

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Jaspreet Singh,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 24, 2024

Court of Appeals Case No.
23A-CR-2453

Appeal from the Cass Superior Court
The Honorable Lisa L. Swaim, Judge

Trial Court Cause No.
09D02-2103-F5-15

Memorandum Decision by Judge Foley
Judges Bailey and Kenworthy concur.

Foley, Judge.

[1] Following an earlier appeal, Jaspreet Singh (“Singh”) was retried, and the jury found him guilty of reckless homicide, a Level 5 felony, related to a fatal vehicular crash.¹ The trial court sentenced Singh to four years, fully executed in the Indiana Department of Correction (“the DOC”). Singh appeals and raises the following restated issues for our review:

- I. Whether sufficient evidence was presented to support that Singh caused the victim’s death and that Singh acted with the requisite mens rea;
- II. Whether the trial court improperly identified aggravators to support Singh’s enhanced sentence; and
- III. Whether Singh’s sentence is inappropriate in light of the nature of his offense and his character.

[2] We affirm.

Facts and Procedural History²

[3] On March 1, 2021, around 8:20 a.m., Singh was driving his semi-truck in the left southbound lane on US Highway 35 South—with a posted speed limit of sixty miles per hour—when he missed his exit to turn left onto US Highway 24

¹ Ind. Code § 35-42-1-5.

² We held an oral argument on March 28, 2024, at Indiana University East. We thank the parties and the university for their participation, and we thank the advocates for their skilled presentations.

at the Anoka Exchange. While in the left southbound lane, Singh stopped his semi-truck, activated his hazard lights, and began slowly reversing his semi-truck. A moment later, Jamie Pay (“Pay”)—who was also driving in the left southbound lane—crashed her black SUV into the back right corner of Singh’s semi-truck. The collision caused Pay’s SUV to spin to the right side of the highway, and Pay instantly died.

- [4] Singh was the first to call 911 to report the collision, but due to his minimal proficiency in English, he passed the phone to a passerby—Tyson Freiburger—who had witnessed the collision and stopped to check on whoever was in the SUV because “[i]t was pretty bad.” Tr. Vol. 2 p. 153. Cass County law enforcement officers responded to the scene of the crash.
- [5] During the investigation of the crash, Officer Flaude Dillon (“Officer Dillon”), who is trained and certified in crash reconstruction, obtained the airbag control module from Pay’s vehicle to retrieve information regarding Pay’s speed, acceleration, braking, and seatbelt use. Sergeant Patrick Zeider (“Sergeant Zeider”) took Singh’s statement at the scene. Singh was later transported to the hospital for chemical testing. Test results for both Singh and Pay were negative for intoxicants.
- [6] Pay’s cellphone was recovered from the roadside debris. A digital forensic examiner recovered data from the Snapchat messaging application and determined that Pay (1) received a Snapchat message at 7:50 a.m.; (2) read the Snapchat message at 8:21:53 a.m.; and (3) replied to the Snapchat message at

8:22:41 a.m. Pay collided with Singh’s semi-truck at some point between 8:22:41 a.m., when she sent her reply, and 8:24:13 a.m., when Singh called 911.

[7] The State charged Singh with Level 5 felony reckless homicide. In February 2022, a two-day jury trial was held. Interpreters were utilized so that Singh could understand the proceedings. The first trial led to a guilty verdict, and the trial court sentenced Singh to six years in the DOC, imposing an aggravated sentence in part because it determined Singh lacked remorse. Singh appealed, raising issues regarding the admission of evidence and the instruction of the jury, and we reversed on grounds that Singh should have been able to present the evidence gleaned from the Snapchat application, which was relevant to prove whether Pay was distracted around the time of the collision. A second jury trial was held on August 16 and 17, 2023, at which Officer Dillon, Sergeant Zeider, and Singh testified.

[8] Officer Dillon testified that he was able to “retrieve speed, acceleration, braking, [and] seatbelt information” from Pay’s vehicle. Tr. Vol. 2 p. 186. At impact, Pay’s speed was seventy-three miles per hour, and no brakes were applied. Officer Dillon also testified that Pay “let off the accelerator a half . . . second prior to the . . . impact.” *Id.* at 188. Due to the location of the impact to the semi-truck, Officer Dillon further testified that he believed that Pay “had begun to turn her vehicle” in an “attempt to get out of the lane of travel to avoid the crash.” *Id.* at 190–91.

