MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Duane N. Longacre,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 7, 2022

Court of Appeals Case No. 21A-CR-1812

Appeal from the Marshall Superior Court

The Honorable Robert O. Bowen, Judge

Trial Court Cause No. 50D01-2006-MR-1

Najam, Judge.

Statement of the Case

[1] Duane N. Longacre appeals his convictions and sentence for murder, a felony; arson, as a Level 4 felony; resisting law enforcement, as a Class A misdemeanor, and his adjudication as a habitual offender. Longacre raises three issues for our review:

1. Whether the trial court abused its discretion when it admitted certain autopsy photos as evidence.

2. Whether the court abused its discretion when it declined to instruct the jury on voluntary manslaughter as a lesser-included offense to murder.

3. Whether the court abused its discretion when it sentenced him.

[2] We affirm.

Facts and Procedural History

[3] In June 2020, Longacre lived "off and on" with Jill McCarty. Tr. Vol. 2 at 191. The two had a relationship that was, at times, a "mother/son sort of relationship" and, at other times, romantic. Tr. Vol. 3 at 59. Their relationship was "hit and miss" and "was contingent on [McCarty] providing drugs to [Longacre]." *Id*. at 59, 236.

[4] On June 27, Longacre was at McCarty's house. At different points in the night, Jasmine Perry and Ashley Bays arrived. Longacre and McCarty were "getting along just fine." Tr. Vol. 2 at 203. Longacre, McCarty, and Perry did "a little

bit of methamphetamine" together. *Id*. Bays spent the evening "hanging out" on a chair in the living room. Tr. Vol. 3 at 70. From that spot, Bays could see into McCarty's bedroom. At some point, McCarty and Longacre went to McCarty's bedroom, and Bays and Perry remained in the living room.

[5] The next morning, Longacre and McCarty were still in McCarty's room. Things were "peaceful." *Id*. at 77. Longacre was behind McCarty "braid[ing] her hair" and "holding her hand." Tr. Vol. 2 at 206. At some point, Bays, who was still in the chair in the living room, looked up and saw Longacre "coming down with [a] machete" on McCarty "two or three times." Tr. Vol. 3 at 76. Bays asked Longacre what he was doing, and Longacre just "mumbled something," set the machete down, and started dragging McCarty across the floor. *Id*.

[6] Meanwhile, Perry was in the bathroom. While she was in there, Longacre "push[ed] open the door," and Perry saw him "pulling" McCarty by her arms. Tr. Vol. 2 at 207. Perry saw blood on McCarty, "took off running," and called 9-1-1. *Id*. at 208. Bays followed on his bike.

[7] Officers with the Plymouth Police Department responded to the dispatch. As Officer Wallace Derifield approached the house, he observed Longacre "moving from room to room." *Id*. at 228. Officer Derifield knocked on the front door, and Longacre stated that he was "not coming out to get shot from the police for what [he] did." *Id*. Officer Derifield then went to the other side of the house, and "all of a sudden" he started "smelling smoke that's associated

with burning." *Id*. at 230. Officer Derifield went back to the front of the house, looked through the window, and saw that the couch was on fire. Officers attempted to gain entry to the home, but Longacre had "barricaded" the front door. *Id*. at 231.

[8] Longacre periodically stuck his head out of a window in order to get "breaths of air." Tr. Vol. 3 at 18. Officer Jeremy Enyart attempted to grab Longacre, but Longacre's arms and hands were covered in "sweat and blood." *Id*. When the house became fully engulfed in flames, Longacre ran out of the back door. Officer Enyart tased Longacre, and Officer Derifield attempted to handcuff him. But Longacre continued to "fight" the officers, and he did not comply with any orders the officers gave. Tr. Vol. 2 at 232. A third officer assisted, and they were able to detain Longacre. When officers asked Longacre if there was anyone inside the residence, he responded by saying that the "f***in' b**ch is dead." Tr. Vol. 3 at 20.

