MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Vickie Wooldridge,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 26, 2023

Court of Appeals Case No. 22A-CR-2296

Appeal from the Kosciusko Circuit Court

The Honorable Michael W. Reed, Judge

Trial Court Cause No. 43C01-2012-MR-1

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Vickie Wooldridge was convicted in Kosciusko Circuit Court of murder, Level 1 felony attempted murder, Level 3 felony attempted criminal confinement, and Level 5 battery while armed with a deadly weapon. The trial court imposed an aggregate sentence of ninety-four years. Wooldridge appeals her convictions and raises two issues on appeal. First, she argues that the trial court abused its discretion when it admitted into evidence a deceased victim's statements made during the 9-1-1 call and to a responding law enforcement officer. Wooldridge also argues that the trial court abused its discretion when it refused to tender her proposed instruction concerning the jury's consideration of circumstantial evidence.

[2] Concluding that Wooldridge has not established any reversible error on appeal, we affirm.

Facts and Procedural History

[3] On December 15, 2020, Matthew Lucas lived with his parents, William and Diane Burr, in their home in Warsaw, Indiana. Matthew's bedroom was in the basement of the home, and the basement had its own entry and exit from the house. Matthew was involved in a romantic relationship with Wooldridge.

[4] In December, William was recovering from surgery on a broken leg and could not put any weight on his lower left leg. His mobility was limited, and he had to use a "knee buggy" to move around the house. After he and Diane had eaten breakfast on December 15, Matthew and Wooldridge came upstairs from the basement to speak to William and Diane. After Matthew and Wooldridge

returned to the basement, Diane began to take a shower, while William sat in his recliner with his laptop computer.

[5] While Diane was in the shower, William heard noises from the basement, which sounded like furniture was bumping against the walls. William used his knee buggy to go to the top of the basement stairs. He called out asking if everything was alright. His first inquiry was met with silence, so he called out again in a louder tone of voice. Wooldridge responded that she and Matthew were fine.

[6] William returned to his recliner. Shortly thereafter, William heard Wooldridge behind him and he felt something hit his chest. The force knocked him backward and he saw blood squirting out of his chest. William saw Wooldridge standing next to him with a knife, and he yelled Diane's name. When Diane came out of the bathroom, Wooldridge ran toward her and started to attack Diane. William started to call 911 but put the phone down to try to help Diane get away from Wooldridge. Diane was able to run out of the house and her neighbor called 911. While her neighbor spoke to the 911 operator, Diane yelled that Wooldridge had stabbed William. *See* State's Ex 1.

[7] In the meantime, William managed to take the knife from Wooldridge, who ran down the stairs to the basement. William laid down on the floor and put pressure on his chest wound. After law enforcement officers and paramedics arrived, he was airlifted to a hospital in Fort Wayne. William had a stab wound

on the right side of his chest near his heart that required surgery and treatment in intensive care.

[8] Officer Justin Smith responded to the 911 call and spoke to Diane at her neighbor's home. Diane was upset and concerned about what was happening in her home. The officer had to instruct Diane to take a deep breath to calm her enough so that she could provide her name. Diane told the officer that Wooldridge hit her and stabbed her. State's Ex. 4. Diane stated that, before Wooldridge attacked her, she was in her bathroom and heard Matthew and Wooldridge fighting downstairs. She described hearing William scream, and when she came out into the hallway, she saw Wooldridge standing over William. *Id*.

[9] Diane was transported to an emergency room in Warsaw. Diane told the treating physician that she and her husband had been assaulted by her son's girlfriend. Tr. Vol. 2, p. 139. She had superficial cuts on her chest and a wound on her finger. Wooldridge had also punched Diane in the mouth and knocked out several of her teeth.

[10] The responding law enforcement officers found Matthew's body on the floor next to his bed. There was a large amount of blood underneath his body. Wooldridge had stabbed Matthew over thirty times in his head, chest, and back. Matthew's heart and lungs had sustained stab wounds, and the stab wounds on his neck pierced his carotid and jugular veins and spinal column.

[11] At trial, the State presented evidence that the knife that Wooldridge had used to stab William had DNA on it from multiple individuals, and there was strong support for the inclusion of William, Matthew, and Wooldridge as contributors. Tr. Vol. 3, p. 38. The officers found another knife on Matthew's bed. A forensic scientist confirmed that Matthew's DNA was found on the knife and the testing also provided limited support for the inclusion of Wooldridge's DNA on the knife. *Id*. at 34-35. The officers also found Wooldridge's personal belongings and black latex gloves in the bedroom.

[12] A bloody trail extended from the patio outside Matthew's bedroom door to a camper approximately seventy yards from the Burr residence. There was blood on the camper's door and clothes left at the base of the door. The clothing had blood on it and matched Diane's description of the clothing that Wooldridge was wearing at the time of the attacks. Samples of the bloody clothing contained DNA likely belonging to Wooldridge, Matthew, and William. *Id*. at 40-42.