[9] Sergeant Zeider testified that when he told Singh that “someone had died in the accident[,]” Singh reacted by only asking, “can I get my [semi-]truck back?” Tr. Vol. 3. p. 27. Sergeant Zeider testified that Singh asked about his semi-truck “multiple times” and that Singh was upset “he couldn’t leave with [his semi-truck]” after Sergeant Zeider informed him that Singh’s semi-truck would be impounded. *Id.* at 27–28.

[10] Outside of the presence of the jury, Singh informed the trial court that he was a “follower of the Sikh faith and [that he] follow[s] the . . . holy book of the Sikhs.” *Id.* at 53. The trial court asked Singh if “there [was] any rule or custom in his religion not to speak about or show grief regarding a death.” *Id.* at 54. Singh stated that “the tendency is not to show too much about it or go talk to this person and that person about it, but to show to the creator that you really are sorry about what happened.” *Id.* In the presence of the jury, Singh testified that he received extensive training—a majority of which pertained to safety—prior to obtaining his CDL driver’s license. *See id.* pp. 48, 80. Pursuant to his training, Singh testified that he was only allowed to turn his hazards on then subsequently stop his semi-truck during an emergency and that he considered missing his turn an emergency. Singh testified that when he saw that Pay died, “[he] was very scared” and “couldn’t understand what [he] should do or where [he] should go.” *Id.* at 64. Singh further testified that his response to Pay’s death was “shock” as to “why or how the accident happened,” adding that he “couldn’t understand what [he] was supposed to do at that time.” *Id.* Singh also testified that he knew at that time that “if somebody came from behind,

they would have hit [him]” while he was reversing his semi-truck and that he knew at that time that it was “dangerous” to stop in the highway, but “once the truck [wa]s stopped, what could [he] do.” *Id.* at 82. Singh also testified that there were other safer options available for him, such as “turn[ing] around” a tenth of a mile down the highway or pulling over on the “big wide shoulder.” *Id.* at 83. Singh agreed that those options were safer than “stopping in the middle of the highway.” *Id.* The jury found Singh guilty of reckless homicide.

[11] The presentence investigation report stated that Singh “ha[d] no history of delinquent or criminal activity[.]” Appellant’s App. Vol. II p. 205. The report also stated that Singh “scored in the low risk range to re-offend.” *Id.*

[12] At the sentencing hearing, Singh gave a statement in allocution. Singh stated, “I apologize to the family . . . I’m really sorry for what happened . . . I’ll do whatever you want.” Tr. Vol. 3 p. 148. Singh further stated, “I don’t know how the accident happened.” *Id.* The trial court found as mitigating that Singh “expressed remorse at this time that he had not expressed in the past” and that Singh had “no known criminal history other than this event and this instance.” *Id.* at 152. Although the trial court was giving “some credit to [Singh] for that remorse,” the trial court found as aggravating that “there was no remorse expressed by [] Singh until now, which is almost two years later, on the date of the second sentencing in this matter.” *Id.* at 153. The trial court further remarked that Singh’s remorse “came so late.” *Id.* The trial court proceeded to weigh the aggravating and mitigating evidence “[b]ased on the new information about remorse” and found that “the aggravators outweigh[ed] the mitigators[.]”

Id. The trial court then sentenced Singh to four years executed in the DOC for the Level 5 felony. That sentence was one year above the advisory sentence and two years below the six-year sentence that the trial court imposed at Singh’s sentencing hearing in connection with the first jury trial. Singh now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[13] When there is a challenge to the sufficiency of the evidence, “[w]e neither reweigh evidence nor judge witness credibility.” *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016), *cert. denied*. Instead, we consider only the evidence most favorable to the judgment together with all reasonable inferences drawn therefrom. *Id.* “We will affirm the judgment if it is supported by substantial evidence of probative value even if there is some conflict in that evidence.” *Id.* Indeed, we will ultimately “affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

[14] Here, Singh was convicted of reckless homicide. This offense is defined in Indiana Code section 35-42-1-5, which provides as follows: “A person who recklessly kills another human being commits reckless homicide, a Level 5 felony.” A person acts recklessly “if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.” Ind. Code § 35-41-2-2. “Such conduct will support a reckless

homicide conviction if it results in the death of another.” *Gibbs v. State*, 677 N.E.2d 1106, 1108 (Ind. Ct. App. 1997), *trans denied*.

