MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Anthony S. Churchward
Deputy Public Defender
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Cordell D. Patterson, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 26, 2022

Court of Appeals Case No.
21A-CR-1573

Appeal from the
Allen Superior Court

The Honorable
David M. Zent, Judge

Trial Court Cause No.
02D06-1812-MR-22

Vaidik, Judge.

Case Summary

[1] Cordell D. Patterson, Jr., appeals his conviction and sentence for murder, arguing the trial court made errors related to witness testimony and that his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On November 25, 2018, Patterson and a friend, Montell Jones, went to a bar in Fort Wayne. There, they met Laura Larkin and Chelsey Kirkland. Patterson and Larkin "hit it off" and went back to Larkin's home. Tr. Vol. I p. 102. A few hours later, Patterson called Jones and told him he tried to rob Larkin at her house and killed her after she resisted. He also stated he stole her car and several credit cards. The next day, Kirkland went to Larkin's home and discovered her body. Larkin suffered injuries consistent with manual strangulation, including contusions to the neck and a fractured trachea. DNA taken from Larkin's body and home was consistent with Patterson's DNA. Larkin's car, which also had DNA consistent with Patterson's in it, was found a few blocks from Patterson's girlfriend's home.

[3] On November 27, Patterson, Jones, and Jones's mother, Maria Williams, were in Williams's home and heard media coverage of Larkin's death. Patterson indicated to Jones and Williams that he was going to leave town and later fled with his girlfriend to his mother's home in Mississippi. On December 3, the

State charged Patterson with murder and Level 2 felony robbery. Patterson was arrested in Mississippi and brought back to Indiana for trial.

[4] Both Williams and Jones participated in police interviews, as well as pretrial depositions. In February 2020, Jones reached out to a prosecutor to negotiate a plea deal after he was charged with misdemeanor domestic battery. The prosecutor, noting Jones did not yet have an attorney in that case, refused to negotiate with him about a plea. That November, Jones was charged with Level 5 felony carrying a handgun without a license, and he and the State entered an agreement in which he would testify truthfully in this case and he would receive a sentence fully suspended to probation in his felony case.

[5] Patterson's case went to a jury trial in April 2021. The trial court entered a separation order, stating "[a]ll witnesses subpoenaed in this case are to remain outside of the courtroom during the trial." *Id.* at 56. Jones testified that Patterson called him the night of the murder and told him he had killed Larkin. Jones also testified that when Patterson heard media coverage about the murder he "freak[ed] out" and stated "he needed to get out of town." *Id.* at 135. During Jones's testimony, the defense was permitted to ask him about the plea deal he received from the State in exchange for his testimony. But the trial court did not allow the defense to ask about Jones's attempt to secure a deal in the domestic-battery case because it did not end in an agreement.

[6] During Jones's testimony, despite the separation order, two witnesses—Mallory Pippin (Jones's girlfriend) and Williams—came into the courtroom and heard

most of his testimony. After discovering Pippin and Williams had heard Jones's testimony, the defense moved to exclude both from testifying. The State did not object to excluding Pippin but did object to excluding Williams. The trial court agreed, citing that Williams had already given a police interview and a deposition. The court stated,

> The separation of witnesses is to prevent witnesses from gaining knowledge from the testimony of other witnesses and adjusting their testimony accordingly. We already know what her statements were, we'll obviously also know if she changes them, and then that's obviously [the defense's] opportunity to point that out to the [j]ury.

Tr. Vol. II p. 108. Williams's testimony was substantially similar to Jones's. She testified that Patterson was at her home a few days after the murder and, upon hearing media coverage of Larkin's death, he began acting "nervous" and called his mother, telling her, "I hurt somebody."[1] *Id.* at 114, 116. During cross-examination, the defense questioned her as to her violation of the separation order in front of the jury.

[7] Also at trial, Dr. Scott Wagner, the forensic pathologist who performed Larkin's autopsy, testified about Larkin's cause of death. He stated that Larkin would have passed out after fifteen to twenty seconds of pressure to the jugular

[1] While Williams's previous statements are not in the record, it appears those statements are consistent with her in-court testimony, as there is no allegation by the defense that she changed her testimony, nor did the defense impeach her with prior inconsistent statements at trial.

veins in the neck, but that her attacker would have needed to continue that pressure for at least another two minutes to kill her.

[8] The jury found Patterson guilty as charged. The trial court vacated the robbery conviction due to double-jeopardy concerns. At sentencing, the trial court found three aggravating factors: (1) that Patterson, who was twenty-two at the time of the murder, had four juvenile adjudications, including one for battery, and an adult conviction for Class A misdemeanor carrying a handgun without a license, the sentence for which he had just completed two months before the murder; (2) there is a great impact on the people surrounding the victim, including her two minor children; and (3) "the nature and circumstances of the offense." Tr. Vol. III p. 35. Patterson proposed several mitigators, including evidence he suffers from mental-health issues. But the court found no mitigators, noting with regard to his mental-health issues that "there is no nexus between any mental health [issues] and the crime." *Id.* at 34. The court sentenced Patterson to sixty-two years.

[9] Patterson now appeals.

Discussion and Decision

I. Witness Testimony

[10] Patterson first argues the trial court erred when it did not allow him to cross-examine Jones about his potential plea agreement. The trial court has wide discretion to determine the scope of cross-examination, and only an abuse of

that discretion warrants reversal. *Seketa v. State*, 817 N.E.2d 690, 693 (Ind. Ct. App. 2004). We have acknowledged it is important to fully disclose to the jury any beneficial agreement between an accomplice-witness and the State, to better help the jury assess the credibility of the witness. *Id.* That duty to disclose arises when there is a confirmed promise of leniency in exchange for testimony. *Id.* Preliminary discussions are not matters subject to mandatory disclosure. *Id.*

[11] Here, Patterson was allowed to cross-examine Jones about the plea agreement he ultimately made with the State in exchange for his testimony. However, Patterson was not allowed to cross-examine Jones about his attempts to secure a plea deal in an earlier case. Patterson argues this prevented the jury from having "the complete picture of [Jones's] tactics as a cooperating witness in the case and then be in the best position to assign weight to his testimony." Appellant's Br. p. 16. We disagree.