[13] Law enforcement officers found Wooldridge later that day walking down Old Road 30. When she was arrested, she was wearing a blood-stained shirt and bra. Testing determined that the bloodstain on Wooldridge's bra likely contained Matthew's DNA. *Id*. at 73.

[14] On December 17, the State charged Wooldridge with murder, Level 1 felony attempted murder, Level 3 felony aggravated battery, Level 3 felony attempted

criminal confinement, and Level 5 battery while armed with a deadly weapon. Tragically, Diane died from Covid-19 shortly thereafter.

[15] Wooldridge's three-day jury trial commenced on August 9, 2022. During trial, Wooldridge objected to the admission of the 911 call and Diane's statements to the responding law enforcement officer claiming a violation of her right to confrontation under the Sixth Amendment. The trial court overruled her objections and admitted the evidence. The court also denied Wooldridge's request to tender an instruction to the jury, which provided in pertinent part: "Where proof of guilt is by circumstantial evidence only, it must be so conclusive in character and point so surely and unerringly to the guilt of the accused as to exclude every reasonable theory of innocence." Appellant's App. Vol. 2 p. 146. The court instead gave the jury the State's proposed jury instruction concerning direct and circumstantial evidence. *See* Tr. Vol. 3, p. 124.

[16] The jury found Wooldridge guilty as charged. At the sentencing hearing, the trial court did not enter judgment of conviction on the Level 3 felony aggravated battery count citing double jeopardy concerns. The court ordered Wooldridge to serve an aggregate ninety-four-year sentence in the Department of Correction.

[17] Wooldridge now appeals.

I. Admission of Evidence

[18] Wooldridge argues that the trial court abused its discretion when it admitted the 911 call, which contained Diane's statement that Wooldridge had stabbed

William, and Diane's statements to the officer who had responded to the 911 call. Our standard of review is well-settled:

> The trial court has broad discretion to rule on the admissibility of evidence. We review evidentiary rulings for an abuse of discretion, which occurs when the ruling is clearly against the logic and effect of the facts and circumstances.

Kress v. State, 133 N.E.3d 742, 746 (Ind. Ct. App. 2019) (citations omitted), *trans. denied*.

[19] Citing *Crawford v. Washington*, 541 U.S. 36 (2004), and *Davis v. Washington*, 547 U.S. 813 (2006), Wooldridge argues that Diane's statements were inadmissible at trial because she did not have the opportunity to cross-examine Diane, who died shortly after Wooldridge was charged. In *Crawford*, the Supreme Court held that "[w]here testimonial evidence is at issue, [] the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross examination." 541 U.S. at 68. Because Wooldridge had no opportunity to cross- examine Diane, her statements were admissible at trial only if they were non-testimonial.

[20] In *Davis*, the Supreme Court considered whether responses to questions asked by a 911 operator were "testimonial" statements. 547 U.S. at 826. In answering this question, the Court initially observed:

> When we said in *Crawford*, [] that "interrogations by law enforcement officers fall squarely within [the] class" of testimonial hearsay, we had immediately in mind (for that was the case before us) interrogations solely directed at establishing

> the facts of a past crime, in order to identify (or provide evidence to convict) the perpetrator. The product of such interrogation, whether reduced to a writing signed by the declarant or embedded in the memory (and perhaps notes) of the interrogating officer, is testimonial. It is, in the terms of the 1828 American dictionary quoted in *Crawford*, "'[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact.'" 541 U.S., at 51, 124 S.Ct. 1354. []The solemnity of even an oral declaration of relevant past fact to an investigating officer is well enough established by the severe consequences that can attend a deliberate falsehood. *See, e.g., United States v. Stewart*, 433 F.3d 273, 288 (C.A.2 2006) (false statements made to federal investigators violate 18 U.S.C. § 1001); *State v. Reed*, 2005 WI 53, ¶ 30, 280 Wis.2d 68, 85, 695 N.W.2d 315, 323 (state criminal offense to "knowingly giv[e] false information to [an] officer with [the] intent to mislead the officer in the performance of his or her duty").) A 911 call, on the other hand, and at least the initial interrogation conducted in connection with a 911 call, is ordinarily not designed primarily to "establish [h] or prov[e]" some past fact, but to describe current circumstances requiring police assistance.

Id. at 826-27.

[21] The Court then made the following observations concerning the differences between the "testimonial" statements in *Crawford* and the answers elicited by the 911 operator in *Davis*.