[15] Our review of the sufficiency of evidence supporting a reckless homicide conviction tends to focus on the following three issues: (1) whether the defendant’s conduct caused the death; (2) whether “the act resulting in the homicide was voluntary,” and (3) whether “the defendant’s conduct was reckless and not merely negligent.” *Id.* at 1108–09 (quoting *Taylor v. State*, 457 N.E.2d 594, 597 n.6 (Ind. Ct. App. 1983)). In this case, Singh claims there was insufficient evidence that he caused Pay’s death and that he acted with the requisite mens rea. We address each contention in turn.

A. Causation

[16] According to Singh, the evidence indicates that Pay’s conduct—rather than Singh’s—caused the death because she was not paying attention to the road. “The concept of causation in criminal law is similar to that found in tort law. Like in tort law, the criminal act must be both 1) the actual cause (sometimes called the ‘cause-in-fact’); and 2) the legal cause (sometimes called the ‘proximate cause’) of the result.” *Cannon v. State*, 142 N.E.3d 1039, 1043 (Ind. Ct. App. 2020).

1. Actual Cause

[17] For a person’s conduct to be the “actual cause” of a death, the death must not have occurred “but for” the defendant’s conduct. *Cf. id.* If there is more than one cause that “precipitates the result,” then the defendant’s conduct is the

actual cause of the death only if the conduct “is a ‘substantial factor’ in bringing about that result.” *Id.* Whether a person’s conduct actually caused an injury is a question of fact for the fact-finder. *See, e.g., Indian Refining Co. v. Summerland*, 173 N.E. 269, 270 (Ind. Ct. App. 1930).

[18] Singh challenges the sufficiency of evidence that he was the actual cause of Pay’s death. According to Singh, even if he “[h]ad . . . done everything perfectly and slowed his truck well before the Anoka [Ex]change, Pay would still have crashed into the truck and died because she was looking at her phone and not the road ahead.” Appellant’s Br. p. 19. Singh adds that Pay “was not paying attention to the road but rather composing messages to friends while speeding at seventy-five miles per hour in the passing lane” and not wearing a seatbelt. Appellant’s Br. pp. 17–18. Singh focuses on evidence indicating that, between 8:21:53 a.m. and 8:22:41 a.m., Pay read and replied to a Snapchat message and subsequently crashed into the back of Singh’s semi-truck. Moreover, Singh interprets the evidence and argues that “Pay had drifted between lanes when she crashed” because the vehicle recorder showed that “the force from impact was directly backward, without any evidence that Pay made a hard movement to the left or right to avoid the collision.” *Id.* at 18–19. Singh also points out that “there was no witness testimony or data from Pay’s car suggesting she made a hard attempt to divert her car from the collision.” *Id.* at 19.

[19] All in all, Singh focuses on evidence favorable to his position. But he declines to address inculpatory evidence indicating that Pay “let off the accelerator a half

. . . second prior to the . . . impact.” Tr. Vol. 2 p. 188. Singh also declines to address Officer Dillion’s testimony that, due to the location of the impact to the semi-truck, Pay “had begun to turn her vehicle” in an “attempt to get out of the lane of travel to avoid the crash.” *Id.* at 190–91. We must decline Singh’s invitation to reweigh evidence. We ultimately conclude that, based upon the evidence presented, a reasonable fact-finder could determine that Singh’s decision to reverse his truck in the left lane of a highway was a substantial factor in Pay’s death, which resulted from a collision with Singh’s semi-truck.

2. Proximate Cause

We note that a defendant’s conduct need not be the sole cause of a death in order to support a conviction for reckless homicide.” *Barber v. State*, 863 N.E.2d 1199, 1205 (Ind. Ct. App. 2007). Rather, “[t]he State must only prove that the defendant’s conduct was a proximate cause of the victim’s death.” *Id.* As we have explained in other contexts, “[p]roximate cause is generally a question of fact, and becomes a question of law only in plain and indisputable cases where merely a single inference or conclusion can be drawn.” *Doe v. Lafayette Sch. Corp.*, 846 N.E.2d 691, 700 (Ind. Ct. App. 2006). Proximate cause is a concept distinct from the concept of actual cause. *Cannon*, 142 N.E.3d at 1043. That is, proximate cause “speak[s] not to the physical relationship between the actor’s conduct and the result, but instead embod[ies] a value judgment as to the extent of the physical consequences of an action for which the actor should be held responsible.” *Id.* As we have explained:

[P]roximate cause questions are often couched in terms of “foreseeability”; an actor is not held responsible for consequences which are unforeseeable. In Indiana, a result is deemed foreseeable if it is a “natural and probable consequence” of the act of the defendant.

