

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Danny J. Clark,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 1, 2023

Court of Appeals Case No.
22A-CR-1423

Appeal from the
Pulaski Circuit Court

The Honorable
Mary C. Welker, Judge

Trial Court Cause No.
66C01-1808-MR-2

Memorandum Decision by Senior Judge Shepard
Chief Judge Altice and Judge Bailey concur.

Shepard, Senior Judge.

- [1] Danny Clark appeals his six convictions, contesting the trial court's admission of certain evidence. He also challenges the sufficiency of the evidence supporting his conviction of murder. Concluding there was no evidentiary error and the evidence is sufficient, we affirm.

Facts and Procedural History

- [2] Clark's nine-year relationship with Darlene Schultz ended in May 2018. That same month, Schultz obtained a no-contact order against Clark. In August, Clark went to Schultz's house to talk to her. Schultz was not home, so Clark broke into her home to wait for her. Unbeknownst to Clark, Schultz was out of the state visiting family. One afternoon, after Clark had been inhabiting Schultz's house for a few days, Schultz's current boyfriend, William Toosley, entered the house to do some work for Schultz. He was surprised to find Clark there. Clark forced Toosley onto the floor and then hit him in the head with a baseball bat at least five times, fracturing his skull in several places. The force of the impact drove the fractured skull pieces into Toosley's brain, killing him. Clark then set fire to the house and fled in Schultz's vehicle. Firefighters later found Toosley's charred body in the home.
- [3] Clark fled to Louisiana, where he was apprehended. In a statement to police, he confessed to the crimes. The State charged Clark with murder, a felony; arson, a Level 4 felony; abuse of a corpse, a Level 6 felony; residential entry, a

Level 6 felony; auto theft, a Level 6 felony; and invasion of privacy, a Class A misdemeanor. A jury found Clark guilty as charged.

Issues

- [4] Clark presents three issues for our review, which we restate as:
- I. Whether the trial court erred by admitting evidence of Clark's prior charges and threats;
 - II. Whether the trial court erred by admitting Clark's statement into evidence; and
 - III. Whether the evidence is sufficient to sustain Clark's conviction of murder.

Discussion and Decision

I. Admission of 404(b) Evidence

[5] Clark first contends the court erred by admitting evidence of his prior threats against Schultz.¹ Specifically, he argues that admission of this evidence violated Evidence Rules 404(b) and 403.

[6] As a general matter, the trial court is afforded considerable discretion in ruling on the admissibility and relevancy of evidence. *Nicholson v. State*, 963 N.E.2d

¹ Contrary to Clark's assertion, the trial court did not admit evidence of his pending domestic violence charges involving Schultz in addition to the evidence of his prior threats. Rather, a defense witness mentioned the charges in his testimony. *See* Tr. Vol. 5, pp. 159, 164, 167.

1096 (Ind. 2012). Because the trial court is best able to weigh the evidence and assess witness credibility, we review its rulings on admissibility for abuse of discretion and reverse only if a ruling is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights.

Canfield v. State, 128 N.E.3d 563 (Ind. Ct. App. 2019), *trans. denied*.

- [7] Evidence Rule 404(b)(1) precludes the admission of evidence of a crime, wrong, or other act to prove a person's character in order to show that on a particular occasion the person acted in accordance with that character. Evidence is excluded under this rule when its purpose is to permit the jury to indulge in the "forbidden inference" that the defendant "must be guilty of the charged crime because, on other occasions, he acted badly." *Fairbanks v. State*, 119 N.E.3d 564, 565 (Ind. 2019). However, such evidence may be admissible for other purposes, such as "proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Ind. Evidence Rule 404(b)(2). In assessing the admissibility of 404(b) evidence, a trial court must (1) determine that such evidence is relevant to a matter at issue, other than the defendant's propensity to commit the charged act and (2) balance the probative value of the evidence against its prejudicial effect pursuant to Evidence Rule 403. *Whitham v. State*, 49 N.E.3d 162 (Ind. Ct. App. 2015), *trans. denied*. Rule 403 provides that a trial court may exclude relevant evidence if its probative value is substantially outweighed by its prejudicial effect.