[9] Firefighters with the Plymouth Volunteer Fire Department arrived and extinguished the fire. An investigator with the Indiana State Fire Marshal's Office investigated the fire and concluded that it "was an intentional act by a human." *Id*. at 53. Officers were ultimately able to gain access to the house, and they discovered McCarty's body in the bathtub. McCarty had died as a result of "[m]ultiple injuries due to physical assault." Ex. Vol. 1 at 21.

[10] Following his detention, Detective Ben McIntyre interviewed Longacre. Longacre stated that McCarty was "evil" and that she had "been perpetuating

lies and that's why there [is] a f***ing bounty on [his] head." *Id*. at 79. He further stated that he thought McCarty was a human "possessed by a demon." *Id*. at 83. And Longacre told Detective McIntyre that he had "killed the witch" because she had "power." *Id*. at 85. The State charged Longacre with murder, a felony; arson, as a Level 4 felony; and resisting arrest, as a Class A misdemeanor. In addition, the State alleged that Longacre was a habitual offender.

[11] Thereafter, Doctor Christina Pietz conducted a forensic psychological evaluation of Longacre. During their meeting, Longacre stated that he had been using methamphetamine "every day" and that he had not slept in the ten days prior to the offense. *Id*. at 194. Longacre also stated that McCarty was a "real life living and breathing witch"; that he believed he was going to be her "next victim"; and that McCarty had already tried to get her son to kill him. *Id*. at 195. According to Dr. Pietz, Longacre "believed that his life was in danger" and that he "felt compelled to murder" McCarty. *Id*. Dr. Pietz concluded that Longacre did not meet the criteria for a severe mental disease but that he met "the criteria for methamphetamine induced psychosis caused by voluntary intoxication." *Id*. at 198.

[12] The court then held a bifurcated jury trial. During the first phase of the trial, the State called as a witness Doctor LaTanja Watkins, the forensic pathologist who had performed McCarty's autopsy. During her testimony, the State moved to admit photographs taken of McCarty at different stages of the autopsy. The photographs showed Dr. Watkins shaving McCarty's head

around an injury, pulling part of McCarty's scalp away, and removing part of the skull. Longacre objected on the ground that the "gruesome shock factor outweighs the probative value." Tr. Vol. 2 at 248. The court overruled the objection and admitted the photographs. Dr. Watkins testified that the purpose of "resecting the scalp" was to "see all of the associated injuries." *Id*. And she confirmed that McCarty's head injury "went all the way into the brain." *Id*.

[13] At the conclusion of the first phase of the trial, Longacre requested that the court instruct the jury on voluntary manslaughter as a lesser-included offense to murder. The State objected, and the court declined to provide that instruction. The jury found Longacre guilty as charged. During the second phase of the trial, Longacre admitted to being a habitual offender, and the court entered judgment of conviction accordingly. At his ensuing sentencing hearing, Longacre gave a lengthy allocution during which he stated that "witches are real" and that McCarty was part of a "covenant." Tr. Vol. 4 at 87, 89. He then stated that he "knew [McCarty] wasn't going to stop" until he "was dead." *Id*. at 117. And he said that he was "tired of running" so he "picked up her machete and brought it down hard on top of her head." *Id*. at 118.

[14] In sentencing Longacre, the court found that there were no mitigating circumstances. And the court identified the following as aggravating circumstances: that Longacre "showed no remorse," that Longacre "showed no sincere acknowledgement of wrongdoing," Longacre's lengthy criminal history, his prior habitual offender adjudication, his seventeen negative conduct reports while incarcerated, and that he is a "high risk to reoffend." Appellant's

App. Vol. 2 at 107-108. The court found that the "aggravating circumstances obviously outweigh the mitigating circumstances" and sentenced Longacre to an enhanced aggregate sentence of ninety-seven years in the Department of Correction. Tr. Vol. 4 at 128. This appeal ensued.

Discussion and Decision

Issue One: Admission of Evidence

[15] Longacre first contends that the trial court abused its discretion when it admitted certain evidence. Our standard of review is well settled. As this Court has recently stated:

> "The trial court has broad discretion to rule on the admissibility of evidence." *Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017). 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. *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). Moreover, we may affirm an evidentiary ruling on any theory supported by the evidence. *Satterfield v. State*, 33 N.E.3d 344, 352 (Ind. 2015).

