MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Zachary Douglas,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 30, 2024

Court of Appeals Case No. 23A-CR-1670

Appeal from the Warrick Circuit Court

The Honorable Greg A. Granger, Judge

Trial Court Cause No. 87C01-2104-F4-145

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] Zachary Douglas appeals his conviction and sentence for level 4 felony causing death when operating a vehicle while intoxicated. He argues that the evidence is insufficient to support his conviction and that the trial court abused its discretion by excluding his out-of-court statements to a bystander following the accident. He also asserts that his six-year executed sentence is inappropriate based on the nature of the offense and his character. We affirm.

Facts and Procedural History

[2] The evidence in support of Douglas's conviction shows that one evening in April 2021, Douglas was with his girlfriend, Shannon St Laurent, at an Evansville bar. They were with their friends Christopher Lawson and Taletha Farrar. Around midnight, after a few hours of drinking, the four went to Lawson and Farrar's house, where they spent the night.

[3] Around 9:00 a.m. the following morning, the four went to an Evansville bar and grill, where they all had alcoholic beverages. Douglas drank a Bloody Mary, and at least four shots were purchased. They returned to Lawson and Farrar's house and then decided to go motorcycle riding. Around 12:22 p.m., the four arrived at the 3rd Street Saloon in Boonville. They all drank alcoholic beverages. Douglas drank three tall beers.

[4] Around 1:30 p.m., they left the saloon and drove on Highway 261 toward Lawson and Farrar's house. Lawson and Farrar rode on one motorcycle, and Douglas drove a motorcycle behind them with St Laurent as his passenger. The

day was sunny, and it had not been raining. After Lawson and Farrar went around a curve, Farrar noticed that she did not see Douglas's motorcycle in the rearview mirror. Farrar told Lawson that Douglas was not behind them, so Lawson pulled into a driveway and dropped Farrar off while he turned around to go back and see what happened.

[5] Steven Basham was driving away from Boonville on Highway 261 when he came upon a curve in the road where a man motioned him to slow down. A woman on the opposite side of the road was also slowing down traffic. Basham saw two people in a ditch, so he stopped his vehicle and ran toward them to render aid. As Basham approached the ditch, he saw a distraught man, later identified as Douglas, holding a woman, later identified as St Laurent, and saying the woman's name. St Laurent's lips were blue, her eyes were rolled back in her head, and Basham did not detect a pulse. Some other people ran up about the same time that Basham was checking St Laurent's pulse, and they helped Basham situate her so that he could give her CPR. Basham performed CPR for ten or fifteen minutes. He was the first person to provide aid to her. A woman who said she was nurse arrived and helped him. He continued to perform CPR until a fireman came and relieved him.

[6] Around 1:45 p.m., a bystander called 911. Warrick County Sheriff's Department Officer Dalton Spaulding arrived at the scene at 1:52 p.m. When he arrived, multiple people were attending to St Laurent. The motorcycle was in the ditch beside a telephone pole. At some point, someone placed the motorcycle in an upright position.

[7] Emergency personnel arrived shortly after Officer Spaulding. An EMT declared St Laurent dead at the scene. An autopsy showed that she suffered a severed spine and a torn brainstem and that she died of multiple blunt force trauma. According to the forensic pathologist who performed the autopsy, someone with these types of injuries would have died immediately and would not have been responsive. The pathologist had only seen such severe injuries where the motor vehicle involved in the accident was moving at "highway speeds" of at least "[f]orty, fifty, sixty miles per hour." Tr. Vol. 2 at 195.

[8] Officer Spaulding searched the motorcycle to find information to identify St Laurent. In the motorcycle's saddlebag, he found an empty beer can, an empty plastic holder for a six-pack of beer, some ice, and a bottle of bourbon. Douglas was taken to a hospital, where he underwent a blood draw at 3:37 p.m. The test showed that his blood alcohol content was 0.16. The toxicology screen was also positive for marijuana.

[9] According to an accident reconstructionist, the marks on the road and the furrows in the ground at the accident site showed that Douglas was driving toward Boonville when he lost control of the motorcycle, changed direction, left the road, and hit a telephone pole. Metal parts of the motorcycle had scraped the pavement, and there was a part of the motorcycle in the pole and other debris from the motorcycle nearby. In the accident reconstructionist's opinion, the curve in the road was "wicked[,]" but the pole Douglas crashed into was not at the sharpest point of the curve. *Id*. at 223.

[10] The State charged Douglas with level 4 felony causing death when operating a vehicle while intoxicated and class A misdemeanor operating a vehicle while intoxicated in a manner endangering a person. A jury trial was held. Spaulding, Basham, the accident reconstructionist, and the forensic pathologist testified. There were no eyewitnesses to the accident. The jury found Douglas guilty as charged. The trial court ultimately vacated the class A misdemeanor conviction. The trial court found no aggravating or mitigating factors and sentenced Douglas to an executed term of six years. This appeal ensued. More facts will be provided as necessary.