In cases where an action of the victim . . . affects the chain of causation, foreseeability is again a factor. Such an occurrence is called an “intervening cause[,]” and it becomes a superseding cause breaking the chain of causation if it was not foreseeable. If an intervening and superseding cause aided in bringing about the result, the defendant is not criminally liable.

[20] *Id.* “In order for an intervening cause to break the chain of criminal responsibility, it must be so extraordinary that it would be unfair to hold the [defendant] responsible for the actual result.” *Id.* “The foreseeability of an intervening cause presents a question of fact for the jury.” *Cole v. State*, 69 N.E.3d 552, 558 (Ind. Ct. App. 2017), *trans. denied*.

[21] Singh relies on *Carter v. State*, wherein the defendant drank a substantial amount of whiskey and immediately drove off in his car. 234 N.E.2d 850, 851 (Ind. 1968). The weather was clear and there was no traffic on the street; but it was dark, and the defendant had turned on his headlights. Meanwhile, a child had lost his shoe on the road and started going back to grab it. The defendant struck the child with his vehicle. The defendant testified that he did not see the child, that he therefore did not swerve to avoid him, and that he did not know he had hit him until after he had stopped and saw the child lying on the ground. At the same time, the defendant’s blood alcohol content indicated that he was under

the influence of intoxicating liquor sufficient to lessen his driving ability within the meaning of the statutory definition of reckless homicide. A bench trial was held, and the trial court found the defendant guilty of reckless homicide. The Indiana Supreme Court reversed the conviction, reasoning that the accident would have occurred even if the defendant had been driving in the most careful manner. That is, the Indiana Supreme Court determined that the sudden movement of the child was an unforeseeable superseding cause and, therefore, the defendant's driving was not the proximate cause of the death.

[22] Singh contends that, like the child in *Carter*, “Pay would have died even if Singh proceeded in the most careful manner.” Appellant’s Br. p. 20. Singh further argues that Pay’s actions were more troubling than those of the child in *Carter* because Pay was “an adult who would know that sending messages to friends on a highway at seventy-five miles per hour can result in death” and, by composing messages while driving, Pay was violating the law. *Id.* He further claims that, unlike the defendant in *Carter*, who “had at least some opportunity to see the child and try to react before the [child] tried to grab his shoe, Singh had no similar opportunity to react to Pay’s unlawful driving.” *Id.* Therefore, Singh asserts that his conviction should be reversed because Pay’s conduct resulted in her own death.

[23] We disagree with Singh’s contentions and find *Carter* distinguishable. Here, Singh was not operating his semi-truck in the most careful manner given his extensive CDL training. A rear-end collision was reasonably foreseeable because of Singh’s decision to reverse his semi-truck in the travel lane of the

state highway. As to Pay's operation of her vehicle, it was not unforeseeable that Pay, or any other vehicle, may be travelling at seventy-three miles per hour on a divided state highway. Whether Pay's use of her phone in the moments before the accident distracted Pay or inhibited her reaction to Singh's semi is a disputed fact, best left for the jury to resolve.

[24] Singh himself testified that he foresaw the possibility that someone would drive into the rear of his semi-truck while he was reversing on the highway. Singh further testified that he knew at that time it was "dangerous" to stop in the highway, but "once the truck [wa]s stopped, what could [he] do." Tr. Vol. 2 p. 82. Despite acquiring substantial training on the safe operation of a vehicle requiring a CDL, Singh disregarded the safer option of driving past his exit and later turning around to make the exit and instead chose to stop his semi-truck and reverse while in the middle of the highway. As a result, an unexpected Pay suffered the natural and probable consequence of Singh's actions. The evidence was sufficient for a reasonable fact-finder to conclude that Singh was the proximate cause of Pay's death and Pay's conduct did not constitute an intervening and superseding cause that broke the chain of causation.

