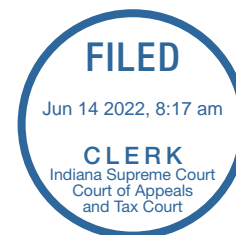


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Mark Cochran,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 14, 2022

Court of Appeals Case No.
21A-CR-2434

Appeal from the Tippecanoe
Superior Court

The Honorable Randy J. Williams,
Judge

Trial Court Cause No.
79D01-2012-F5-202

Bradford, Chief Judge.

Case Summary

- [1] Mark Cochran was charged with two counts of Level 5 felony battery by means of a deadly weapon after he stabbed two different individuals in the neck with a knife. He was also alleged to be a habitual offender. After a jury found Cochran guilty of the Level 5 battery charges, the trial court found him to be a habitual offender and sentenced him to an aggregate twelve-year sentence. On appeal, Cochran contends that his battery convictions violate the prohibitions against double jeopardy and that the trial court abused its discretion in admitting certain evidence. We affirm.

Facts and Procedural History

- [2] On December 9, 2020, several individuals, including Cochran, Wytona Edwards, James Taylor, and Zack Alford, were staying the night in an apartment. At approximately 5:00 a.m., Cochran and Edwards became involved in a verbal altercation. When Edwards turned away in an attempt to separate herself from the altercation, Cochran stabbed Edwards in the neck and back. Edwards was transported to the hospital for treatment for stab wounds to the neck and back and required stitches to close the wounds inflicted by Cochran.
- [3] After hearing Edwards scream “he’s stabbing me,” Taylor “jumped up” and attempted to tackle Cochran from behind. Tr. Vol. II p. 140. Taylor was not able to tackle Cochran before Cochran “took the knife and put it to [Taylor’s]

neck and sliced [his] neck.” Tr. Vol. II p. 140. Taylor was treated by paramedics at the scene and required sutures to close the wound to his neck. Although Taylor did not see the weapon at the time of the attack, he had previously seen Cochran with what he described as a “multi-tool, like pliers with a bunch of different accessories on them, screwdriver, saw blade, knife.” Tr. Vol. II p. 145.

[4] Cochran was arrested within an hour of the batteries. At the time of his arrest, he was in possession of a “silver metal multi-tool kit.” Tr. Vol. II p. 181.

[5] On December 10, 2020, the State charged Cochran two counts of Level 5 felony battery by means of a deadly weapon, Level 6 felony battery resulting in moderate bodily injury, and Level 6 felony intimidation. The State also alleged that Cochran was a habitual offender.

[6] A jury trial was held on September 14–15, 2021. During trial, the State presented an audio recording of a telephone call Cochran made to his wife from the Tippecanoe County Jail in which he referred to Edwards, Taylor, and Alford as snitches. Cochran objected to admission of the recording, arguing that it lacked “any relevance.” Tr. Vol. II p. 207. The trial court overruled Cochran’s objection, admitted the recording, and allowed the State to play the recording for the jury. At the conclusion of the State’s evidence, the trial court dismissed the intimidation charge. The jury subsequently found Cochran guilty of the remaining Level 5 and Level 6 battery charges and the trial court found that Cochran to be a habitual offender.

[7] On October 15, 2021, the trial court vacated the Level 6 felony battery conviction. The trial court sentenced Cochran to consecutive terms of five years on each of the Level 5 battery convictions, enhanced by an additional two years by virtue of Cochran’s status as a habitual offender, for an aggregate twelve-year sentence.

Discussion and Decision

[8] On appeal, Cochran contends that his convictions for two counts of Level 5 felony battery by means of a deadly weapon violate the prohibitions against double jeopardy. He also contends that the trial court abused its discretion in admitting a recording of a telephone call that he made to his wife from the Tippecanoe County Jail. For its part, the State contends that Cochran’s convictions do not violate the prohibitions against double jeopardy and the trial court did not abuse its discretion in admitting the recording of the telephone call at issue.