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

[16] Longacre alleges that the trial court abused its discretion when it admitted as evidence the State's Exhibits 67 through 70, which were photographs from McCarty's autopsy, because those exhibits violated Indiana Evidence Rule

403.[1] Under Indiana Rule of Evidence 403, "relevant evidence may be excluded if its probative value is substantially outweighed by the danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." *Snow v. State*, 77 N.E.3d 173, 179 (Ind. 2017) (quotation marks omitted). As our Supreme Court has made clear:

> "Trial judges are called trial judges for a reason. The reason is that they conduct trials. Admitting or excluding evidence is what they do." *United States v. Hall*, 858 F.3d 254, 288 (4th Cir. 2017) (Wilkinson, J., dissenting). That's why trial judges have discretion in making evidentiary decisions. This discretion means that, in many cases, trial judges have options. They can admit or exclude evidence, and we won't meddle with that decision on appeal. *See Smoote v. State*, 708 N.E.2d 1, 3 (Ind. 1999). There are good reasons for this. "Our instincts are less practiced than those of the trial bench and our sense for the rhythms of a trial less sure." *Hall*, 858 F.3d at 289. And trial courts are far better at weighing evidence and assessing witness credibility. *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). In sum, our vantage point—in a "far corner of the upper deck"—does not provide as clear a view. *State v. Keck*, 4 N.E.3d 1180, 1185 (Ind. 2014).

Id. at 177. Our trial courts have "wide discretion" in applying Rule 403. *Id.*

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[1] At trial, Longacre objected to the admission of the State's Exhibits 57 through 70, all of which were photographs from McCarty's autopsy. *See* Tr. Vol. 2 at 248. However, on appeal, Longacre only argues that the court abused its discretion when it admitted Exhibits 67 through 70. *See* Appellant's Br. at 14-15.

[17] On appeal, Longacre first contends that the photographs were inadmissible because they had "little to no probative value" since he "admit[ted] to having killed the victim and how he did so." Appellant's Br. at 15. However, our Supreme Court has concluded that, in a homicide case, "'the death of the alleged victim and its cause'" is a fact of consequence in the determination of guilt of the accused. *Halliburton v. State*, 1 N.E.3d 670, 677 (Ind. 2013) (quoting *Butler v. State*, 647 N.E.2d 631, 634 (Ind. 1995)). As such, autopsy photos are not inadmissible simply because there is no dispute over the cause of death. *See id*.

[18] Still, Longacre contends that the unfair prejudicial impact of the autopsy photos substantially outweighed their probative value because they were "overkill," "gruesome," and "add[ed] very little to the pathologist's explanation." Appellant's Br. at 14-15. He maintains that the photos "arous[ed] the emotions of and misle[d] the jury" as they "show[ed] McCarty after the autopsy had begun and in an altered state." *Id*.

[19] It is true that "autopsy photographs are generally inadmissible if they show the body in an altered position." *Haliburton*, 3 N.E.3d at 677. But "'there are situations where some alteration of the body is allowed where necessary to demonstrate the testimony given.'" *Id*. (quoting *Swingley v. State*, 739 N.E.2sd 132, 134 (Ind. 2000)). Indeed, our Supreme Court has expressly "held admissible two photographs that depicted the victim's skull with the hair and skin pulled away from it." *Id*. (citing *Fentress v. State*, 702 N.E.2d 721, 722 (Ind. 1998)). The Court found that the potential for confusion was minimal and that

the probative value outweighed the prejudicial effect because the pathologist had explained what he had done and that the alteration was necessary to determine the extent of the victim's injuries. *Id.*

[20] The same is true here. The autopsy photographs of McCarty's altered body were necessary to demonstrate Dr. Watkin's testimony. Indeed, Dr. Watkins testified that Exhibit 66 was a picture of her "shaving the head around" one of McCarty's injuries; that Exhibit 67 showed the "breaking of the skull"; that Exhibits 68 and 69 depicted her "pull[ing] the scalp away" to see "the full extent" of McCarty's injury; and that Exhibit 70 showed that she had "taken the bony part of the skull off" in order to see a "cut" in the dura mater of McCarty's brain. Tr. Vol. 3 at 5-6. Dr. Watkins then reiterated that the purpose of "resecting the scalp" was to "see the full extent" of McCarty's injury, which demonstrated that McCarty's injury had gone into her brain. *Id.* at 6.

