isom v. State*, 31 N.E.3d 469, 486 (Ind. 2015), *reh'g denied*, *cert. denied*, 136 S. Ct. 1161 (2016). When the trial court makes a finding that a serious evidentiary dispute does not exist, we will review that finding for an abuse of discretion. *Brown v. State*, 703 N.E.2d 1010, 1019 (Ind. 1998).

[13] The record reveals that Carruthers and Gillam argued over an extended period, including after Gillam returned from 7-Eleven with Sanders and a woman and Gillam telling Carruthers that he was not cheating on her. At some point, Carruthers slapped Gillam, and Gilliam pushed Carruthers. The testimony reveals that, after being pushed, Carruthers went inside the house, exited the house while holding a knife behind her back, and then swiped at Gillam with the knife. Gillam jumped back and forth to avoid the knife, Carruthers stated she was going to kill him, and she stabbed him in the chest. While Carruthers was angry, anger alone is not sufficient to support an instruction on sudden heat. *See Suprenant*, 925 N.E.2d at 1282. Further, Carruthers does not point to testimony that Gillam made statements to her which were designed to provoke her such as fighting words. To the contrary, Sanders testified that Gillam attempted to explain to Carruthers that he was not cheating on her, told her to go lay down, and kept telling her that he did not want to argue. Further, the length of the extended argument before the stabbing, as well as the period during which Carruthers went inside to retrieve the knife, do not support a

claim of sudden heat. The evidence does not indicate that Carruthers was provoked to a degree sufficient to prevent premeditation or render her incapable of reflection. Based upon the record, we cannot say the trial court abused its discretion in declining to instruct the jury on the offense of voluntary manslaughter.

[14] For the foregoing reasons, we affirm Carruthers's murder conviction.

[15] Affirmed.

Mathias, J., and Molter, J., concur.