MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kennisha J. Jackson,
Appellant-Jackson,

v.

State of Indiana,
Appellee-Plaintiff

September 15, 2023

Court of Appeals Case No. 22A-CR-2305

Appeal from the Allen Superior Court

The Honorable David M. Zent, Judge

Trial Court Cause No. 02D06-2001-MR-2

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

[1] After three jury trials, Kennisha Jackson stands convicted of murdering Diquan Meriwether. She appeals this conviction, alleging the jury from her most recent trial was tainted through misconduct, the trial court erred in ruling on a litany of evidentiary issues, and the State failed to timely disclose relevant evidence. Finding no error, we affirm.

Facts

[2] In January 2020, Jackson and Meriwether were close friends, "pretty much together all the time, pretty much every day." Tr. Vol. I, p. 157. Fitting into this pattern, Meriwether was at Jackson's house one day when the two began to argue. Jackson was inside her home while Meriwether stood on the porch, separated by a screen door. Meriwether's friend, Patinque Robinson, sat in his car outside, watching. Thirty seconds into the argument, Meriwether opened the outer door, prompting Jackson to pull at the hoodie Meriwether was wearing. The pair then disappeared inside Jackson's home.

[3] A few minutes later, Robinson, still outside in the car, heard a single gunshot. Emerging from Jackson's house, Meriwether appeared, now shirtless and clutching his chest. Jackson watched Meriwether flee from her front door while holding a gun in her hand. Struggling to walk, Meriwether almost reached Robinson's car before collapsing to the ground. Robinson picked him up, put him into the car and drove off. Rather than go directly to the hospital, Robinson first stopped at a friend's home to pass along some marijuana. After this detour,

Robinson called 911. But when the first responders found Meriwether, he was cold to the touch and unresponsive, with only a weak pulse. By the time he made it to the hospital, Meriwether had died from a gunshot wound through the heart.

[4] Meanwhile, several of Jackson's relatives gathered at her home before police arrived. A neighbor's security camera detected two men scrutinizing the front porch where, based on the angle of the bullet hole found in Jackson's door, the bullet had likely landed. Two men were also observed carrying what appeared to be gun cases out of the home.

[5] When police arrived at Jackson's home, the house looked orderly with no signs of a struggle or forced entry. But Jackson told police that an unknown man had followed her home, forced his way inside, attacked her, and drew a gun. According to Jackson, a struggle ensued, the man dropped the gun, and Jackson picked it up and shot the intruder. At this point, the intruder fled the house. When police asked about the gun, Jackson said she did not know what happened to it and that the man must have taken it.

[6] Police found drops of Meriwether's blood on Jackson's porch and by the front door. Drops of blood were scattered inside the house in a manner that the crime scene technician viewed as staged. For instance, investigators identified a circular blood drop on a coffee table that likely fell at a 90-degree angle from a completely still source and from close range.

[7] The State charged Jackson with murder along with an enhancement based on the use of a firearm. Jackson's first trial was initially set for October 2020, but after jury selection and before opening arguments, Jackson came forward with newly discovered evidence, causing the trial to be continued and vacated. Due to scheduling and pandemic related delays, Jackson's second trial convened nearly a year later in August 2021. This trial ended in a mistrial with the jury unable to reach a verdict.

[8] Jackson's third trial began in August 2022. After selecting the jury, the trial court instructed the jurors not to conduct their own research, gather their own information about the issues in the case, or receive any assistance from anything outside the courtroom. But before opening arguments, one of the jurors, having determined that Jackson would be making a self-defense argument, reviewed an internet document regarding Indiana's self-defense laws.[1] This juror printed the document and shared it with another juror over lunch. Although only these two jurors read and discussed the document, nearly half the jury was aware of what they were doing.

