MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Eugene Jones,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 8, 2022

Court of Appeals Case No. 21A-CR-2011

Appeal from the Marion Superior Court

The Honorable Grant Hawkins, Judge

Trial Court Cause No. 49D31-1709-MR-36161

Vaidik, Judge.

Case Summary

[1] Eugene Jones was convicted of murder and Level 3 felony robbery for shooting someone during a gun-deal-gone-bad. He now appeals, arguing the trial court erred in admitting certain testimony, the evidence is insufficient to support his convictions, and the trial court erred in not admonishing the jury. We affirm.

Facts and Procedural History

[2] In September 2017, eighteen-year-old Deante Williams lived with his nineteen-year-old girlfriend, Erika Bolanos, in Indianapolis. Around 6:30 p.m. on September 17, Erika drove Williams to Wes Montgomery Park on the eastside of Indianapolis to meet someone who wanted to buy Williams's "Glock 22" handgun. Tr. Vol. III p. 89. Erika parked her blue Mazda near the basketball courts, and she and Williams waited in the car. While they waited, Williams communicated with the buyer on Snapchat and took the bullets out of his gun.

[3] About ten to fifteen minutes after Erika and Williams arrived at the park, the buyer approached Erika's car and got in the backseat directly behind Williams. Erika had never seen the buyer before. Williams handed the gun to the buyer so he could inspect it. The buyer made a comment "about paint being scraped off the gun," and Williams told him he didn't have to buy it if he didn't want to. *Id.* at 108. This exchange made Erika nervous, and she turned around to look at the buyer. She noticed his hands were "shaking uncontrollably as he was holding the gun." *Id.* at 110. The next thing Erika knew, the buyer pointed a

gun (which belonged to the buyer and was not the gun Williams was trying to sell) at Williams. Williams put his hands in the air and told the buyer he could take "whatever" he wanted. *Id.* at 111. The buyer then fired two shots at Williams, killing him.

[4] Officer Tyler Colclazier from the Indianapolis Metropolitan Police Department arrived minutes after the shooting and spoke to Erika, who was "crying," "hysterical," and "hyperventilating." *Id.* at 44, 46. Officer Colclazier asked Erika who shot Williams, and she said, "Eugene." *Id.* at 47; *see also id.* at 171.

[5] Other officers arrived on the scene and started collecting evidence. Although the murder weapon wasn't found, two .45-caliber shell casings and two .45-caliber bullets were recovered. The shell casings were "put in [the] NIBIN"[1] database in case they were "used in a different scene." *Id.* at 227. In addition, a cell phone that didn't belong to Williams or Erika was found in the backseat of the car on the passenger-side floorboard. The cell phone was swabbed for DNA and dusted for fingerprints.

[6] Later that evening, Erika was taken to the homicide office for questioning. Erika gave officers the passcode to Williams's cell phone, and officers began searching his phone for a "Eugene." Detective John Breedlove showed Erika a photo array (which didn't contain a photo of Jones), and Erika didn't identify

[1] NIBIN is an apparent reference to the National Integrated Ballistic Information Network.

anyone. *See* Ex. Vol. I p. 111. In the meantime, officers found a "Eugene" in Williams's contacts and searched Facebook using that contact information.[2] The officers came up with Jones, who was also eighteen years old. Detective Breedlove then put together a second photo array containing Jones's photo from the BMV. All the photos were in black and white so that Jones's photo didn't stick out (it had a different-colored background). *See id.* at 113. Erika pointed to the photo of Jones and said it "looked like" the shooter, but she wasn't 100% certain. *Id.*; Tr. Vol. III p. 115. A couple of days after the shooting, Erika was watching the news when she saw a photo of Jones in color. At that point, she "for sure" knew Jones was the shooter. Tr. Vol. III p. 115.