B. Mens Rea

[25] Singh challenges whether there is sufficient evidence demonstrating that he acted with the requisite mens rea. Here, the State was obligated to prove that Singh acted recklessly. A person acts recklessly "if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of

conduct.” I.C. § 35-41-2-2(c). Moreover, it is not enough that the defendant was negligent. Rather, as we have explained:

The specific harm that a defendant convicted of reckless homicide must have plainly, consciously, and unjustifiably disregarded by their conduct is the risk of death of another person. Under the reckless homicide statute . . . , the State faces a significant burden in proving that an automobile accident resulting in death was the result of a driver’s reckless disregard of the risk of death by their conduct. . . [A] defendant could be guilty of reckless driving, but still not be guilt[y] of reckless homicide if a death results, if the defendant lacked the requisite mens rea for that death.

Hurt v. State, 946 N.E.2d 44, 49 (Ind. Ct. App. 2011) (internal citations omitted).

[26] Singh claims that the State failed to prove that when Singh stopped his truck in the left-hand lane, he did so “in plain, conscious, and unjustifiable disregard of the harm that might result” and that the disregard “involve[d] substantial deviation from acceptable standards of conduct.” Appellant’s Br. p. 21. Singh claims that “the only reasonable inference from the evidence is that Singh, at worst, acted negligently.” *Id.* at 24. To support his contention, Singh likens his conduct to that of the drivers in *Whitaker v. State*, 778 N.E.2d 423 (Ind. 2002), *Seibert v. State*, 156 N.E.2d 878 (Ind. 1959), and *State v. Boadi*, 905 N.E.2d 1069 (Ind. Ct. App. 2009).

[27] In *Whitaker*, our Supreme Court determined that there was insufficient evidence to support a reckless homicide conviction where the defendant rear-ended a car

stopped for a left turn, killing the driver of the stopped car. The defendant had been following the car at a distance of two to four car lengths, he had been driving slightly over the speed limit, no weather or road conditions contributed to the collision, and he was sober and well-rested. The State argued that the defendant's violation of the traffic code's prohibitions against excessive speed and following too closely supported a finding of recklessness on his part. Our Supreme Court held the evidence to be insufficient to support the conviction, in that the defendant's speed was only a minor deviation from the traffic code and the traffic code's prohibition on following too closely was too subjective and subject to ever-changing mental calculations based on traffic conditions. The Court also concluded that the defendant was keeping up with traffic and following at a distance similar to others on the road, so there was insufficient evidence that he had deviated from acceptable driving standards. The Court observed that the defendant's testimony that he had failed to notice the stopped car ahead of him until it was too late was evidence of his inadvertence or lack of attention, which only amounted to negligence on his part and that the State's argument that the defendant mistakenly thought the car would make the left turn before he reached it, if true, would merely have been a gross error in judgment.

[28] Similarly, in *Seibert*, the Indiana Supreme Court reversed the reckless homicide conviction of a driver who attempted to pass a car on a blind hill and collided with an oncoming car, killing the driver. The defendant testified that he looked for oncoming traffic before he attempted to pass the car, and he did not see, or

believe, that his view was obstructed. When he started to pass and observed that his view was obstructed, he applied his brakes for the purpose of getting back into his lane of traffic even before the approaching car came into view. The witness, who was driving the car that the defendant was attempting to pass, testified that he did not at the time know that the hill obstructed the view ahead at the place where the defendant was attempting to pass, and that he had traveled the road several hundred times. The witness further testified he did not see the car approaching from the other side of the hill until after the defendant had applied his brakes. The Court concluded that the evidence was insufficient to support that the defendant acted recklessly. That is, there was insufficient evidence that, when the defendant attempted to pass, he had knowledge or was chargeable with knowledge that his view ahead was obstructed, and that nevertheless, he attempted to pass, knowing his action would probably result in injury to others.