[9] When this outside research was discovered by the trial court, both jurors readily admitted to their actions. The juror turned over the document to the trial court, which shared it with the parties. The State moved to strike the two jurors because they had violated the trial court's instructions. Jackson, however,

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[1] Although the document itself does not appear in the record, Jackson's counsel saw the document at the trial and describes it on appeal as "the Indiana statute on self-defense." Appellant's Br., p. 13-14.

moved for a mistrial on the grounds that the entire jury was tainted. The State objected to a mistrial because the other jurors had not violated the trial court's instructions and argued an admonishment to the remaining jurors to disregard what had occurred would be sufficient. The trial court then individually interviewed the remaining jurors and alternates. After discovering that none of the other jurors had participated in the discussions of the outside research, the trial court ultimately removed only the two jurors who had. The court also admonished the remaining jurors to closely follow its instructions.

[10] Over the course of her trial, Jackson objected to several of the trial court's evidentiary rulings. This included the admittance of the testimony of two witnesses, Detective Alan Garriott, one of the detectives who investigated Jackson's home, and Dr. William Smock, an emergency room physician and expert in clinical forensic medicine. Jackson also objected to the introduction of photographs showing the bullet wound to Meriwether's heart and, conversely, to the trial court's exclusion of text messages Meriwether allegedly sent to Jackson before his death. The text messages had been admitted in the prior trial resulting in the hung jury.[2]

[11] Towards the end of the trial, the State received new evidence from Jackson's cellphone when a lab technician misinterpreted a conversation with State

[2] Although Jackson claims that the text messages were also admitted into evidence in her first trial—which was vacated sometime after jury selection but before opening arguments—she provides no proof of this on appeal.

prosecutors and had sent prosecutors information from the cellphone's SIM card such as the phone's model number, serial number, and phone number. Jackson moved for a mistrial once the State disclosed the existence of this new evidence. The trial court denied the motion for a mistrial, reasoning that this evidence was irrelevant.

[12] Ultimately, the jury found Jackson guilty of murder and the use-of-a-firearm enhancement. Jackson received an aggregate 70-year sentence.

Discussion and Decision

[13] On appeal, Jackson makes several arguments that divide themselves into two categories: (1) the trial court abused its discretion through its evidentiary rulings and (2) the trial court abused its discretion in denying her motions for a mistrial.

I. Evidentiary Issues

[14] "The decision to admit or exclude evidence is within the trial court's sound discretion and is afforded great deference on appeal." *Ennik v. State*, 40 N.E.3d 868, 877 (Ind. Ct. App. 2015) (quoting *Carpenter v. State*, 786 N.E.2d 696, 702 (Ind. 2003)). We may affirm a trial court's evidentiary ruling on any basis apparent in the record. *Reeves v. State*, 953 N.E.2d 665, 670 (Ind. Ct. App. 2011).

[15] Jackson alleges the trial court erred in ruling on several pieces of evidence at her trial. First, she contends the court should have struck testimony from Detective Garriott and Dr. Smock. Next, she claims the court erred in admitting

photographic evidence of the bullet wound to Meriwether's heart. And finally, she argues that the trial court erred in excluding evidence of text messages Meriwether allegedly sent to Jackson's cell phone the day of the murder. We address each in turn.

Garriott's Testimony

[16] Jackson argues that Detective Garriott's testimony that the crime scene appeared "staged" was improperly elicited on cross-examination. We disagree.

[17] Detective Garriott, who served as the crime scene investigator, testified that, based on his extensive experience, parts of the crime scene appeared "staged." Tr. Vol. II, p. 156. In particular, the blood droplets found in Jackson's home were placed "in a very questionable manner," evidenced by their uniform shape and consistency, unlike typical blood spatters which, according to Detective Garriott, typically vary in shape and placement. *Id.* at 156-57. Detective Garriott has four decades of experience as a police officer, with nearly three of those being in the investigative division of the Fort Wayne Police Department. He has been trained and certified in both crime scene analysis and preservation, and by his own count, has worked on several thousand crime scenes.

[18] "The role of redirect examination is to address new matters brought up upon cross-examination, and to correct false or misleading impressions left after cross-examination." *Sisson v. State*, 985 N.E.2d 1, 15 (Ind. Ct. App. 2012) (quoting *Lycan v. State*, 671 N.E.2d 447, 455 (Ind. Ct. App. 1996)). The basic rule is that once a party raises a subject on cross-examination, they have

"opened the door" for the opposing side to explore that subject on re-direct examination. *Flowers v. State*, 154 N.E.3d 854, 870 (Ind. Ct. App. 2020). The scope and extent of re-direct examination lies within the broad discretion of the trial court and is reviewed only for an abuse of that discretion. *Sisson*, 985 N.E.2d at 14-15.