[12] Our Supreme Court analyzed a similar issue in *Bussey v. State*, 536 N.E.2d 1027 (Ind. 1989). There, the trial court allowed the defense to question a witness about his plea agreement with the State in exchange for his testimony but did not allow the defense to question him about a proposed plea offer that never manifested into an agreement. The Court found no error, stating,

> From the testimony, the jury was informed of the benefit [the witness] received for his testimony, and they had the opportunity to discount his credibility accordingly. Because [the witness] did not benefit from the proposed plea offer, it was irrelevant in establishing his motive for testifying. Therefore, we find no error in the limitation of cross-examination.

Id. at 1031.

[13] The same can be said here. Patterson was allowed to question Jones about the plea agreement he actually entered into with the State. Any potential benefit from a proposed plea agreement or attempted negotiations is not relevant.

[14] The trial court did not abuse its discretion in limiting cross-examination to only the plea agreement reached by Jones and the State.

II. Separation of Witnesses

[15] Patterson also argues the trial court "erred when it permitted Maria [Williams] to testify despite finding that she had violated a separation order" by listening to Jones's testimony. Appellant's Br. p. 16. Indiana Evidence Rule 615 "allows litigants to move for separation of witnesses so they cannot hear each other's testimony." *Spinks v. State*, 122 N.E.3d 950, 954 (Ind. Ct. App. 2019). "The determination of the remedy for any violation of a separation order is wholly within the discretion of the trial court." *Joyner v. State*, 736 N.E.2d 232, 244 (Ind. 2000). We will disturb the trial court's decision on such matters only upon a showing of abuse of discretion. *Id.* This is so even when the trial court is confronted with a clear violation of a separation order and still allows the violating witness to testify at trial. *Id.*

[16] Williams was present in the courtroom during her son's testimony despite the separation order. Patterson argues she therefore should have been excluded from testifying. But in fact, the common-law presumption is that the trial court

abuses its discretion when it excludes a witness for a violation of a separation order when the party seeking to call the witness is not at fault for the violation. *Jiosa v. State*, 755 N.E.2d 605, 607 (Ind. 2001). And Patterson does not allege any wrongdoing on the State's part, nor did the trial court find any.

[17] Patterson nonetheless argues Williams had the "opportunity to listen and tailor her statements to her son's." Appellant's Br. p. 18. It is true that the purpose of Rule 615 is to prevent witnesses from "gaining knowledge from the testimony of other witnesses and adjusting their testimony accordingly." *Spinks*, 122 N.E.3d at 955. But the trial court properly accounted for this in its remedy. As the court noted, Williams had already given both a police interview and a deposition. Thus, had she adjusted her testimony after hearing her son's, the defense could have impeached her. *See Smith v. State*, 420 N.E.2d 1225, 1228 (Ind. 1981) (noting that although witness violated the separation order, the defense "was armed with several written pretrial statements" by the witness and could therefore "thwart any attempt by [the witness] to alter his testimony in any way."). Additionally, the trial court permitted Patterson to question Williams about her violation of the separation order in front of the jury, impeaching her credibility. *See Smiley v. State*, 649 N.E.2d 697, 699 (Ind. Ct. App. 1995) ("Therefore, since the jury is entrusted with the job of determining witness credibility, where the violation resulted from no wrongdoing on the part of the party calling the witness, judges should allow an offending witness to testify and then permit the other party to inform the jury about the [witness's] misconduct."), *trans. denied*.

[18] The trial court did not abuse its discretion in permitting Williams to testify.

III. Inappropriate Sentence

[19] Patterson next argues his sixty-two-year sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) 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 must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[20] A person who commits murder shall be imprisoned for a fixed term of between forty-five and sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3. Patterson received an above-advisory sentence of sixty-two years.

[21] Patterson argues his sentence should be reduced in light of his character. He points to his mental-health issues and argues his criminal history is relatively minor. But as the trial court noted, Patterson did not establish a nexus between any mental-health issues and the murder. And while his criminal history was

minor, "[e]ven a minor criminal record reflects poorly on a defendant's character." *Reis v. State*, 88 N.E.3d 1099, 1105 (Ind. Ct. App. 2017). Patterson had several juvenile adjudications, including one for battery. As an adult, Patterson received a misdemeanor conviction, and just a few months after completing the sentence in that case, he committed the instant offense. Additionally, Patterson went to great lengths to avoid justice in this case, including fleeing the state. *See Bennett v. State*, 883 N.E.2d 888, 894 (Ind. Ct. App. 2008) (defendant's decision to flee the State after committing the crime reflected poorly on his character), *trans. denied*.

[22] Furthermore, the nature and circumstances of the offense warrant the above-advisory sentence. As testified to at trial, Patterson killed Larkin in a brutal fashion after trying to rob her. Although Larkin would have passed out after fifteen to twenty seconds of strangulation (which would have accomplished Patterson's goal of stopping her resistance to the robbery), Patterson continued to strangle her to death, which would have taken over two minutes. *Cf. Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (noting life sentence was not inappropriate where the murder was "brutal," in part because it involved prolonged manual strangulation during which the defendant "had opportunities to stop").

[23] Patterson has failed to establish that his sentence is inappropriate.

[24] Affirmed.

Najam, J., and Weissmann, J., concur.