[29] Finally, in *Boadi*, the defendant was charged with several counts of criminal recklessness, including reckless homicide, as a result of an automobile collision that occurred when the defendant failed to stop his semi-truck at a red light. There was no evidence that the defendant sounded his horn or attempted to brake heavily before entering the intersection. However, there was also no evidence that the defendant had consumed any alcohol or drugs, been driving erratically, been overly fatigued, failed to comply with trucking regulations, or accelerated through the red light. After the State's presentation of evidence at trial, the trial court granted the defendant's motion for a directed verdict. The

State appealed and this court affirmed, holding that the failure to stop at a red light was not evidence of a substantial departure from acceptable standards of conduct sufficient to serve as evidence of recklessness. Therefore, we concluded that the trial court had properly determined there was a complete lack of evidence to support the reckless homicide and other recklessness-related charges against the defendant.

[30] Singh claims that, even though he overshot his turn, the subsequent actions he took as a result amounted to “an error in judgment . . . not criminal recklessness.” Appellant’s Br. p. 24. Singh further asserts that the accident occurred during daylight hours and that there was no evidence of fatigue nor noncompliance with trucking regulations presented. Therefore, Singh contends that “the only reasonable inference from the evidence is that Singh . . . acted negligently,” akin to the defendants in *Whitaker, Seibert, and Boadi*. *Id.*

[31] We disagree and find *Whitaker, Seibert, and Boadi* distinguishable from the facts before us in that the accidents in those cases involved a defendant making an inadvertent mistake or showing poor judgment while otherwise following acceptable standards of conduct. In contrast, here, Singh’s actions deviated significantly from acceptable standards of conduct when he brought his semi-truck to a complete stop and then reversed the semi-truck against the flow of traffic in the middle of the left travel lane of a divided four-lane highway. Indeed, unlike the defendant in *Whitaker*, Singh’s actions were not the result of mere inadvertence or inattention, but a conscious choice to reverse his semi-truck against the flow of traffic. Furthermore, unlike the defendant in *Seibert*

who did not appreciate the risk that passing on that particular stretch of highway posed, Singh was aware that his conduct posed a risk of a rear-end collision with oncoming traffic. Singh testified that he knew then that it was dangerous for him to stop in the highway, and yet, he proceeded to do just that. Finally, unlike the *Boadi* case, where there was no evidence to support even an inference of reckless conduct, but rather simple negligence or inattention; here, Singh’s testimony provides sufficient evidence that (1) he acted “in plain, conscious, and unjustifiable disregard of the harm that might result” by backing his semi in the travel lane of the highway and (2) the disregard “involve[d] substantial deviation from acceptable standards of conduct” because Singh’s conduct was the outlier among the other drivers’ conduct on that same highway and contrary to his extensive CDL safety training. *See Hurt*, 946 N.E.2d at 49. The State presented sufficient evidence demonstrating that Singh’s conduct was reckless.³

³ In his Reply Brief, Singh claims that he did not commit a single infraction because this court “has never found that stopping or going too slow can be reckless.” Appellant’s Reply Br. p. 10. Although the latter part of Singh’s contention is correct, the former part of his assertion is contrary to Indiana law. Indiana Code section 9-21-5-7(a) provides that “[a] person may not drive a motor vehicle at a slow speed that impedes or blocks the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with the law.” Driving at too low of a speed under circumstances where such speed endangers others is considered reckless driving under [Indiana Code section 9-21-8-52\(a\)\(1\)\(A\)](#). Moreover, [Indiana Code section 9-21-8-9](#) provides: “A vehicle shall be driven upon a roadway designated and signposted for one-way traffic only in the direction designated.” Since US Highway 35 is a divided highway with a designated direction for each side, Singh’s actions constituted a traffic infraction because he was driving against traffic. Thus, contrary to Singh’s assertion, the uncontroverted evidence indicates that Singh may have committed three separate infractions. Singh’s conduct was not “necessary for safe operation” nor in compliance with the designated direction for the southbound lane and his actions endangered other drivers. *See* I.C. §§ 9-21-5-7(a); [9-21-8-9](#).

II. Abuse of Sentencing Discretion

[32] Singh contends that the trial court abused its discretion in sentencing him to four years executed in the DOC for his Level 5 felony conviction. The sentencing range for a Level 5 felony is one to six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). Singh focuses on whether the trial court identified an improper aggravating circumstance when it referred to his remorse.

[33] We review the trial court’s sentence for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[34] A trial court abuses its discretion in a number of ways, such as by:

(1) “failing to enter a sentencing statement at all”; (2) entering a sentencing statement in which the aggravating and mitigating factors are not supported by the record; (3) entering a sentencing statement that does not include reasons that are clearly supported by the record and advanced for consideration; or (4) entering a sentencing statement in which the reasons provided in the statement are “improper as a matter of law.”