[19] On direct examination, the State asked Detective Garriott to generally describe the crime scene as he found it. This involved walking through the photographic evidence and having Detective Garriott explain the deductions and conclusions he made based on the evidence before him. Through cross-examination, Jackson largely explored how Detective Garriott had arrived at his conclusions, specifically by questioning the importance of certain evidence, such as blood droplets. Thus, because Jackson called Detective Garriott's conclusions into question, the State could properly redirect to his opinion about the crime scene's appearance. *Flowers*, 154 N.E.3d at 870-71 (finding defense opened the door to subsequent testimony on redirect after "attempting to cast doubt" on existing evidence).

Smock's Testimony

[20] Next, Jackson challenges Dr. Smock's testimony as unnecessarily cumulative.

[21] Dr. Smock testified largely about his opinion of the crime scene and the extent of Meriwether's wounds. Jackson concedes that Dr. Smock is generally qualified as an expert witness but vigorously disputes the exact scope of Dr. Smock's qualifications. But the record amply established Dr. Smock's expert

experience in forensic medicine and crime scene analysis—precisely the subjects his testimony spoke to. Dr. Smock possesses a medical degree, has worked in the medical field for decades, trains other professionals in forensic analysis of gunshot wounds, and regularly consults and appears as an expert witness in criminal cases. Tr. Vol. II, pp. 233-44. Even still, Jackson contends that this testimony should have been excluded as impermissibly cumulative of evidence already in the record. We disagree.

[22] Evidence that "goes to prove what has already been established by other evidence" is generally inadmissible. *Davis v. State*, 456 N.E.2d 405, 409 (Ind. 1983) (quoting *Black's Law Dictionary* 343 (5th ed. 1979)). But because cumulative evidence is not inadmissible per se, its admission is a question left to the discretion of the trial court. *Davis*, 456 N.E.2d at 409. Evidence is not considered cumulative "if it tends to prove the same facts, but in a materially different way." *Bunch v. State*, 964 N.E.2d 274, 290 (Ind. Ct. App. 2012) (quoting *In re Paternity of H.R.M.*, 864 N.E.2d 442, 451 (Ind. Ct. App. 2007)).

[23] Dr. Smock's expert testimony did not simply repeat evidence already before the jury. For example, Dr. Smock spoke on the severity of the wound to Meriwether's heart. Although a photograph of the heart with the bullet wound was already entered into evidence, Dr. Smock's testimony explained to the jury—as an expert witness—the severity of such an injury. Still, Jackson contends the jury was more than capable of making such a determination by itself. But this argument ignores the purpose of expert witness testimony: to

"help the trier of fact to understand the evidence or to determine a fact in issue." Ind. Evidence Rule 702(a).

[24] The trial court did not abuse its discretion in admitting Dr. Smock's testimony.

Photographs

[25] Jackson also challenges the introduction of photos depicting Meriwether's heart with a bullet hole in it, arguing the evidence was impermissibly graphic.

[26] Exhibits 27 and 28 comprised two autopsy pictures showing the wound to Meriwether's heart. Like other evidentiary issues, the admission of photographic evidence is within the trial court's sound discretion and is reviewed only for an abuse of that discretion. *Harris v. State*, 163 N.E.3d 938, 952 (Ind. Ct. App. 2021). While defendants may challenge the introduction of photographic evidence as needlessly grisly or graphic, "even gory and revolting photographs may be admitted if they are relevant to some material issue or show scenes that a witness could describe orally." *Id.* Evidence is relevant when "it has any tendency to make a fact more or less probable" and it "is of consequence in determining the action." Evid. R. 401(a)-(b). Yet even relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of," as relevant here, misleading the jury, or if it presents needlessly cumulative evidence. Evid. R. 403.

