MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joshua Andrew Treadwell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 24, 2023

Court of Appeals Case No. 22A-CR-1857

Appeal from the Madison Circuit Court

The Honorable Andrew Hopper, Judge

Trial Court Cause No. 48C03-2001-MR-2495

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

[1] Joshua Andrew Treadwell appeals his conviction and sentence for murder and a firearm enhancement. We affirm.

Facts and Procedural History

[2] On October 25, 2020, Treadwell went to a gas station in Anderson with his girlfriend, Brooklyn Parnell, and a friend, Taylor Hubble. Arneshia Fuller was also at the gas station. Fuller and Parnell had recently been in a fight in which Parnell aimed a gun at Fuller. Upon seeing each other, Fuller and Parnell began to argue. Eventually, Parnell drove away with Treadwell and Hubble, and Fuller followed them in her own car.

[3] Realizing Fuller was following them, Parnell stopped at the home of a friend, Monyae Allen. Parnell and Fuller both parked in front of Allen's home. Hubble went inside Allen's home, where several other guests were congregated. Fuller got out of her car and began yelling at Parnell, attempting to get her to come out of the car and fight. Parnell refused to exit her car but continued to engage Fuller verbally. Allen and another friend, Maurijah May, stayed in the front yard monitoring Parnell and Fuller. Treadwell went back and forth between the cars and the home, attempting to get both Parnell and Hubble to leave.

[4] Fuller and Parnell argued outside Allen's home for several minutes. During this time, Fuller primarily focused on Parnell but occasionally argued with Treadwell, telling him he was a "b*tch." Tr. Vol. IX p. 66. She also spit at him and "pushed" at his face. Tr. Vol. VIII p. 145. At one point, Fuller told Treadwell "if I had my gun, I would shoot you." *Id.* Eventually, Treadwell walked over to Parnell's car, appeared to retrieve something, and then walked over to where Fuller was standing by her own car. He pulled out a gun and shot her once in the chest. Treadwell and Parnell then fled the scene.

[5] Fuller was transported to the hospital, where she was pronounced dead. She had been shot once with a hollow-point bullet. No gun was found on Fuller's person or in her car.

[6] At the scene, Detective Norman Rayford with the Anderson Police Department interviewed Allen, May, Hubble, and the other guests. All claimed not to have seen anything. However, the next day during formal interviews with police, Allen and May identified Treadwell as the shooter, and the other guests told police that Treadwell, Parnell, and Fuller were arguing right before the shooting. All denied seeing Fuller with any weapon.

[7] The State charged Treadwell with murder and a firearm enhancement.[1] A jury trial was held in March 2022. At trial, Treadwell testified that Fuller threatened

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[1] For her role in the incident, including fleeing with Treadwell and helping him dispose of the handgun, Parnell was charged with Level 5 felony assisting a criminal, Level 6 felony obstruction of justice, and Class

to kill him and Parnell, told him she had a gun and would shoot him, and that he shot her only after she pointed a handgun at him.

[8] After much deliberation, the jury could not come to a unanimous verdict, and the court declared a mistrial. A second trial commenced in June and was also declared a mistrial after a potential juror made a threatening gesture to the court during voir dire.

[9] A third trial was held later that month. Allen and May both testified that they were in the yard when the two cars pulled up, that Fuller argued with Parnell and Treadwell for several minutes, and that Treadwell then walked up to Fuller and shot her once. Allen's other guests all testified that they were in the house when they heard a shot. All these witnesses admitted they had lied to law enforcement at the scene. Detective Rayford also testified that he spoke with the witnesses at the scene, "could tell they [were] not being truthful," and arranged for them to come to the police station for formal interviews, during which they disclosed more information. Tr. Vol. X p. 222.

[10] Instead of Treadwell testifying, he and the State agreed that his testimony from the March 2022 trial would be read into evidence. Defense counsel and the State worked together to redact parts of the testimony that referenced the trial in order to keep the jury from knowing Treadwell had previously been tried for

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A misdemeanor carrying a handgun without a license. She pled guilty as charged and was sentenced to five years. *See* Case No. 48C03-2011-F5-002494.

this offense. The redacted testimony was then read into evidence, with defense counsel, the prosecutor, and the trial court reading their earlier statements and Detective Rayford reading Treadwell's.