Ackerman v. State, 51 N.E.3d 171, 193 (Ind. 2016) (quoting *Anglemyer*, 868 N.E.2d at 490–91), *cert. denied*. It is improper to rely on a defendant’s maintaining his innocence as an aggravator, and a defendant’s constitutional privilege against self-incrimination protects him from having to confess to the police. *Angleton v. State*, 686 N.E.2d 803, 816 (Ind. 1997). However, “[a] trial

court may consider as an aggravator the defendant's lack of remorse," which is "displayed by a defendant when he displays disdain or recalcitrance, the equivalent of 'I don't care.'" *Sloan v. State*, 16 N.E.3d 1018, 1027 (Ind. Ct. App. 2014). Further, it is constitutionally impermissible for a trial court to impose a more severe sentence because the defendant has chosen to stand trial rather than plead guilty. *Hill v. State*, 499 N.E.2d 1103, 1107 (Ind. 1986) (citing *Walker v. State*, 454 N.E.2d 425, 429 (Ind. Ct. App. 1983), *trans. denied*). "[R]egardless of the presence or absence of aggravating or mitigating circumstances, a trial court may impose any sentence authorized by statute and permissible under the Indiana Constitution." *Kubina v. State*, 997 N.E.2d 1134, 1137 (Ind. Ct. App. 2013).

[35] Singh points out that, based on the trial court's remarks at sentencing, the court did not aggravate Singh's sentence because he *lacked* remorse. Rather, Singh asserts that the trial court aggravated his sentence because he waited until after his second jury trial to *express* remorse. That is, Singh argues that the trial court "conceded that Singh was remorseful," when it stated that "I do find that the remorse is a mitigator." Appellant's Reply Br. p. 11; Tr. Vol. 3 p. 152. Therefore, according to Singh, the trial court's sole basis for aggravating Singh's sentence was that Singh "came so late" with expressing remorse. Appellant's Br. p. 13. Singh contends that this type of aggravator was improper because "no Indiana court has ever approved a trial court aggravating a sentence because a defendant delayed expressing remorse." *Id.* at 11. Singh argues that he maintained his innocence throughout these proceedings, and his actions—

calling 911 right after the crash, cooperating with investigations, appearing for court proceedings, and not evading the criminal process—were not demonstrative of disdain, recalcitrance, or a lack of care for what occurred. Singh points out that, although not required by law to apologize to Pay’s family, Singh did so, and he argues that the trial court was not permitted to aggravate his sentence merely because he did not apologize until after his second trial.

[36] We disagree with Singh’s characterization of the trial court’s aggravating circumstance. The trial court’s remarks about a potential aggravating circumstance did not revolve around the timing of Singh’s expression of remorse or the content of Singh’s statements at the second sentencing hearing. Rather, the trial court was focused on Singh’s remarks and behavior at the scene, which demonstrated callousness about the effect of his conduct, “the equivalent of ‘I don’t care.’” *Sloan*, 16 N.E.3d at 1027. That is, after Sergeant Zeider informed Singh that the person in the SUV had died, Singh’s main concern was whether he would get his semi-truck back, and Singh inquired about recovering his semi-truck multiple times while still at the scene. Singh was also upset that he was unable to leave with his semi-truck because it was going to be impounded. Singh’s callousness at the scene, with a seemingly singular focus on his semi-truck, is what the trial court found aggravating. The trial court gave Singh’s conduct at the scene separate consideration from the remorse Singh expressed during his statement in allocution, which the trial court determined warranted at least some mitigating weight. This distinction is

evidenced in the trial court’s decision to impose a sentence two years less than the sentence it imposed after Singh’s first jury trial, indicating that the trial court found Singh’s expression of remorse as worthy of some mitigation. However, as the trial court put it, “[b]ased on new information about remorse[,]” the trial court still imposed a four-year *aggravated* sentence because it found that the aggravator—Singh’s callousness at the scene—outweighed the mitigators. Tr. Vol. 3 p. 153. And, when considering the trial court’s remarks in context, we cannot say that it was improper for the trial court to find Singh’s callousness at the scene as aggravating. *See* I.C. § 35-38-1-7.1 (providing a non-exhaustive list of potential aggravating circumstances). Therefore, the trial court did not abuse its discretion when it found Singh’s lack of remorse as aggravating.⁴