[27] Here, the challenged exhibits show no more than the bullet wound in Meriwether's heart. The photos contain no more additional gore or graphic details than present in any other picture of a bodily organ. The admission of

such photographs has been routinely upheld by reviewing courts. *See, e.g.*, *Corbett v. State,* 764 N.E.2d 622, 626-28 (Ind. 2002) (finding although 26 photographs of the victim's injuries was cumulative, but individually, the photographs served a relevant purpose); *Harris*, 163 N.E.3d at 952-53 (upholding the introduction of photographic evidence of the victim's injuries); *Jackson v. State*, 973 N.E.2d 1123, 1127-29 (Ind. Ct. App. 2012) (same). And even if Jackson were correct that the trial court should have excluded the photographs, this would amount only to harmless error. *See Swingley v. State*, 739 N.E.2d 132, 134 (Ind. 2000) (the erroneous admittance of "gruesome" evidence was harmless error as substantial evidence still supported the conviction and it was "improbable" that the challenged evidence "had any significant impact on the jury's decision").

[28] Accordingly, we find no error in the trial court's admission of Exhibits 27 and 28.

Defense Exhibit

[29] Lastly, the trial court did not err in excluding Jackson's exhibit showing alleged text messages from Meriwether.

[30] The exhibit was a photograph of text messages on Jackson's cellphone, purportedly sent from Meriwether, indicating that Jackson owed Meriwether money and that he was coming to collect. But the message was undated and showed only that the message came from "Diquan" with no accompanying

phone number. Additionally, the sponsoring witness, Jackson's aunt, only saw the message after the shooting.

[31] The State objected to this evidence as hearsay and contended the defense had failed to lay the necessary foundation for its admission. These objections were sustained by the trial court. On appeal, Jackson does not contend that the trial court erred in these determinations. Rather, Jackson attempts to rely on the "law of the case" doctrine to show that because these messages were entered into evidence in her second trial, the trial court should have admitted them in this trial. But as Jackson concedes, this legal principle has been exclusively confined to appellate proceedings.

[32] "The law of the case doctrine 'mandates that an appellate court's determination of a legal issue binds the trial court and ordinarily restricts the court on appeal in any subsequent appeal involving the same case and relevantly similar facts.'" *Means v. State*, 201 N.E.3d 1158, 1164 (Ind. 2023) (quoting *Hopkins v. State*, 782 N.E.2d 988, 990 (Ind. 2003)). Although Jackson urges us to expand the doctrine to the trial level proceedings involved here, she also admits that no other court in the nation has yet taken this step. We think this is for good reason. The prudential concerns underlying the law of the case doctrine—namely, "facilitat[ing] the finality of [legal] issues decided within the same action"—are absent here. *CBR Event Decorators, Inc. v. Gates*, 4 N.E.3d 1210, 1216 (Ind. Ct. App. 2014).

[33] Thus, we find no error in the trial court's decision to exclude Jackson's exhibit.

II. Motions for Mistrial

[34] Mistrials are "an extreme action" warranted only when no other action will remedy the situation. *Vaughn v. State*, 971 N.E.2d 63, 68 (Ind. 2012) (quoting *Bedwell v. State*, 481 N.E.2d 1090, 1093 (Ind. 1985)). Thus, the decision to grant or deny a mistrial is committed to the trial court's discretion and is reviewed only for an abuse of that discretion. *Vaughn*, 971 N.E.2d at 67. "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court." *Id.* at 68. The legal basis for a mistrial, however, is a pure question of law, which we review de novo. *Weisheit v. State*, 26 N.E.3d 3, 15 (Ind. 2015).

[35] At her trial, Jackson twice moved for a mistrial. The first motion was based on juror misconduct after the trial court discovered that two jurors had conducted external research. The second motion occurred when the State came forward with additional evidence recovered from Jackson's cellphone. Jackson appeals the denial of both.