> In *Davis*, [the victim] McCottry was speaking about events as they were actually happening, rather than "describ[ing] past events," *Lilly v. Virginia*, 527 U.S. 116, 137, 119 S.Ct. 1887, 144 L.Ed.2d 117 (1999) (plurality opinion). Sylvia Crawford's interrogation, on the other hand, took place hours after the events she described had occurred. Moreover, any reasonable listener would recognize that McCottry (unlike Sylvia Crawford)

> was facing an ongoing emergency. Although one might call 911 to provide a narrative report of a crime absent any imminent danger, McCottry's call was plainly a call for help against bona fide physical threat. Third, the nature of what was asked and answered in *Davis*, again viewed objectively, was such that the elicited statements were necessary to be able to resolve the present emergency, rather than simply to learn (as in *Crawford*) what had happened in the past. That is true even of the operator's effort to establish the identity of the assailant, so that the dispatched officers might know whether they would be encountering a violent felon. *See, e.g.*, *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177, 186, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004). And finally, the difference in the level of formality between the two interviews is striking. Crawford was responding calmly, at the station house, to a series of questions, with the officer-interrogator taping and making notes of her answers; McCottry's frantic answers were provided over the phone, in an environment that was not tranquil, or even (as far as any reasonable 911 operator could make out) safe.

Id. at 827 (emphasis omitted). The Court concluded that the primary purpose of the 911 operator's interrogation of McCottry was to "enable police assistance to meet an ongoing emergency. She simply was not acting as a witness; she was not testifying." *Id.* at 828 (emphasis omitted). For this reason, the *Davis* Court held that the admission of McCottry's statement did not violate the defendant's Sixth Amendment right to confrontation. *Id.* at 829, 834.

[22] Here, Diane's neighbor called 911, and, in the 911 call recording admitted at trial, Diane yelled out that Wooldridge had stabbed William. Diane's outburst, occurring just moments after Wooldridge stabbed William and attacked Diane, was non-testimonial. Diane made the statements unprompted while suffering from the shock of the attack, and she made the statements not to establish

evidence for trial but to obtain emergency assistance for her husband. For these reasons, admission of Diane's non-testimonial statements in the 911 recording did not violate Wooldridge's Sixth Amendment right to confrontation.

[23] Likewise, Diane's responses to Officer Smith's questions were elicited "to enable police assistance to meet an ongoing emergency." *See Ward v. State*, 50 N.E.3d 752, 758 (quoting *Michigan v. Bryant*, 562 U.S., 344, 358 (2011)). When Officer Smith arrived, he observed that Diane was injured and "stressed." Tr. Vol. 2, p. 133. Diane was trying to answer the officer's questions but was also focused on what the police were discovering at her own house next door. *Id.* The officer asked Diane questions to try to determine who attacked her, her husband, and son. The officer was trying to determine whether Wooldridge might still be on the property and what clothing Wooldridge was wearing. The officer's questions were not designed to preserve evidence for trial but to ascertain whether the danger to Diane, her family, and the community at large had resolved. Specifically, the officer was attempting to provide assistance during an ongoing emergency, i.e., addressing William's and Diane's injuries and determining Wooldridge's location after she fled from their home. The admission of the video recording of Officer Smith's interrogation of Diane did not violate Wooldridge's Sixth Amendment right of confrontation.

[24] For all these reasons, we conclude that the trial court did not abuse its discretion when it admitted the 911 call recording and the body camera recording of Officer Smith's interrogation of Diane.[1]

II. Jury Instruction

[25] The trial court refused to tender to the jury Wooldridge's proposed jury instruction on circumstantial evidence. We review a trial court's decision to refuse a jury instruction for an abuse of discretion. *Hernandez v. State*, 45 N.E.3d 373, 376 (Ind. 2015). In doing so, we consider: "(1) whether the instruction correctly states the law; (2) whether there is evidence in the record to support the giving of the instruction; and (3) whether the substance of the tendered instruction is covered by other instructions which are given." *Id.*

[26] In *Hampton v. State*, 961 N.E.2d 480 (Ind. 2012), our supreme court described the differences between direct and circumstantial evidence.

> Direct evidence means evidence that directly proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact. Circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn . . . . An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts.

Id. at 489 (internal citations and quotation marks omitted).

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[1] We also observe that many of Diane's statements in these exhibits, that Wooldridge had attacked her and stabbed William, were cumulative of other evidence admitted at trial. Tr. Vol. 2, pp. 139, 152-55.

[27] The *Hampton* Court concluded that a qualitative difference exists "between direct and circumstantial evidence with respect to the degree of reliability and certainty they provide as proof of guilt." *Id.* at 486. For this reason, the court held that,

> when the trial court determines that the defendant's conduct required for the commission of a charged offense, the *actus reus*, is established exclusively by circumstantial evidence, the jury should be instructed as follows: *In determining whether the guilt of the accused is proven beyond a reasonable doubt, you should require that the proof be so conclusive and sure as to exclude every reasonable theory of innocence*.