[7] The State charged Jones with murder and Level 3 felony robbery. In December 2017, about three months after the shooting, IMPD officers stopped a car in which Seantrel Cabil (whom Jones knew as "Trell") was a passenger. When officers patted down Cabil, they found a .45-caliber Glock 30 handgun. Because Cabil didn't have a license for the gun, the officers seized it. In January 2018, Detective Breedlove was notified there was "a NIBIN hit" in this case based on the gun seized from Cabil. *Id.* at 228. Detective Breedlove had a forensic firearms expert, Michael Putzek, compare the gun seized from Cabil to the bullets and shell casings found in this case. Ex. 73 (CD); *see also* Tr. Vol. III p.

[2] Detective Breedlove says that feature is no longer available in Facebook.

230. According to Putzek, the shell casings and bullets were fired from the gun seized from Cabil.

[8] Although officers had obtained a search warrant for Jones's phone, based on limitations in technology they at first weren't able to access it because it was passcode protected. When that technology became available in May 2018, Detective Mark Barnett with IMPD's Digital Forensics Unit digitally analyzed Jones's phone. The phone contained six user accounts: "joneseugene152@yahoo.com," "Tony FA Bitch," "eugenejones993@yahoo.com," "FA Homey," and "Longwaybitchh." These accounts were for various services, including Apple, Twitter, Instagram, and Snapchat. Jones's phone contained a photo of a .45-caliber Glock 30 handgun, which had been "capture[d]" and "created" less than a month before the shooting. *See* Ex. Vol. I p. 223; Tr. Vol. IV p. 9. Jones's phone also contained a photo that was taken at 4:42 p.m. on the day of the shooting; the latitude and longitude coordinates for the photo show it was taken at Jones's house.

[9] Jones's phone also contained text-message conversations with "Billy" on the day of the shooting. Jones's phone told Billy that "Deante trying to sell it to me." Ex. Vol. II p. 3. Billy replied, "Might be a shoot out," and Jones's phone responded, "Duh." *Id.* Billy and Jones's phone also discussed the time of meeting Williams. Billy wanted to know why Williams was pushing back the time to 5:00 or 6:00 p.m., and Jones's phone explained that Williams said he had to help his mother. *Id.* at 7. Billy later asked, "When we leaving?" and Jones's phone responded, "We need to stop by Trell he giving head buss." *Id.* at

9. Jones's phone told Billy that Williams was trying to meet "on 38th and Emerson" "at the park" and that he was "with his girl." *Id.* at 11. Billy asked if they should get Trell, and Jones's phone responded, "Yea lets hurry then." *Id.* at 13. Jones's phone later said he told Williams "5:30" and didn't know if they had "time to get Trell." *Id.* Billy said, "Ok." *Id.* Billy later asked, "Where is he at?" *Id.* At 6:29 p.m., Jones's phone responded, "Right by the courts." *Id.*

[10] Finally, Jones's phone contained records of a Snapchat conversation between "longwaybitchh"—Jones's Snapchat username—and "whodidit23"—Williams's Snapchat username. Although Snapchat conversations don't leave permanent records of their contents, Detective Barnett managed to decode some of the conversation using the new software. Detective Barnett found messages around the time of the shooting. At 6:26 p.m., "longwaybitchh" said, "I'm here bro," and asked "whodidit23" where he was; "whodidit23" replied that he was "by the basketball courts, blue mazda." Ex. Vol. II p. 53. A message from "longwaybitchh" to "whodidit23" at 6:28 p.m. said, "Ok I'm walking there now." *Id.*

[11] A jury trial was held in July 2021. Evidence was presented that the DNA testing on the swabs found a mixture of DNA on the phone, with the major contributor's DNA matching the DNA profile of Jones, a match estimated to occur once in more than 330 billion unrelated individuals. Tr. Vol. III p. 140. The DNA profile of the minor contributor was inconclusive and therefore no comparison could be made. A fingerprint lifted from the phone matched Jones's fingerprint.

[12] Erika testified she drove Williams to the park that day to meet someone who wanted to buy his gun. *Id.* at 91. When the State asked Erika if Williams told her who they were meeting, defense counsel objected on hearsay grounds. The State argued Erika's answer was admissible under Indiana Evidence Rule 803(1) as a present-sense impression. The trial court overruled defense counsel's objection. Erika then testified that Williams told her they were going to the park to meet "Eugene." *Id.* at 99. Erika also testified that as the buyer approached her car in the parking lot, she asked Williams if he was "Eugene," and Williams said yes. *Id.* at 106. Erika then identified Jones in court as the shooter. *Id.* at 115-16.