[11] The jury found Treadwell guilty of murder and that he used a firearm in the commission of the offense. At sentencing, the court found the following aggravators: (1) Treadwell's criminal history, consisting of Class D felony assisting a criminal, Level 3 felony neglect of a dependent resulting in serious bodily injury, and misdemeanor possession of marijuana, (2) he has twice violated probation and was on community supervision when he committed the offense, and (3) he shot Fuller "nearly at pointblank range . . . with a load in [his] weapon that was designed to inflict maximum damage." Tr. Vol. XII p. 32. The court found no mitigators. The court sentenced Treadwell to sixty years for murder, enhanced by fifteen years for the use of a firearm, for an aggregate term of seventy-five years.

[12] Treadwell now appeals.

Discussion and Decision

I. Admission of Evidence

[13] Treadwell challenges the trial court's admission of Detective Rayford's testimony that other witnesses, namely Allen and her guests, initially lied to law enforcement. Treadwell argues this violated Indiana Evidence Rule 704(b),

which provides in part, "Witnesses may not testify to opinions concerning . . . whether a witness has testified truthfully."

[14] But Treadwell did not object to this testimony at trial. Failure to object to the admission of evidence at trial "normally results in waiver and precludes appellate review unless its admission constitutes fundamental error." *Konopasek v. State*, 946 N.E.2d 23, 27 (Ind. 2011). "Fundamental error is an extremely narrow exception to the waiver rule where the defendant faces the heavy burden of showing that the alleged errors are so prejudicial to the defendant's rights as to make a fair trial impossible." *Ryan v. State*, 9 N.E.3d 663, 668 (Ind. 2014), *reh'g denied*. To establish fundamental error, the defendant must show that, under the circumstances, the trial court erred in not sua sponte raising the issue because the alleged error constituted a clearly blatant violation of basic and elementary principles of due process and presented an undeniable and substantial potential for harm. *Id.*

[15] We first note that Rule 704(b) "prohibits a witness from testifying about whether a witness *has testified* truthfully." *Halliburton v. State*, 1 N.E.3d 670, 680 (Ind. 2013) (citation omitted). Here, Detective Rayford's testimony involved the truthfulness of the witnesses' out-of-court statements to him, not their testimony. But even assuming the admission of his testimony was an error, we cannot say it harmed Treadwell, let alone was fundamental. Detective Rayford testified that he believed the witnesses lied to him at the scene when they denied knowing anything about the shooting. Each of those witnesses also testified and admitted they had initially lied for various reasons, namely, not wanting to be

involved and not trusting law enforcement. Where erroneously admitted evidence is cumulative of other testimony, its admission is harmless. *See Hoglund v. State*, 962 N.E.2d 1230, 1240 (Ind. 2012) (holding that although vouching testimony violated Rule 704(b), the error was harmless, not fundamental, because the improper testimony was cumulative of other properly admitted testimony).

[16] The admission of Detective Rayford's testimony did not amount to reversible error.[2]

II. Sufficiency

[17] Treadwell next claims the State produced insufficient evidence to negate his claim of self-defense. If a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating the claim beyond a reasonable doubt. *Wilson v. State*, 770 N.E.2d 799, 800-01 (Ind. 2002). "The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief." *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999). When a defendant challenges the sufficiency of the State's evidence in this regard, we

[2] Treadwell also argues the court erred in admitting his testimony from the March 2022 trial. But not only did Treadwell fail to object to the testimony's admission, he invited the error by agreeing that the testimony would be admitted, assisting the State in redacting the testimony, and helping read it to the jury. Thus, he cannot now challenge the procedure he affirmatively participated in. *See Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018) (stating that under the invited-error doctrine, a party cannot challenge an alleged error where they not only fail to object but actively commit or invite the error).

will not reweigh the evidence or judge the credibility of witnesses. *Wilson*, 770 N.E.2d at 801. We will reverse "only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt." *Id.* In other words, a trier of fact's decision on a claim of self-defense is generally entitled to considerable deference on appeal. *Taylor v. State*, 710 N.E.2d 921, 924 (Ind. 1999).

[18] A claim of self-defense requires that the defendant "(1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm." *Wilson*, 770 N.E.2d at 800. The State argues the defendant did not have a reasonable fear of death or great bodily harm, and we agree. At trial, Treadwell testified that he was in fear of his life because Fuller had a gun and was about to shoot him. To refute this contention, the State presented witness testimony that Fuller did not have a gun during the confrontation and had even said as much to Treadwell. This is sufficient to show he was not in reasonable fear of death or great bodily harm. *See Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021) (finding evidence sufficient to overcome self-defense claim where the State presented evidence from which the jury could have found defendant's act of shooting the victim was not "proportionate to the . . . situation"); *Butler v. State*, 547 N.E.2d 270, 272 (Ind. 1989) (finding witness testimony that victim did not have a gun was sufficient to overcome defendant's self-defense claim that victim tried to pull a gun on him). And while Treadwell points to other evidence in the record,

such as Fuller's size and aggression toward him, these are merely requests to reweigh the evidence, which we do not do. *Wilson*, 770 N.E.2d at 801.