- [8] Here, prior to trial the court heard argument on the admissibility of testimony regarding threats Clark had previously made to Schultz. The court ruled that

the evidence was admissible to show Clark's plan and motive. *See* Appellant's App. Vol. 3, pp. 247-48 (Order on Issues of 404(b) Evidence).

[9] At trial, out of the presence of the jury, defense counsel made a continuing objection to the 404(b) evidence that would be introduced by the State. *See* Tr. Vol. 3, pp. 60-62. During its direct examination of Schultz, the State asked generally if she had obtained a no contact order against Clark in May 2018, to which she replied in the affirmative. *Id.* at 137. Later, the State asked Schultz if Clark had ever expressed to her what he would do if she left him. Schultz responded that Clark told her he would "[b]urn the house down" and "kill [her] or beat [her] up." *Id.* at 147. Mandy Moody, Clark's girlfriend at the time he committed these offenses, testified that Clark hated Schultz and stated several times that he was going to kill her. Tr. Vol. 4, p. 199. Moody stated he was very specific that "he wanted to tie her to a chair, beat her legs with a baseball bat until she couldn't walk, and then set her house on fire." *Id.*

[10] A defendant's prior actions can be admissible to show the relationship between the parties and defendant's motive, plan, or other proper purposes. *Elliott v. State*, 630 N.E.2d 202 (Ind. 1994). "Evidence of motive is always relevant in the proof of a crime." *Davis v. State*, 186 N.E.3d 1203, 1212 (Ind. Ct. App. 2022) (quoting *Ross v. State*, 676 N.E.2d 339, 346 (Ind. 1996)), *trans. denied*. In addition, our Supreme Court "has made clear that 'hostility is a paradigmatic motive for committing a crime.'" *Whitham*, 49 N.E.3d at 167 (quoting *Hicks v. State*, 690 N.E.2d 215, 222 (Ind. 1997)).

[11] Evidence of Clark's previous threats illustrates the hostility he harbored toward Schultz and is thus highly relevant to establishing his motive for burning Schultz's home. Additionally, the evidence demonstrates his intent or plan to burn the home. Thus, we conclude the testimony relating Clark's aggression and threats concerning Schultz is relevant to a matter at issue other than his propensity for violence. *See, e.g., Elliott*, 630 N.E.2d 202 (defendant's prior threats and statements concerning his ex-wife and murder victim/ex-wife's boyfriend were admissible to show relationship between parties and defendant's motive, plan, and absence of accident).

[12] Turning to the balancing required by Rule 403, we recognize that assessment of whether the probative value of evidence is substantially outweighed by its possible prejudice is a task best performed by the trial court. *Ward v. State*, 138 N.E.3d 268 (Ind. Ct. App. 2019). And trial courts are given wide latitude in performing this assessment. *Wilcoxson v. State*, 132 N.E.3d 27 (Ind. Ct. App. 2019), *trans. denied*. We will reverse the court's decision only upon a showing of abuse of discretion. *Ceaser v. State*, 964 N.E.2d 911 (Ind. Ct. App. 2012), *trans. denied*. We are mindful that, while all relevant evidence is inherently prejudicial to a criminal defendant, the question is not whether the evidence is prejudicial but whether the evidence is *unfairly* prejudicial. *Ward*, 138 N.E.3d 268. Here, Clark's argument on this issue has not convinced us that the probative value of the evidence was substantially outweighed by any prejudicial effect.

[13] Thus, we conclude the testimony recounting Clark's threats and hostile feelings toward Schultz was relevant to establish both his motive and plan for burning

her home. Further, the testimony was of such probative value that it was not outweighed by any prejudice to Clark. Accordingly, the trial court did not abuse its discretion by admitting the testimony.

II. Admission of Statement

[14] Clark next alleges the trial court abused its discretion by admitting his confession into evidence. He claims he did not knowingly waive his rights and his confession was not voluntary under the Indiana Constitution.