[13] During closing arguments, defense counsel acknowledged that Jones's phone was found in Erika's car. *See* Tr. Vol. IV p. 58 ("That's the one glaring fact that we can't get over. And no we can't. We're admitting to you upfront."). However, he argued that whoever was the minor contributor of the DNA found on Jones's phone had possession of it and was the shooter. Defense counsel suggested it was Cabil. *See id.* ("We also have strong reason to believe [Cabil] was there.").

[14] The jury found Jones guilty as charged, and the trial court sentenced him to sixty years, with five years suspended and two years of probation.

[15] Jones now appeals.

Discussion and Decision

I. Present-Sense Impression

[16] Jones first contends the trial court erred in admitting Williams's statement to Erika that they were going to the park to meet Eugene under Evidence Rule 803(1). Challenges to the admission of evidence are ordinarily reviewed for an abuse of discretion. *Fansler v. State*, 100 N.E.3d 250, 253 (Ind. 2018).

[17] Evidence Rule 803 provides, in relevant part:

> The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
>
> > (1) **Present Sense Impression.** A statement describing or explaining an event, condition or transaction, made while or immediately after the declarant perceived it.

To qualify as a present-sense impression, a statement must satisfy three requirements: (1) it must describe or explain an event, condition, or transaction; (2) it must be made during or immediately after the event, condition, or transaction; and (3) it must be based on the declarant's personal perception of the event, condition, or transaction. *Stott v. State*, 174 N.E.3d 236, 243 (Ind. Ct. App. 2021).

[18] Jones argues that Williams's statement to Erika that they were going to the park to meet Eugene doesn't qualify as a present-sense impression because it was not made during or immediately after the meeting with Eugene. The State responds that Williams's statement qualifies as a present-sense impression because it

"was made to describe the couple's travel to the park." Appellee's Br. p. 17. We need not decide whether Williams's statement qualifies as a present-sense impression because even assuming the trial court erred in admitting it, any error was harmless.

[19] "An error is harmless when it results in no prejudice to the substantial rights of a party." *Hall v. State*, 177 N.E.3d 1183, 1197 (Ind. 2021) (quotation omitted). Factors considered in a harmless-error analysis include the presence or absence of other corroborating evidence on material points; whether the impermissibly admitted evidence was cumulative; the overall strength of the prosecution's case; the importance of the impermissibly admitted evidence in the prosecution's case; and the extent of cross-examination or questioning on the impermissibly admitted evidence. *Id.*

[20] Here, the State presented cumulative and corroborating evidence of Jones's guilt, and thus any error did not affect his substantial rights. Williams's statement to Erika that they were going to the park to meet "Eugene" is cumulative of other evidence admitted at trial that Jones does not challenge on appeal. First, Erika testified they were going to the park to meet someone who wanted to buy the gun. Second, Erika testified that as the buyer approached her car in the parking lot, she asked Williams if he was "Eugene," and Williams said yes. Finally, Erika told Officer Colclazier minutes after the shooting that "Eugene" had shot Williams.

[21] There is also corroborating evidence of Jones's guilt. Erika identified Jones in court as the shooter. Jones's phone was found in the backseat of Erika's car, where the buyer had been sitting. Testing revealed that Jones's DNA and fingerprint were on the phone. A photo of a .45-caliber Glock 30—the type of gun used to shoot Williams—was found on Jones's phone; the photo had been taken less than a month before the shooting. Another photo was found on Jones's phone that had been taken a couple of hours before the shooting at Jones's house, further tying the phone to Jones. On the day of the shooting, Jones's phone had a text-message conversation with Billy about having a "shoot out" with Williams. Finally, there was a Snapchat exchange between Jones's phone and Williams minutes before the shooting during which Williams said he was by the basketball courts in a blue Mazda and Jones's phone said, "Ok I'm walking there now."

[22] Given this evidence, any error in the admission of Williams's statement was harmless.