Id. at 491 (emphasis in original). This "reasonable theory of innocence instruction" provides "a safeguard urging jurors to carefully examine the inferences they draw from the evidence presented, thereby helping to assure that the jury's reasoning is sound." *Id.* at 486. It "informs the jury that if a *reasonable* theory of innocence can be made of the circumstantial evidence, then there exists a reasonable doubt, and the defendant is entitled to the benefit of that doubt." *Id.* (emphasis in original).

[28] Wooldridge's proposed instruction read in part as follows:

> It is not necessary that facts be proved by direct evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. *Where proof of guilt is by circumstantial evidence only, it must be so conclusive in character and point so surely and unerringly to the guilt of the accused as to exclude every reasonable theory of innocence*.

Appellant's App. Vol. 2 p. 146.

[29] The trial court instead gave the State's tendered instruction, Indiana Pattern Jury Instruction 12.01, which defines direct and circumstantial evidence and informs the jury that a conviction may be based on either type of evidence. *Id.* at 202; Tr. Vol. 3 pp. 113, 124. That instruction did not include any language like the italicized language above. Because Wooldridge's proposed instruction correctly states the law and was not covered by any other instruction, we must consider whether the record supported giving the instruction, i.e., whether the actus reus of murder was established solely by circumstantial evidence.[2] *Hampton*, 961 N.E.2d at 491.

[30] No person witnessed Matthew's murder and Wooldridge did not confess or admit to murdering him. Matthew was stabbed over thirty times, which resulted in his death.

[31] The morning that Wooldridge committed her crimes, she and Matthew had a conversation with William after William had finished his breakfast. William observed Wooldridge and Matthew return to the basement of the home. William testified that he heard noises in the basement shortly thereafter. After hearing the noises, William asked if everything was ok in the basement. William heard Wooldridge reply that she and Matthew were fine. This is direct evidence placing Wooldridge at the crime scene at the precise time and place of Matthew's murder. *See Jackson v. State*, 758 N.E.2d 1030, 1036 (Ind. Ct. App.

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[2] Wooldridge only argues that there was no direct evidence that she murdered Matthew. Appellant's Br. at 18.

2001) (holding that "voice identification evidence that places the defendant at the crime scene at the precise time and place of the crime's commission is direct evidence").

[32] Moreover, the State argues that it presented direct evidence to establish the actus reus of murder with the DNA evidence discovered on the knives used to stab Matthew. Specifically, the knife found in Matthew's bedroom contained Matthew's DNA, and the forensic scientist concluded that there was limited support for the inclusion of Wooldridge as a contributor to the DNA on the knife. The forensic scientist also discovered Matthew's DNA on the knife that Wooldridge had used to stab William. Finally, the forensic scientist concluded that the bloodstains on Wooldridge's clothing that she was wearing when arrested indicated the presence of Matthew's DNA. This evidence is also direct evidence, but only that Wooldridge had touched the knives used to stab Matthew and that she was present when Matthew was stabbed. It is not direct evidence that Wooldridge committed the actus reus of Matthew's murder.

[33] Indeed, none of the direct evidence established that Wooldridge was the person who actually stabbed Matthew. *See Hampton*, 961 N.E.2d at 489-90 (explaining that "footprints or fingerprints that place an accused at the scene of a crime may be direct evidence of the accused's presence at some point in time but only circumstantial proof that the accused committed the charged offense"). For this reason, we conclude that the trial court abused its discretion when it refused to tender Wooldridge's proposed instruction to the jury.

[34] But we will not reverse Wooldridge's conviction if the trial court's error in instructing the jury was harmless. *Dixson v. State*, 22 N.E.3d 836, 840 (Ind. Ct. App. 2014), *trans. denied*. An error is to be disregarded as harmless unless it affects the substantial rights of a party. *Oatts v. State*, 899 N.E.2d 714, 727 (Ind. Ct. App. 2009); Ind. Appellate Rule 66(A). And an error is harmless where the probable impact of the error, in light of the totality of the record, would not have produced a different result at trial. App. R. 66(A).

[35] The State presented overwhelming evidence proving that Wooldridge murdered Matthew. The State proved that she was in the basement when he was stabbed, his blood covered her clothing, she fled from the scene, and she removed most of her bloody clothing after leaving Matthew's home. Before fleeing the home, she also stabbed William and attacked Diane. After considering the evidence presented at trial, no reasonable jury could have found Diane innocent of murdering Matthew. For this reason, the trial court's error in refusing to tender Wooldridge's proposed instruction to the jury was harmless.

Conclusion

[36] The trial court did not violate Wooldridge's Sixth Amendment right to confrontation when it admitted Diane's statements into evidence. Although the trial court abused its discretion when it refused to tender her proposed instruction to the jury, the error was harmless. We affirm Wooldridge's convictions.

[37] Affirmed.

Vaidik, J., and Pyle, J., concur.