[15] Several standards govern our review. First, the State bears the burden of proving beyond a reasonable doubt that the defendant knowingly and intelligently waived his rights and that the defendant's confession was voluntarily given. *Wessling v. State*, 798 N.E.2d 929 (Ind. Ct. App. 2003). Second, where that standard has been met, the decision whether to admit a confession is within the discretion of the trial court and will not be reversed absent an abuse of that discretion. *Moore v. State*, 143 N.E.3d 334 (Ind. Ct. App. 2020), *trans. denied*. And third, when reviewing a challenge to the trial court's decision to admit a confession, we do not reweigh the evidence but instead examine the record for substantial probative evidence of voluntariness. *Id.*

A. Knowing Waiver

[16] Clark claims he did not knowingly waive his rights because the police did not confirm that he understood them by engaging in a colloquy with him. Waiver

of a defendant's *Miranda*² rights occurs when the defendant, after being advised of those rights and acknowledging an understanding of them, proceeds to make a statement without taking advantage of those rights. *State v. Keller*, 845 N.E.2d 154 (Ind. Ct. App. 2006) (quoting *Ringo v. State*, 736 N.E.2d 1209, 1211-12 (Ind. 2000)). There is no formal requirement for the manner in which the State meets its burden of advising an individual consistent with *Miranda*; accordingly, we examine the issue in light of the totality of the circumstances. *Keller*, 845 N.E.2d 154. The totality of the circumstances includes the defendant's background, experience, and conduct. *Rhodes v. State*, 698 N.E.2d 304 (Ind. 1998) (quoting *Allen v. State*, 686 N.E.2d 760, 772 (Ind. 1997)).

[17] Here, Indiana State Police (ISP) Sergeant Richard Strong provided Clark with the ISP's standard advice of rights form and read it aloud to Clark while Clark followed along. Supp. Ex. Vol. 4 (Suppression Hrg Exhibits), State's Ex. 2 at 0:03:12 – 0:04:47; Supp. Tr. Vol. 2, p. 23 (Suppression Hrg); Tr. Vol. 5, pp. 34-35. After reading the rights, Sergeant Strong told Clark to sign the form if he was willing to talk to the officers. Supp. Ex. Vol. 4, State's Ex. 2 at 0:04:47 – 0:04:49; Tr. Vol. 5, p. 36.

[18] Clark is a high school graduate with some amount of post-high school education, and at the time of the interview he was forty-six years old. In the

² *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

video of the interview, Clark appeared alert, and he demonstrated no difficulty in understanding or responding to questions.

[19] In addition, Clark is not a stranger to the justice system. In 2009, Clark was charged with the felony offenses of residential entry and domestic battery in the presence of a child less than sixteen years old, and in 2010 he was charged with the felony of escape from lawful detention. In 2018, he was again charged with felony domestic battery as well as the felony offenses of strangulation, intimidation, auto theft, and resisting law enforcement.

[20] At no point did Clark give any indication that he did not understand the rights Sergeant Strong read aloud to him, and he signed the waiver and proceeded to talk with the officers. This Court has emphasized that an oral advisement, whether or not accompanied by the use of a form, is the preferred method of ensuring an accused's constitutional rights. *Keller*, 845 N.E.2d 154. Moreover, we have recognized that a signed waiver form is one piece of evidence that demonstrates the accused was aware of and understood his rights. *Id.* (quoting *Allen*, 686 N.E.2d at 770). Based on the totality of the circumstances here, we are satisfied that Clark was advised of his *Miranda* rights and knowingly chose to engage in an interview with police without asserting those rights.

B. Voluntary Statement

[21] Clark further asserts his statement was not voluntary because, at the time he made it, he had extensive poison ivy on his body, he was suffering from

depression, and the officers led him to believe he was being questioned about another matter.

