MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Mark F. James
Mark James Legal, LLC
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kathy Bradley
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jeanette R. Gordon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 16, 2023

Court of Appeals Case No. 23A-CR-286

Appeal from the Elkhart Superior Court

The Honorable Christopher J. Spataro, Judge

Trial Court Cause No. 20D05-2008-CM-1017

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Jeanette R. Gordon appeals her three battery convictions and aggregate 540-day sentence. She raises three issues for appeal, which we restate as:

I. Whether the Elkhart Superior Court abused its discretion when it refused to tender Gordon's proposed intoxication instructions to the jury;

II. Whether the evidence is sufficient to support her convictions; and,

III. Whether Gordon's aggregate 540-day sentence is inappropriate in light of the nature of her offenses and her character.

[2] We affirm.

Facts and Procedural History

[3] On June 20, 2020, at approximately 8:00 a.m., Gordon was visiting a friend in the emergency room at Elkhart General Hospital and ingested three Ambien. Gordon informed the staff that she had taken the pills but declined treatment and left the ER. Three hours later, she returned to the ER and reported that she took the Ambien with the intent to harm herself. Because she reported the desire to self-harm, Gordon was placed on a seventy-two-hour hold. Gordon also told the intake nurse that she uses methamphetamine to help keep her focused and "real clear." Ex. Vol. p. 7.

[4] Gordon was calm and cooperated during the intake process. Medical staff were able to draw Gordon's blood, start an IV, and run other tests with Gordon's cooperation. Gordon was drowsy but answered the staff's questions appropriately. Around noon, Gordon began to get agitated. She spit on the

floor and sliding glass door to the room. But when she attempted to get out of the hospital bed, the nurse's aide who was monitoring Gordon was able to redirect her.

[5] At 12:30 p.m., a case manager spoke with Gordon, and after the case manager left the hospital room, Gordon became increasingly agitated. She tried to get out of the bed and leave the room. Medical staff tried to de-escalate the situation and calm Gordon but could not do so. Therefore, they called security.

[6] Security Office Darlene Miller was the first officer to arrive and observed Gordon try to pull out her IV and leave the room. Miller explained to Gordon that she could not leave because she was on a seventy-two-hour hold. Gordon swore at Miller, was verbally aggressive, and told the staff that they could not stop her from leaving. The staff administered medication to Gordon to attempt to calm her, but the medication was not effective. Gordon became more physically aggressive, so Miller called for additional security.

[7] Two security officers and two nurses arrived in Gordon's room to assist. Nurse Kristy Ruiz observed Gordon swearing, yelling, kicking, hitting, and biting. Security Officer Kaleb Carder saw Gordon trying to kick, bite, and hit fellow officer Darlene Miller. While the security officers attempted to hold Gordon down so the nurses could place her in restraints, Gordon bit and scratched Miller's right arm and ripped the mask off her face. Gordon also threatened to kill Miller. Gordon struck Carder on the right side of his face and spit in his face. She also spit in Ruiz's eye. The officers and nurses were eventually able to

place Gordon in restraints and Gordon calmed down. Hospital staff also learned that Gordon's blood draw taken earlier in the day was positive for amphetamines or methamphetamine and marijuana. Tr. p. 71, 92; Ex. Vol. p. 9.

[8] The State charged Gordon with two counts of Class B misdemeanor battery and one count of Level 6 felony battery by bodily waste. Gordon's jury trial commenced on December 15, 2022. Prior to trial, Gordon requested jury instructions concerning voluntary and involuntary intoxication. The court refused to tender the instructions to the jury. The court also granted the State's motion in limine precluding evidence on the issue of intoxication.

[9] During trial, Gordon made an offer of proof and questioned Nurse Ruiz about the effects of Ambien. But Ruiz testified that she did not know the side effects when a person overdoses on Ambien other than excessive sleepiness. Tr. Vol. 2, p. 115. Ruiz also stated that she did not know if Ambien could cause delirium or acute psychosis but that methamphetamine use could cause those conditions. *Id*. at 117-18.

[10] The jury found Gordon guilty as charged. During the sentencing hearing, the trial court noted that Gordon had drugs in her system when she committed her offenses, that her criminal history was relatively minor, and that Gordon was actively participating in mental health treatment. The trial court also remarked on Gordon's combative and disrespectful behavior during the proceedings and considered the impact of her offenses on the victims. The trial court ordered

Gordon to serve 540 days for the Level 6 felony battery conviction and concurrent terms of 180 days for the misdemeanor battery convictions.

[11] Gordon now appeals.