[21] In other words, Dr. Watkins explained what she had done during the autopsy and that the alterations were necessary to determine the extent of McCarty's injuries. We therefore conclude that the probative value outweighed the prejudicial effect. *Halliburton*, 1 N.E.3d at 678. As such, the trial court did not abuse its discretion when it admitted as evidence State's Exhibits 67 through 70.

Issue Two: Proffered Jury Instruction

[22] Longacre next asserts that the trial court abused its discretion when it declined to instruct the jury on voluntary manslaughter as a lesser-included offense to

murder. "Instructing the jury is a matter within the discretion of the trial court, and we'll reverse only if there's an abuse of that discretion." *Cardosi v. State*, 128 N.E.3d 1277, 1284 (Ind. 2019).

[23] Further,

> [w]hen a defendant requests an instruction covering a lesser-included offense, a trial court applies the three-part analysis set forth in *Wright v. State*, 658 N.E.2d 563, 566-67 (Ind. 1995). The first two parts require the trial court to determine whether the offense is either inherently or factually included in the charged offense. *Id*. If so, the trial court must determine whether there is a serious evidentiary dispute regarding any element that distinguishes the two offenses. *Id*. at 567; *see also Brown v. State*, 703 N.E.2d 1010, 1019 (Ind. 1998). *Wright* held that, "if, in view of this dispute, a jury could conclude that the lesser offense was committed but not the greater, then it is reversible error for a trial court not to give an instruction, when requested, on the inherently or factually included lesser offense." *Wright*, 658 N.E.2d at 567. Where a trial court makes such a finding, its rejection of a tendered instruction is reviewed for an abuse of discretion. *Brown*, 703 N.E.2d at 1019.

Wilson v. State, 765 N.E.2d 1265, 1271 (Ind. 2002) (footnote omitted). "In our review, we accord the trial court considerable deference, view the evidence in a light most favorable to the decision, and determine whether the trial court's decision can be justified in light of the evidence and circumstances of the case." *Leonard v. State*, 80 N.E.3d 878, 885 (Ind. 2017) (quotation marks omitted).

[24] Voluntary manslaughter is an inherently lesser included offense of murder. *Isom v. State*, 31 N.E.3d 469, 485 (Ind. 2015). However,

> [t]his is not a typical example of a lesser included offense in that what distinguishes voluntary manslaughter from murder is the existence of sudden heat, which is not an element of murder, but rather a mitigating favor in conduct that would otherwise be murder. 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. Thus, 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.

Id. at 485-86 (quotation marks and citations omitted).

[25] Longacre asserts that the evidence before the jury created a serious evidentiary dispute as to whether he had killed McCarty out of terror. To support this assertion, Longacre directs us to Dr. Pietz's psychological report. In that report, Dr. Pietz stated that Longacre believed that McCarty was a "witch," and that he "was about to be the next victim." Ex. Vol. 1 at 195. On appeal, Longacre contends that those beliefs "provided some evidence" that he "was scared for his life" such that he acted without reflection. Appellant's Br. at 19.

[26] However, while Longacre reported to Dr. Pietz that he believed he was going to be McCarty's next victim, he also reported that the last thing McCarty said before her death was "[n]ot here," which she said "low and under her breath." Ex. Vol. 1 at 195. And Longacre "believe[d]" that that statement by McCarty meant that McCarty "did not want [her minions] to kill [him] there." *Id*. In other words, while Longacre may have believed that McCarty was going to kill

him at some point in time, his own statement to Dr. Pietz demonstrates that he did not believe he was in immediate danger. And Longacre does not direct us to any other evidence to show that McCarty had taken any action against him such that he did not have time to deliberate or reflect on his actions.