Discussion and Decision

Section 1 – The evidence is sufficient to support Douglas's conviction.

[11] Douglas asserts that his conviction is not supported by sufficient evidence. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Anderson v. State*, 37 N.E.3d 972, 973 (Ind. Ct. App. 2015), *trans. denied*. We respect "the jury's exclusive province to weigh conflicting evidence," and we consider "only the evidence most favorable to the verdict." *Id*. On appeal, it is "not necessary that the evidence overcome every reasonable hypothesis of innocence." *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). "[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Patel v. State*, 60 N.E.3d 1041, 1049 (Ind. Ct. App. 2016) (quoting *Pickens v. State*, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001)).

[12] To support Douglas's conviction, the State was required to prove beyond a reasonable doubt that he caused St Laurent's death when operating a vehicle while intoxicated. Ind. Code § 9-30-5-5(a). Douglas asserts that the evidence is not sufficient "to establish that it was [his] intoxication that caused the accident as opposed to another driver swerving over the centerline towards him or an animal running across the road." Appellant's Br. at 15.

[13] We observe that the State is not required to prove that the defendant's intoxication caused the victim's injury. *Abney v. State*, 766 N.E.2d 1175, 1177 (Ind. 2002). Our supreme court has emphasized that "analysis of this statute should focus on the driver's acts…. If the driver's conduct caused the injury, he commits the crime; if someone else's conduct caused the injury, he is not guilty." *Id*. (quoting *Micinski v. State*, 487 N.E.2d 150, 154 (Ind. 1986)). "This is simply a short-handed way of stating the well-settled rule that the State must prove the defendant's conduct was a proximate cause of the victim's injury or death." *Id*. at 1177-78. Put another way, the State must demonstrate that the "defendant's operation of a motor vehicle while intoxicated was a 'substantial cause' of the resulting death, not merely a 'contributing cause.'" *Radick v. State*, 863 N.E.2d 356, 358 (Ind. Ct. App. 2007) (quoting *Abney*, 766 N.E.2d at 1177-78).

[14] Here, the evidence shows that it was a sunny day. The accident reconstructionist testified that the motorcycle left "yaw" marks on the road, which indicated a change in direction and loss of control and did not show a decrease or increase in speed. Tr. Vol. 2 at 233. The yaw marks led to the scrape

marks on the road, which led to the furrows in the ground, all of which led in a direct line to the pole the motorcycle crashed into. As the State notes, "There was no evidence of any skid marks which would suggest [that] Douglas braked to avoid oncoming traffic, nor was there evidence that he swerved to avoid something as the motorcycle was moving in a direct line to the pole." Appellee's Br. at 15-16. The State's evidence supports a reasonable inference that Douglas's operation of the motorcycle was a substantial cause of St Laurent's death. The State does not have to prove that Douglas's intoxication caused her death. Further, on appeal the evidence need not overcome every reasonable hypothesis of innocence. *Gray*, 957 N.E.2d at 174. The jury here was instructed that "[w]hen circumstantial evidence is the only evidence it must exclude every reasonable hypothesis of innocence." Tr. Vol. 3 at 52. The jury concluded that the evidence met this requirement. Douglas's argument is merely a request for us to reweigh the evidence, which we must decline. We conclude that sufficient evidence supports Douglas's conviction.

Section 2 – The trial court did not abuse its discretion by excluding Douglas's out-of-court statements.

[15] At his jury trial, Douglas called Angelica Escalante to testify. She testified that she was the first person on the accident scene and that she got out of her vehicle to help St Laurent, who was lying in the grass. Escalante testified that she knelt next to St Laurent and asked her if she was okay, and St Laurent responded by blinking her eyes once for yes and twice for no. Escalante testified that she stayed with St Laurent for sixteen minutes until a nurse arrived. Escalante also

testified that Douglas was crawling toward her and St Laurent. When Douglas's counsel asked her about her interactions with Douglas, the State objected to the admission of Douglas's statements to her on the grounds that they were hearsay and did not meet the excited utterance exception to the hearsay rule. Douglas's counsel then made an offer to prove.

[16] During the offer to prove, Escalante testified that when Douglas was crawling toward her, he was focused on St Laurent and began speaking to her when he reached them. Escalante testified that he was crying and appeared distraught, confused, and worried about St Laurent. Escalante testified that she asked Douglas if he was okay, and he responded, "I'm fine, is she okay." Tr. Vol. 3 at 11. Escalante asked Douglas what St Laurent's name was, and he said "Shannon." *Id*. Escalante asked Douglas what happened, and he said, "[D]id you see it? Car … swerved into my lane and I avoided it." *Id*. at 12. The trial court ruled that the statements did not satisfy the excited utterance exception to the hearsay rule and sustained the State's objection. Douglas maintains that the trial court abused its discretion by excluding his statements to Escalante.