[22] “In addition to the required *Miranda* advisement, a defendant’s self-incriminating statement must also be voluntarily given.” *State v. Banks*, 2 N.E.3d 71, 80 (Ind. Ct. App. 2014), *trans. denied*. “A confession is voluntary if, in light of the totality of the circumstances, the confession is the product of a rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant’s free will.” *Shelby v. State*, 986 N.E.2d 345, 365 (Ind. Ct. App. 2013), *trans. denied*. The crucial inquiry is whether the defendant’s statements were induced by violence, threats, promises, or other improper influence. *Id.*

[23] When evaluating a claim that a statement was not given voluntarily, the trial court is to consider the totality of the circumstances, including: the critical element of police coercion, the length of the interrogation, its location, its continuity, and the defendant’s maturity, education, physical condition, and mental health. *Id.* On appeal, we examine the record for substantial, probative evidence of voluntariness, but we will not reweigh the evidence. *Id.* We consider the evidence most favorable to the trial court’s conclusion as well as reasonable inferences that can be drawn therefrom. *Id.* We will not set aside the trial court’s decision if there is substantial evidence to support it. *Id.*

[24] Clark’s conclusory assertion that his poison ivy affected his ability to give a voluntary statement enjoys no evidentiary support in the record. The video

shows that before the interview began, one of the officers motioned to Clark's arm, and Clark responded, "it's all over my back and legs" and stated he had been given calamine lotion. Supp. Ex. Vol. 4, State's Ex. 2 at 0:01:43. Before asking Clark questions concerning the fire, the officers asked Clark if he had any medical conditions; he responded only that he had poison ivy. Clark then talked coherently to the officers for about an hour, after which he informed them of the extent of his poison ivy and the failure of the calamine to treat it and requested a different remedy. He does not allege he ever informed the officers that it made him so uncomfortable that it affected his ability to give a voluntary statement or that, given such information, the officers forced or threatened him to proceed. *See, e.g., Weisheit v. State*, 26 N.E.3d 3 (Ind. 2015) (defendant's concussion and hospitalization did not render his statement involuntary; he remained conscious throughout interview, was fully aware of surroundings, and selectively responded to certain questions in great detail).

[25] Clark further suggests that he was depressed and that this condition rendered his confession involuntary. Although he was emotional during his interview and told the officers that his break-up with Schultz had upset him and caused him to not think clearly, Clark points to no evidence that the officers were aware of any mental condition or that they did anything to take advantage of it. "[A] defendant's claimed mental condition does not render a confession involuntary absent coercive police conduct." *Stevens v. State*, 770 N.E.2d 739, 750 (Ind. 2002); *see also Pettiford v. State*, 619 N.E.2d 925, 928 (Ind. 1993) ("Although a person's mental condition is relevant to the issue of susceptibility

to police coercion, where the person voluntarily makes a confession without police coercion the confession may be considered in spite of the mental condition.”).

[26] Finally, Clark contends his confession was not voluntary because “[l]aw enforcement repeatedly lied” to him “to make him believe that he was there under a different matter.” Appellant’s Br. p. 11. Clark refers to no evidence, testimony, or statements to support this assertion. Instead, he cites defense counsel’s cross examination of Sergeant Strong. Counsel accused the sergeant of lying to Clark during the interview by stating, “I don’t think you meant to hurt [Toosley] at all,” and “I think you wanted to get away and things got out of hand.” Tr. Vol. 5, p. 78.

[27] As to any deceit by the officers, our review of the video of Clark’s confession reveals only that when he referred to his battery and strangulation charges, Sergeant Strong simply informed him they were not there to talk about that. Clark and the officers then proceeded to discuss Clark going to Schultz’s home to talk to her and, ultimately, his beating of Toosley and burning of the home. Moreover, the video disclosed that the sergeant’s comments had no bearing on the voluntariness of Clark’s confession as they were made by the sergeant after Clark confessed and at the conclusion of the interview.

[28] Further, the video shows that when Clark first entered the interview room at the jail, the sergeant offered him a soda and had his handcuffs loosened so that he could drink. He confirmed that Clark had eaten and slept and was not

intoxicated. Sergeant Strong thanked Clark for speaking with them and later confirmed that Clark could read and write. As we recognized above, Clark had at least a high school education as well as experience with the justice system. Although perhaps uncomfortable due to his poison ivy and emotional from everything that had occurred, Clark was articulate and gave a coherent account of his actions in the one-hour statement.