[27] Rather, the undisputed evidence reveals that, prior to the night of the murder, Longacre had believed that McCarty was a witch who wanted to kill him. Indeed, Bays testified that, in the two weeks prior to the offense, Longacre had said that McCarty and her friends were "demons" and "witches" who "were out to get him." Tr. Vol. 3 at 63. But despite believing that McCarty was a witch who was after him, Longacre continued to regularly associate with McCarty, stay at her residence, and do drugs with her.

[28] Moreover, there was no evidence of any physical attack by McCarty. To the contrary, Perry testified that Longacre and McCarty were "getting along just fine" and that they had gone into McCarty's room "to have sex." Tr. Vol. 2 at 203, 206. And Perry testified that, not long before the murder, Longacre was "braid[ing] [McCarty's] hair" and "holding her hand." *Id*. at 207. Similarly, Bays testified that he did not witness any arguments between McCarty and Longacre and that they "seemed to be getting along just fine." Tr. Vol. 3 at 73.

[29] It was the trial court's prerogative to consider "the weight and credibility of the evidence" in "determining the seriousness" of any evidentiary dispute for purposes of deciding whether to instruct the jury on voluntary manslaughter as a lesser-included offense to murder. *Leonard v. State*, 80 N.E.3d at 885. On this

record, we cannot say that the trial court abused its discretion when it declined to instruct the jury on voluntary manslaughter. We affirm the court's denial of Longacre's proffered jury instruction.

Issue Three: Abuse of Discretion in Sentencing

[30] Finally, Longacre contends that the trial court abused its discretion when it sentenced him. Sentencing decisions lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). An abuse of discretion occurs if the decision 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. *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citation omitted).

[31] A trial court abuses its discretion in sentencing if it does any of the following:

> (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law."

Id. (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490-91 (Ind.), *clarified on reh'g on other grounds*, 875 N.E.2d 218 (Ind. 2007).

[32] The sentencing range for murder is forty-five to sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3(a) (2021). The

sentencing range for a Level 4 felony is two years to twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. In addition, a person who commits a Class A misdemeanor shall be imprisoned for a term of not more than one year. I.C. § 35-50-3-2. And the court shall sentence a person found to be a habitual offender to an additional fixed term of six years to twenty years. I.C. § 35-50-2-8(i)(1). Thus, the maximum sentence the court could have imposed was ninety-eight years. And, based on its identification of aggravators, the court sentenced Longacre to the near-maximum sentence of ninety-seven years.

[33] On appeal, Longacre contends that the court abused its discretion when it identified as aggravating factors his lack of remorse, his lack of acknowledgement of wrongdoing, and his risk assessment score. However, we need not decide whether the court erred when it identified those aggravators. Assuming without deciding that Longacre is correct, he is still not entitled to relief.

[34] It is well settled that, where the trial court abuses its discretion in sentencing a defendant, we need not remand for resentencing if we can "say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Anglemyer*, 868 N.E.2d at 491. Here, in addition to the challenged aggravators, the court also identified as aggravating Longacre's criminal history, which is extensive. Indeed, it includes ten felony convictions, eight misdemeanor convictions, seven motions to revoke his placement on probation, a prior parole violation, and a prior habitual

offender adjudication in a different case. And the court identified as aggravating Longacre's seventeen negative conduct reports while incarcerated for the present offenses. Based on that lengthy criminal history and his poor behavior while incarcerated for the instant offense, we can say with confidence that, had the court considered only those proper aggravators, it would have imposed the same sentence. We therefore affirm Longacre's sentence.

Conclusion

[35] In sum, the trial court did not abuse its discretion when it admitted as evidence the autopsy photos. In addition, the court did not abuse its discretion when it did not instruct the jury on voluntary manslaughter as a lesser-included offense to murder. And the trial court did not abuse its discretion when it sentenced Longacre. We therefore affirm Longacre's convictions and sentence.

[36] Affirmed.

Vaidik, J., and Weissmann, J., concur.