[17] "The admission or exclusion of evidence lies within the sound discretion of the trial court and is afforded great deference on appeal." *Turner v. State*, 183 N.E.3d 346, 352 (Ind. Ct. App. 2022) (quoting *Whiteside v. State*, 853 N.E.2d 1021, 1025 (Ind. Ct. App. 2006)), *trans. denied*.

> We will reverse the trial court's ruling on the admissibility of evidence only for an abuse of discretion. An abuse of discretion occurs where the trial court's decision is clearly against the logic

> and effect of the facts and circumstances before it. In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor.

Id. at 352-53 (quoting *Whiteside*, 853 N.E.2d at 1025).

[18] Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). As a general rule, hearsay evidence is inadmissible unless it falls within one of the exceptions. Ind. Evidence Rule 802. In this case, the declarant is the defendant, and Douglas did not testify. "Generally, a defendant who does not testify cannot introduce exculpatory statements made outside of court in order to enhance his credibility at trial." *Sweeney v. State*, 704 N.E.2d 86, 110 (Ind. 1998). Such statements are inadmissible because a defendant has an interest in fabricating an exculpatory statement and therefore the statements lack indicia of reliability inherent in statements against interest.[1] *Washburn v. State*, 499 N.E.2d 264, 268 (Ind. 1986), *overruled on other grounds* by *Ludy v. State*, 784 N.E.2d 459 (Ind. 2003). We agree with the State that "allowing admission of Escalante's testimony regarding Douglas' out-of-court exculpatory statement would be akin to Douglas testifying without being subject to cross examination and would unfairly enhance Douglas' credibility

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[1] A defendant's exculpatory statement may be admissible under the doctrine of completeness: "[W]hen one party introduces part of a conversation or document, opposing party is generally entitled to have the entire conversation or entire instrument placed into evidence." *Sweeney*, 704 N.E.2d at 110 (quoting *McElroy v. State*, 553 N.E.2d 835, 839 (Ind. 1990)). Douglas does not assert that the doctrine of completeness applies.

without the State being able to refute the claims made in the statement." Appellee's Br. at 19.

[19] Here, Douglas contends that his statements to Escalante are admissible under the excited utterance exception. An excited utterance is "[a] statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused." Ind. Evidence Rule 803(2). For a statement to qualify as an excited utterance, three elements must be present: (1) a startling event has occurred; (2) a statement was made by a declarant while under the stress of excitement caused by the event; and (3) the statement relates to the event. *Boatner v. State*, 934 N.E.2d 184, 186 (Ind. Ct. App. 2010). The test is not mechanical and "turns on whether the statement was inherently reliable because the witness was under the stress of the event and unlikely to make deliberate falsifications." *Id*. "The amount of time that has passed between the event and the statement is relevant but not dispositive." *Noojin v. State*, 730 N.E.2d 672, 676 (Ind. 2000). "The heart of the inquiry is whether the declarant was incapable of thoughtful reflection." *Jones v. State*, 800 N.E.2d 624, 627 (Ind. Ct. App. 2003). "The statement must be trustworthy under the facts of the particular case." *Davis v. State*, 796 N.E.2d 798, 802 (Ind. Ct. App. 2003).

[20] Douglas acknowledges that our supreme court has not explicitly held that the hearsay exceptions apply to a defendant's out-of-court exculpatory statement.[2]

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[2] The State recognizes that our appellate courts have not explicitly held that the exceptions to the hearsay rule apply to a defendant's out-of-court exculpatory statements but does not argue that they should not apply.

However, he urges us to apply the excited utterance exception to his statements, citing *Jenkins v. State*, 725 N.E.2d 66 (Ind. 2000). There, at Jenkins's trial for rape, the interrogating officer testified that Jenkins had told him that the encounter was consensual. Jenkins sought to introduce other statements he made to the officer during the interrogation, but the trial court excluded them as hearsay. On appeal, Jenkins argued that his statements were admissible under the excited utterance exception because he was under the stress of being arrested and charged with rape and robbery. *Id*. at 68. Our supreme court observed that Jenkins had not claimed at trial or on appeal that "the omitted statements were relevant to provide a complete account of the matters addressed in the admitted testimony." *Id*. (citing *Sweeney*, 704 N.E.2d at 110-11). The court then analyzed whether Jenkins's out-of-court statements would qualify under the excited utterance exception. The court reasoned that two hours had elapsed between Jenkins's arrest and his statements to the officer, and thus Jenkins had "ample time free of any ongoing effects of the arrest and his learning of the charges against him to reflect and compose a statement." *Id*. at 69. The court concluded that "[t]he trial court was well within its discretion in finding the statements inadmissible." *Id*.