[29] The evidence here demonstrates no violence, threats, promises, or other improper influence by the officers and certainly nothing as egregious as other cases where our courts have nonetheless upheld the admission of defendants' statements. *See, e.g., Malloch v. State*, 980 N.E.2d 887 (Ind. Ct. App. 2012) (concluding there was substantial evidence supporting trial court's decision that defendant's statement to police was voluntary even though interrogation was confrontational and intense, and interrogating officer lied to defendant and indicated defendant could help himself by cooperating), *trans. denied; Henry v. State*, 738 N.E.2d 663 (Ind. 2000) (affirming admission of confession even though officers falsely informed defendant that his fingerprints were found at the scene and that someone had identified him as the killer). Under the totality of the circumstances, we cannot conclude that Clark's statement was induced by violence, threats, or other improper influences that overcame his free will.

III. Sufficiency of the Evidence

[30] For his final contention on appeal, Clark argues the State's evidence is insufficient to sustain his conviction of murder. In reviewing such challenges, we neither reweigh the evidence nor judge the credibility of witnesses.

Sandleben v. State, 29 N.E.3d 126 (Ind. Ct. App. 2015), *trans. denied*. Instead, we consider only the evidence most favorable to the verdict and any reasonable inferences drawn therefrom. *Id.* If there is substantial evidence of probative value from which a reasonable factfinder could have found the defendant guilty beyond a reasonable doubt, the verdict will not be disturbed. *Labarr v. State*, 36 N.E.3d 501 (Ind. Ct. App. 2015).

[31] To obtain a conviction for murder, the State must have proved beyond a reasonable doubt that (1) Clark (2) knowingly or intentionally (3) killed (4) William Toosley. *See* Appellant’s App. Vol. 2, p. 116; *see also* Ind. Code § 35-42-1-1 (2018). Here, Clark challenges the State’s evidence only as to the element of intent; specifically, he claims the State presented no evidence that he intentionally wanted to harm Toosley.

[32] A person engages in conduct “intentionally” if, when he engages in the conduct, it is his conscious objective to do so. Ind. Code § 35-41-2-2(a) (1977). Further, a person engages in conduct “knowingly” if, when he engages in the conduct, he is aware of a high probability that he is doing so. Ind. Code § 35-41-2-2(b).

[33] Our courts have held that “[t]he use of a deadly weapon in a manner likely to cause death or serious bodily injury is sufficient evidence of intent to support a conviction for murder.” *Alexander v. State*, 819 N.E.2d 533, 540 (Ind. Ct. App. 2004) (quoting *Chapman v. State*, 719 N.E.2d 1232, 1234 (Ind. 1999)). And, in *Corder v. State*, 467 N.E.2d 409 (Ind. 1984), our Supreme Court held that a

baseball bat was a deadly weapon when the defendant struck a person across the head with it. Additionally, where blows of magnitude are repeated, a trier of fact could conclude the defendant had an intent to kill. *Burns v. State*, 59 N.E.3d 323 (Ind. Ct. App. 2016), *trans. denied*.

[34] The evidence in this case showed that Clark hit Toosley in the head with a baseball bat at least five times while he was standing over Toosley who was lying on the floor. The forensic pathologist who performed Toosley's autopsy testified that Toosley's skull was fractured in several places by "a significant amount of force" that then drove the pieces of the skull into Toosley's brain. Tr. Vol. 5, p. 100. This evidence is sufficient to establish Clark's intent to kill Toosley. Moreover, it demonstrates a "knowing" killing as well because we do not believe that Clark, by repeatedly hitting Toosley with a bat with such extreme force, could have acted without an awareness of the high probability that his conduct could result in Toosley's death.

Conclusion

[35] We conclude therefore the trial court did not abuse its discretion by admitting evidence of Clark's prior threats as it was relevant to establish both motive and plan, and its probative value was not outweighed by any prejudice to Clark. We further conclude that, based on the totality of the circumstances, Clark knowingly waived his rights before confessing and that his confession was voluntary and not the product of any improper influence. Finally, there was sufficient evidence to sustain Clark's conviction of murder.

[36] Affirmed.

Altice, C.J., and Bailey, J., concur.