I. Double Jeopardy

[9] The Indiana Supreme Court has held that “[i]n determining whether a single criminal statute permits multiple punishments for multiple victims, Indiana courts (as with other jurisdictions) often distinguish conduct-based statutes from result-based statutes.” *Powell v. State*, 151 N.E.3d 256, 265 (Ind. 2020).

A conduct-based statute, under our criminal code, consists of an offense defined by certain actions or behavior (*e.g.*, operating a vehicle) and the presence of an attendant circumstance (*e.g.*,

intoxication). Under these statutes, the crime is complete once the offender engages in the prohibited conduct, regardless of whether that conduct produces a specific result (*e.g.*, multiple victims). The focus—or “gravamen”—of the statutory offense is the defendant’s actions, not the consequences of those actions. To be sure, a specific result or consequence (*e.g.*, death or serious bodily injury) may enhance the penalty imposed. But multiple consequences do not establish multiple crimes, since the crime may still be committed without the consequence. Indeed, under a conduct-based statute, a single discrete incident can be the basis for only one conviction, no matter how many individuals are harmed.

A result-based statute, on the other hand, consists of an offense defined by the defendant’s actions and the results or consequences of those actions. In crimes such as murder, manslaughter, battery and reckless homicide, the gravamen of the offense is causing the death or injury of another person, *i.e.*, the result is part of the definition of the crime. In other words, the resulting death, injury or offensive touching is an element of the crime. And that crime is complete so long as the required *actus reus* and mental state are present. Under these statutes, then, where several deaths or injuries occur in the course of a single incident, the prohibited offense has been perpetrated several times over. The separate victims represent different offenses because conduct has been directed at each particular victim.

In short, crimes defined by conduct (rather than by consequence) permit only a single conviction (with multiple consequences resulting in enhanced penalties, not multiple crimes). But crimes defined by consequence (rather than by conduct) permit multiple convictions when multiple consequences flow from a single criminal act.

Id. at 265–66 (internal citations, quotations, and emphasis omitted).

[10] In arguing that his two convictions for Level 5 battery by means of a deadly weapon violated the prohibitions against double jeopardy, Cochran asserts that we should read Indiana Code section 35-42-2-1(g)(2) to be a conduct-based statute rather than a result-based statute. However, as the above-quoted language indicates, the crime of battery, the “injury or offense touching is an element of the crime” and the “crime is complete so long as the required actus reus and mental state are present.” *Id.* at 266. In such offenses, the crime is defined by consequence and “separate victims represent different offenses because conduct has been directed at each particular victim.” *Id.* Thus, as implied by the Indiana Supreme Court in *Powell*, we conclude that Indiana Code section 35-42-2-1(g)(2) is a result-based statute.

[11] In this case, Cochran acted with both the required actus reus and mental state when he stabbed Edwards and Taylor. Cochran first stabbed Edwards. When Taylor attempted to help Edwards, Cochran stabbed Taylor. Although close in proximity of time, each of the stabbings occurred independently of the other. Cochran was properly convicted of and sentenced for two counts of battery with a deadly weapon as he was charged with and convicted of attacking and injuring two separate victims.¹

¹ To the extent that Cochran alternatively argues that his convictions violate the prohibition against double jeopardy because the batteries of Edwards and Taylor occurred during a single episode of criminal conduct, the Indiana Supreme Court indicated in *Powell* that when a defendant violates result-based statutes, multiple convictions may stand for crimes committed during a single episode of criminal conduct if his conduct involves multiple victims. *See Powell*, 151 N.E.3d at 266 (providing that under result-based statutes, where several injuries occur in the course of a single incident, the prohibited offense has been perpetrated several

II. Admission of Evidence

[12] “Generally, a trial court’s ruling on the admission of evidence is accorded a great deal of deference on appeal.” *Hall v. State*, 36 N.E.3d 459, 466 (Ind. 2015).