[21] In *Jenkins*, the court concluded that the defendant's out-of-courts statement would not have qualified under the excited utterance exception, and therefore it was not necessary for the court to reach the question whether the hearsay exceptions applied to a defendant's out-of-court exculpatory statements. Here, we proceed in like fashion. We analyze whether Douglas's statement qualifies

as an excited utterance. Concluding that it does not, we need not consider whether the hearsay exceptions apply to a defendant's out-of-court exculpatory statements.

[22] Douglas argues that his statements to Escalante qualify under the excited utterance exception because he had just been in a motorcycle accident, he made the statements when he was under the stress and trauma caused by the motorcycle accident while his girlfriend lay dying, and the statements related to the motorcycle accident. He asserts that "the idea that [he] would have had the presence of mind and/or callousness to manufacture a false story to save himself under these circumstances defies credulity." Appellant's Br. at 20. The State asserts that his statements do not qualify under the excited utterance exception because his statements were not spontaneous but were in response to Escalante's questions. The State contends that "[s]tatements made in response to an inquiry 'increases the likelihood that the statements were not made under the stress of a startling event.'" *Id*. at 22 (quoting *Bryant v. State*, 802 N.E.2d 486, 496 (Ind. Ct. App. 2004), *trans. denied*).

[23] Here, the evidence shows that when Douglas made the statements, he was distraught, confused, and worried about St Laurent. On the other hand, Douglas did not spontaneously offer the information. He made the statements in response to Escalante's question. He told Escalante that he was fine. And before answering Escalante's question about what happened, he asked her whether she had seen the accident. These facts suggest that he was capable of rational thought and was aware that he could face significant legal

consequences. Under these circumstances, we decline to second guess the trial court's determination that Douglas's statements were not admissible under the excited utterance exception. Thus, we cannot say that the trial court abused its discretion in excluding the evidence.

Section 3 – Douglas has failed to show that his sentence is inappropriate based on the nature of the offense and his character.

[24] Article 7, Section 6 of the Indiana Constitution authorizes this Court to independently review and revise a sentence imposed by the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Indiana Appellate Rule 7(B) states, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "Such deference 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 character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). As we assess the nature of the offense and character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013).). Douglas bears the burden to show that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[25] Regarding the nature of the offense, the advisory sentence is the starting point that the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The advisory sentence for a level 4 felony is six years, with a range of two to twelve years. Ind. Code § 35-50-2-5.5. The trial court sentenced Douglas to the advisory sentence of six years, all executed. "Since the advisory sentence is the starting point our General Assembly has selected as an appropriate sentence for the crime committed, the defendant bears a particularly heavy burden in persuading us that his sentence is inappropriate when the trial court imposes the advisory sentence." *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*. Douglas does not challenge the length of his sentence; rather he asserts only that it is inappropriate because the trial court declined to suspend any portion to supervised probation. "The location where a sentence is to be served is an appropriate focus for application of our review and revise authority." *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). "Nonetheless, we note that it will be quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate." *Id*. "A defendant challenging the placement of a

sentence must convince us that the given placement is itself inappropriate." *Id*. at 268.

[26] Douglas contends that the nature of the offense shows that the accident occurred at a "wicked" curve where there had been many previous accidents and the evidence shows that he was not traveling at an excessive speed. Tr. Vol. 2 at 223. He claims, therefore, that his offense was not more egregious than what is inherent in every drunk driving accident resulting in death. Douglas ignores that his blood alcohol content was twice the legal limit. He drank three tall beers in an hour right before driving the motorcycle. Also, the pathologist testified that St Laurent's injuries were likely to have resulted from an accident that occurred at high speeds. As such, the nature of the offense does not convince us that a fully executed advisory sentence is inappropriate.

[27] As for Douglas's character, he asserts that he has a very minor criminal history, has a low likelihood of reoffending, a strong history of employment, is a single father with custody of three dependent children, and expressed remorse at the sentencing hearing, "at one point sobbing and declaring that he prayed for Shannon every day." Appellant's Br. at 24 (citing Tr. Vol. 3 at 89).

[28] We note that Douglas has a conviction for class B misdemeanor leaving the scene of an accident, which occurred in February 2021. "A defendant's criminal history is one relevant factor in analyzing character, the significance of which varies based on the "gravity, nature, and number of prior offenses in relation to the current offense.'" *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct. App.

2021) (quoting *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007)). "Even a minor criminal history reflects poorly on a defendant's character for the purposes of sentencing." *Id*. Douglas's crime, while minor, is related to the current offense in that it involved a motor vehicle accident. It also occurred just months before the current offense. As such, Douglas has failed to convince us that his fully executed advisory sentence is inappropriate based on the nature of the offense and his character. Based on the foregoing, we affirm Douglas's conviction and sentence.

[29] Affirmed.

Riley, J., and Mathias, J., concur.