II. Sufficiency of the Evidence

[23] Jones next contends the evidence is insufficient to support his convictions. Specifically, he argues Erika's testimony should be disregarded under the doctrine of incredible dubiosity and that the remaining evidence is insufficient to support his convictions. Under the incredible-dubiosity doctrine, we can impinge upon a fact-finder's responsibility to judge the credibility of the witnesses when "the testimony is so incredibly dubious or inherently

improbable that no reasonable person could believe it." *Hampton v. State*, 921 N.E.2d 27, 29 (Ind. Ct. App. 2010), *reh'g denied*, *trans. denied*. The doctrine "requires that there be: 1) a sole testifying witness; 2) testimony that is inherently contradictory, equivocal, or the result of coercion; and 3) a complete absence of circumstantial evidence." *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015). Application of this rule is rare. *Leyva v. State*, 971 N.E.2d 699, 702 (Ind. Ct. App. 2012), *trans. denied*.

[24] Jones claims Erika's testimony was "inherently incredible" because she testified she wasn't 100% certain Jones was the shooter when she saw the second photo array (which contained only black and white photos) but was able to conclusively identify Jones as the shooter after seeing a color photo of him on the news. Appellant's Br. p. 26. Erika's testimony that she could conclusively identify Jones after seeing a color photo was not "so incredibly dubious or inherently improbable that no reasonable person could believe it." Jones has failed to satisfy the second requirement of the incredible-dubiosity doctrine.[3]

[25] The third requirement isn't satisfied either, as there is not "a complete absence of circumstantial evidence." Jones's DNA and fingerprint on his own cell phone put him in the backseat of Erika's car during the shooting.

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[3] To the extent Jones challenges the pretrial-identification procedures in this case, he has waived the argument for not developing it. *See* Ind. Appellate Rule 46(A)(8)(a).

[26] Because Erika's testimony was not so inherently improbable that no reasonable person could believe it, and was corroborated by other evidence, Jones's incredible-dubiosity argument fails.

III. Jury Admonishment

[27] Finally, Jones contends the trial court erred by failing to give the jury an admonishment limiting juror discussions of the case after the first day of trial in violation of Indiana Code section 35-37-2-4(a). Under Section 35-37-2-4(a), a trial court must give the jury an admonishment limiting juror discussions of the case (1) "in the preliminary instruction," (2) "before separating for meals," and (3) "at the end of the day."[4] As Jones points out, the trial court gave such an admonishment during preliminary instructions, before separating for lunch on the second day of trial, and after the second day of trial. *See* Appellant's App. Vol. II p. 105; Tr. Vol. III pp. 22, 215; Tr. Vol. IV p. 26. However, he says the court didn't give such an admonishment after the first day of trial.

[28] But as Jones acknowledges, he didn't object to the trial court's failure to give such an admonishment after the first day of trial and therefore must establish fundamental error on appeal. Fundamental error is an error so blatant and substantial that the trial court should act even without a request or objection

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[4] Jones doesn't complain about the substance of the admonishment limiting juror discussions. As this Court has explained before, the content of the admonishment required by Section 35-37-2-4(a) conflicts with Indiana Jury Rule 20(a)(8). *See Cruz Rivera v. State*, 127 N.E.3d 1256, 1258 n.1 (Ind. Ct. App. 2019), *trans. denied*.

from a party. *Ryan v. State*, 9 N.E.3d 663, 668 (Ind. 2014), *reh'g denied*. It is meant to correct "the most egregious and blatant trial errors." *Id.*

[29] Jones asserts that because of the "difficulty" in proving what jurors discuss "outside the confines of the jury room and apart from their fellow jurors," "fundamental error should be presumed." Appellant's Br. pp. 24-25. But as the Indiana Supreme Court has already held, "Failure to provide th[e] admonishment [required by Section 35-37-2-4(a)], however, doesn't lead to automatic reversal." *Cardosi v. State*, 128 N.E.3d 1277, 1284-85 (Ind. 2019). Jones hasn't shown that the trial court's failure to give an admonishment limiting juror discussion of the case after the first day of trial was an egregious and blatant error.

[30] Affirmed.

Crone, J., and Altice, J., concur.