Juror Misconduct

[36] "An impartial jury is the cornerstone of a fair trial." *Ramirez v. State*, 7 N.E.3d 933, 936 (Ind. 2014). To ensure a fair trial, the trial court here warned the jurors in its preliminary instructions to focus only on the arguments and evidence as presented by the parties and to not conduct any research themselves. But after the lunch break on the first day of the trial, the court learned that one juror had printed off and discussed with another juror information from the internet about

Indiana's self-defense laws. In response, the trial court individually interviewed each juror to determine the extent of the misconduct.

[37] The trial court's examination revealed that three other jurors were at least aware of the outside research, but that they had neither seen the document nor engaged in conversation about it. Rather than declare a mistrial, the trial court dismissed the two jurors who had conducted the outside research and admonished the remaining jurors to decide the case:

> [B]ased solely on the evidence presented in the courtroom and the law that I will read to you. Don't do any other research on your own or as a group. I will provide you all of the law that you need, and all of the evidence is presented in the courtroom. Ignore anything else that you've heard.

Tr. Vol. II, p. 27.

[38] We will presume that juror misconduct was prejudicial only when the defendant makes two showings. First, a defendant must show that "extra-judicial contact or communications between jurors and unauthorized persons occurred." *Ramirez*, 7 N.E.3d at 939. And second, the defendant must establish "the contact or communications pertained to the matter before the jury." *Id.* If the defendant makes these showings by a preponderance of the evidence, the burden shifts to the State to rebut the presumption by showing that the contact or communications were harmless. *Id.*

[39] Jackson makes a persuasive showing that she proved both *Ramirez* prongs. Although the State faintly attempts to argue that the juror's internet research

does not count as an extra-judicial communication, that position is incorrect. *Bisard v. State*, 26 N.E.3d 1060, 1068-69 (Ind. Ct. App. 2015). The communication also plainly related to the matter before the jury. Thus, with the two *Ramirez* prongs met, the burden shifts to the State to show that the misconduct was harmless. It succeeds.

[40] Once the misconduct was discovered, the trial court interviewed the jurors one by one to discover the extent of the misconduct—and then dismissed the two who engaged in the misconduct. Further, the trial court here delivered an effective admonishment. In most cases, this action alone renders the misconduct harmless error as "[w]e presume that the trial court's admonishment cured any potential harm." *Jones v. State*, 101 N.E.3d 249, 258 (Ind. Ct. App. 2018). Further, half of the jurors did not know the misconduct had occurred. And those who were aware of the misconduct did not learn any details about it; they simply knew misconduct was happening. Isolated misconduct is not presumed to infect the entire jury. *See Weisheit*, 26 N.E.3d at 16.

[41] Under these facts, we find that Jackson suffered no prejudice from the dismissed jurors' misconduct. Accordingly, the trial court did not abuse its discretion in rejecting Jackson's motion for a mistrial for juror misconduct.

Brady Violation

[42] Lastly, Jackson alleges the trial court erred in denying her second motion for a mistrial predicated on the State's alleged failure to turn over new exculpatory information discovered during her trial. We conclude no such error occurred.

[43] As described by this Court, there are three components of a successful *Brady*[3] claim: "(1) the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) prejudice (materiality inquiry)." *Bates v. State*, 77 N.E.3d 1223, 1226 (Ind. Ct. App. 2017) (citing *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999)). Jackson's claim fails at step one.

[44] The evidence here involved information downloaded from the SIM card of Jackson's cellphone. This information amounted solely to identifying characteristics of the phone, like its make, model, serial number, and phone number. Crucially, no information was discovered about the phone's contents. All in all, this evidence cannot be considered exculpatory.

[45] Jackson's only argument to the contrary is that this information may have bolstered the reliability of the excluded text message exhibits. We disagree. That the State was in possession of the make, model, and serial number of

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[3] *Brady v. Maryland*, 373 U.S. 83 (1963).

Jackson's phone does nothing to provide a foundation for screenshots of text messages. In any case, Jackson does not challenge the trial court's finding that the related exhibits constituted inadmissible hearsay. The trial court did not abuse its discretion in denying Jackson's second motion for a mistrial.

Conclusion

[46] Finding no abuse of the trial court's discretion in either its handling of the evidence at Jackson's trial or its denial of her motions for mistrial, we affirm.

Riley, J., and Bradford, J., concur.