[19] The evidence is sufficient to overcome Treadwell's self-defense claim.

III. Aggravating and Mitigating Factors

[20] Treadwell next challenges the trial court's finding of an aggravating factor. Specifically, Treadwell argues the trial court inappropriately considered that he shot Fuller at "pointblank range" with hollow-point bullets. Sentencing decisions rest 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 (Ind. 2007). A trial court abuses its discretion when the result it reaches 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." *Id.* An abuse of discretion may occur when the trial court finds aggravating factors not supported in the record. *Id.* Generally, the "nature and circumstances" of a crime is a proper aggravating circumstance. *McCann v. State*, 749 N.E.2d 1116, 1120 (Ind. 2001).

[21] In arguing that this aggravating factor is improper, Treatwell cites *Biddinger v. State*, 846 N.E.2d 271 (Ind. Ct. App. 2006), *vacated in part*, *affirmed in part* by 868 N.E.2d 407 (Ind. 2007). There, the trial court found as an aggravating factor that the defendant used a larger-caliber weapon and hollow-point bullets. On appeal, we held that aggravator to be improper, noting the defendant's possession of the weapon and bullets was "legal and constitutionally

protected." *Id.* at 278. That is not the case here. Treadwell did not have a license to carry a gun, a requirement under Indiana law at the time. *See* Ind. Code § 35-47-2-1 (2017).

[22] Furthermore, even if this aggravator were improper, we need not reverse if "we are confident the trial court would have imposed the same sentence even if it had not found the improper aggravator." *Baumholser v. State*, 62 N.E.3d 411, 417 (Ind. Ct. App. 2016), *trans. denied*. Here, the court also noted Treadwell's criminal history, that he had twice had his probation revoked, and that he was on community supervision at the time of the offense. Given this, we are confident the court would have imposed the same sentence.

[23] Additionally, Treadwell argues that the trial court abused its discretion in not finding a proposed mitigator, specifically, that the shooting was a reaction to Fuller's aggressive actions toward him. But "the trial court is not required to accept the defendant's arguments regarding what constitutes a mitigating factor or assign proposed mitigating factors the same weight as the defendant." *Mehringer v. State*, 152 N.E.3d 667, 673 (Ind. Ct. App. 2020). We agree with Treadwell that there is some evidence in the record that Fuller was being aggressive toward Treadwell and Parnell before the shooting. However, the record also shows that the altercation was almost entirely verbal, Fuller was not armed, and Treadwell escalated the situation by introducing a deadly weapon. Given this, we cannot say the trial court abused its discretion in not finding this mitigator. *See Ousley v. State*, 807 N.E.2d 758, 763 (Ind. Ct. App. 2004) (trial

court did not err in failing to consider provocation a mitigator where victim hit defendant and he then killed her).

IV. Inappropriate Sentence

[24] Finally, Treadwell argues that his seventy-five-year sentence is inappropriate and asks us to revise it under Indiana Appellate Rule 7(B), which provides that an appellate 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." "Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants have the burden of persuading us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[25] The sentencing range for murder is forty-five to sixty-five years, with an advisory sentence of fifty-five years. I.C. § 35-50-2-3(a). In addition, if a person knowingly or intentionally uses a firearm during the commission of certain offenses, including murder, the trial court may enhance the sentence by five to twenty years. I.C. § 35-50-2-11. Here, the trial court imposed an above-advisory

sentence of sixty years for murder, enhanced by fifteen years for the use of a firearm, for a total sentence of seventy-five years.

[26] As for the nature of the offense, Treadwell argues his actions were not particularly egregious, emphasizing that he shot Fuller only once while under the emotional strain of their argument. But as noted above, Treadwell's actions of bringing a gun to a fistfight drastically escalated the situation, which until that point had been mostly verbal. Furthermore, Treadwell's criminal history supports an enhanced sentence. He has been convicted of two felonies, including Level 3 felony neglect of a dependent, had his probation revoked in both cases, and was on community supervision at the time of this offense.

[27] Treadwell has not persuaded us that his sentence is inappropriate.

[28] Affirmed.

Mathias, J., and Pyle, J., concur.