A trial court has broad discretion in ruling on the admission or exclusion of evidence. An abuse of discretion occurs when the trial court’s ruling is clearly against the logic, facts, and circumstances presented. When reviewing the admissibility of evidence, we do not reweigh evidence, and we consider conflicting evidence most favorable to the trial court’s ruling.

Phillips v. State, 25 N.E.3d 1284, 1288 (Ind. Ct. App. 2015) (internal citations omitted).

[13] Cochran contends that the trial court abused its discretion by admitting a recording of a telephone call that he made to his wife from the Tippecanoe County Jail, arguing that “[t]he evidence was irrelevant and established nothing other than the fact that Cochran was an inmate at a correctional facility.” Appellant’s Br. p. 17. For its part, the State argues that the substance of the phone call was relevant because it “was highly probative of [Cochran’s] consciousness of guilt.” Appellee’s Br. p. 9.

times over and the separate victims represent different offenses because conduct has been directed at each particular victim).

[14] “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Ind. R. Evid. 401. Generally, relevant evidence is admissible and “[i]rrelevant evidence is not admissible.” Ind. R. Evid. 402. However, relevant evidence may be excluded “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.” Ind. R. Evid. 403.

[15] The parties agree that during the call, Cochran can be heard referring to Edwards, Taylor, and Alford as snitches. The term “snitch” is defined as “[s]omeone who informs or tattles; esp., one who supplies law-enforcement officers with information in hopes of receiving lenient treatment; INFORMANT.” BLACK’S LAW DICTIONARY p. 1672 (11th ed. 2019).

[16] The State argues that the evidence of the phone call was relevant because Cochran’s act of referring to Edwards, Taylor, and Alford as snitches was evidence of his consciousness of guilt. The Supreme Court of New Hampshire has previously found the defendant’s reference to another as a snitch was probative evidence of consciousness of guilt. *See State v. Russell*, 159 N.H. 475, 488, 986 A.2d 515, 526 (2009) (“The defendant’s statements about [his co-perpetrator] ‘snitching’ are probative of his consciousness of guilt.”). Likewise, in *Larry v. State*, 716 N.E.2d 79, 81 (Ind. Ct. App. 1999), in which we concluded that “evidence that Larry called [his co-perpetrator] a ‘snitch’ and beat him up was properly admissible to prove Larry’s guilty knowledge or consciousness of

guilt with respect to the charged crime.” We find the New Hampshire Supreme Court’s decision in *Russell* and our prior opinion in *Larry* to be persuasive.

[17] Furthermore, while the Indiana Supreme Court has previously held that evidence of incarceration for an unrelated matter would arguably be inadmissible in a criminal proceeding, *Sauerheber v. State*, 698 N.E.2d 796, 804 (Ind. 1998), we agree with the State that given that the jury was aware that Cochran had been arrested in connection with the instant case, under these circumstances, evidence of incarceration was not overly prejudicial. By referring to Edwards, Taylor, and Alford as snitches, Cochran displayed a consciousness of guilt and the relevance of evidence of this consciousness of guilt outweighed any prejudice that Cochran may have suffered by the jury hearing that he had called his wife from the Tippecanoe County Jail. The trial court, therefore, did not abuse its discretion in admitting a recording of the call into evidence.²

[18] The judgment of the trial court is affirmed.

Najam, J., and Bailey, J., concur.

² In any event, even if the trial court abused its discretion in admitting the recording of the call, such error was harmless given the independent evidence of Cochran’s guilt. “Improper admission of evidence is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court there is no substantial likelihood the challenged evidence contributed to the conviction.” *Cutshall v. State*, 166 N.E.3d 373, 379 (Ind. Ct. App. 2021) (internal quotation omitted). At trial, both Edwards and Taylor identified Cochran as their assailant. In addition, Cochran was arrested a short time after the batteries occurred with a multi-tool knife that matched Taylor’s description of the multi-tool that he had seen in Cochran’s possession prior to the batteries. Thus, any error in admitting the challenged evidence was harmless.