III. Inappropriate Sentence

[37] The Indiana Constitution authorizes appellate review and revision of a trial court’s sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). “That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court’s decision, the sentence is found to be

⁴ Singh also contends that the trial court’s decision to aggravate his sentence due to his late expression of remorse “effectively punished [him] for his religious belief” as a member of the Sikh community. Appellant’s Br. p. 26. Because we conclude that the trial court aggravated Singh’s sentence due to his callousness at the scene of the crime, not his late expression of remorse, we need not address this claim.

inappropriate in light of the nature of the offense and the character of the offender.” *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[38] Our review under Appellate Rule 7(B) focuses on “the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We generally defer to the trial court’s sentencing decision, and our goal is to determine whether the defendant’s sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant’s character (such as substantial virtuous traits or persistent examples of good character).” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[39] Singh claims that the nature of his offense did not warrant an aggravated sentence. When reviewing a sentence under Appellate Rule 7(B), we remain mindful that the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Indiana Code section 35-50-2-6(b) provides: “A person who commits a Level 5 felony . . . shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years.” Singh’s four-year sentence is one year above the advisory sentence.

[40] As to the nature of the offense, Singh asserts that his actions—stopping his semi-truck, activating his flashing lights, and reversing slowly on a multilane highway—“may have been an error in judgment,” but did not justify the sentence given. Appellant’s Br. p. 30. Singh also highlights that he was the first person to call 911, he cooperated with law enforcement, and he made no attempts to flee. Therefore, Singh claims that “[n]othing in this case suggests that an aggravated sentence is appropriate.” *Id.*

[41] We disagree. “The nature of the offense is found in the details and circumstances of the offenses and the defendant’s participation therein.” *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Here, Singh—while driving in the left lane of a divided four-way highway—decided to bring his semi-truck to a complete stop and began slowly reversing the semi-truck all because he considered missing his exit an emergency. Singh testified that he received extensive training on safety prior to receiving his CDL and that, at the time he decided to stop his semi-truck and reverse, there were much safer options available for him to take. Singh was also aware that what he was doing was dangerous and posed a substantial risk of a rear-end collision, and yet, Singh still proceeded in the manner that he did because “once the truck [wa]s stopped, what could [he] do.” Tr. Vol. 2 p. 82. Indeed, Pay collided with the back of Singh’s semi-truck and died as a result of Singh’s actions. To show that his sentence is inappropriate, Singh must portray the nature of his offense in a positive light, “such as accompanied by restraint, regard, and lack of brutality,” which he failed to do here. *Stephenson*, 29 N.E.3d at 122.

[42] As to his character, Singh contends that his character does not warrant his sentence. To support his contention, Singh directs us to the presentence investigation report, which revealed that Singh lacked a criminal or delinquent history and that he was in the low risk range to re-offend.

[43] The record supports Singh's contentions. However, Singh's callous conduct at the scene of the vehicular crash he caused reflects poorly on his character. Immediately after finding out that Pay had died, Singh's remarks were "the equivalent of 'I don't care'" given that Singh was concerned about when he would retrieve his semi-truck—and how he was unable to leave with his semi-truck—instead of his actions that led to the confiscation of his semi-truck in the first place. *See Sloan*, 16 N.E.3d at 1027. Consequently, Singh has failed to identify "substantial virtuous traits or persistent examples of good character" to support revising his sentence. *Stephenson*, 29 N.E.3d at 122.

Conclusion

[44] We conclude that the State presented sufficient evidence demonstrating that Singh caused Pay's death and that Singh acted recklessly when he reversed his semi-truck in the middle of the left southbound lane of the four-lane divided highway. We further conclude that the trial court did not abuse its discretion when it aggravated Singh's sentence due to his callous behavior at the scene of the crime. Singh's sentence is not inappropriate in light of the nature of his offense and his character.

[45] **Affirmed.**

Bailey, J., and Kenworthy, J., concur.

ATTORNEY FOR APPELLANT

Mark K. Leeman
Leeman Law Offices
Logansport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Caroline G. Templeton
Supervising Deputy Attorney General
Indianapolis, Indiana