Intoxication Instructions

[12] We review a trial court's decision to refuse a jury instruction for an abuse of discretion. *Hernandez v. State*, 45 N.E.3d 373, 376 (Ind. 2015). In doing so, we consider: "(1) whether the instruction correctly states the law; (2) whether there is evidence in the record to support the giving of the instruction; and (3) whether the substance of the tendered instruction is covered by other instructions which are given." *Id.*

[13] "Temporary mental incapacity, when induced by voluntary intoxication, normally furnishes no legal excuse for, or defense to, a crime." *Jackson v. State*, 273 Ind. 49, 52, 402 N.E.2d 947, 949 (1980); *see also Berry v. State*, 969 N.E.2d 35, 38 (Ind. 2012). "Intoxication is not a defense in a prosecution for an offense and may not be taken into consideration in determining the existence of a mental state that is an element of the offense unless the defendant meets the requirements of I[ndiana] C[ode] 35–41–3–5." *Townsend v. State*, 45 N.E.3d 821, 828 (Ind. Ct. App. 2015) (citing Ind. Code § 35-41-3-5). That section provides that intoxication is a defense when "the person who engaged in the prohibited conduct" did so while intoxicated but "only if the intoxication resulted from the introduction of a substance into [the person's] body" without

the person's consent or when the person "did not know that the substance might cause intoxication." I.C. § 35-41-3-5.

[14] Intoxication is defined as being under the influence of alcohol or other substances "so that there is an impaired condition of thought and action and the loss of normal control of an individual's faculties." Ind. Code § 35-46-9-2. Involuntary intoxication is a defense to the crime charged if the defendant was unable to appreciate the wrongfulness of the conduct at the time of the offense because of his or her intoxication. *Ellis v. State*, 736 N.E.2d 731, 734 (Ind. 2000). "Involuntary intoxication is a defense that negates culpability for the committed offenses." *Townsend*, 45 N.E.3d at 828.

[15] Here, Gordon requested jury instructions tracking the statutory language from Indiana Code section 35-41-3-5 and the caselaw set forth in the preceding paragraphs. She also requested an instruction defining the term intoxication. Gordon's proposed instructions were correct statements of the law and not covered by other instructions tendered to the jury. However, there was no evidence in the record to support giving the instructions. There was no dispute that Gordon voluntarily ingested Ambien and the other substances present in her system on the date she committed these offenses. Gordon knew that the substances had side effects and returned to the hospital for treatment because she had overdosed on Ambien. Finally, as is discussed below, the evidence presented at trial established that Gordon's actions were deliberate and that she was aware of what she was doing. Therefore, there was no evidence to support Gordon's claim that she was involuntarily intoxicated.

[16] For all of these reasons, we conclude that the trial court did not abuse its discretion when it refused to tender Gordon's proposed instructions to the jury.

Sufficient Evidence

[17] Next, Gordon argues that her battery convictions are not supported by sufficient evidence. Our supreme court recently restated our well-established standard of review.

> On a fundamental level, sufficiency-of-the-evidence arguments implicate a "deferential standard of review," in which this Court will "neither reweigh the evidence nor judge witness credibility," but lodge such matters in the special "province" and domain of the jury, which is best positioned to make fact-centric determinations. *See Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018). In reviewing the record, we examine "all the evidence and reasonable inferences supporting the verdict," and thus "will affirm the conviction if probative evidence supports each element of the crime beyond a reasonable doubt." *Id.*

Carmack v. State, 200 N.E.3d 452, 459 (Ind. 2023).

[18] To prove that Gordon committed Class B misdemeanor battery as alleged in this case, the State had to present evidence sufficient to establish that Gordon knowingly or intentionally touched another person or placed any bodily fluid or waste on another person in a rude, insolent, or angry manner. See Ind. Code § 35-42-2-1(c); Appellant's App. p. 60. The offense against Nurse Ruiz was elevated to a Level 6 felony because she is a public safety official who was engaged in her official duty. *See* I.C. § 35-42-2-1(e).

[19] Gordon concedes that the evidence is sufficient to establish that she touched and/or placed bodily fluid on her victims in a rude, insolent, or angry manner. Appellant's Br. at 7. Gordon only claims that the evidence was insufficient to establish that she did so knowingly or intentionally.

[20] Gordon ingested Ambien approximately five hours before she committed the batteries against the three victims. Therefore, she claims that she "was under the influence of Ambien and did not know the effects Ambien would have on her when she ingested the medication."[1] *Id*.

[21] There was no evidence presented at trial that would establish that an Ambien overdose might cause a person to suffer delirium or psychosis. And the State presented evidence that Gordon was trying to intimidate the officers and nurses and was aware of her words and actions. Tr. Vol. 2, pp. 58-59. Gordon wanted to leave the hospital and told the staff that they were not going to prevent her from leaving. *Id*. at 52, 87. Moreover, Gordon voluntarily ingested Ambien and any other drugs that were present in her system. For all of these reasons, we conclude that the State presented sufficient evidence to establish that Gordon knowingly or intentionally committed three counts of battery.

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[1] Gordon relies on Nurse Ruiz's testimony in her offer of proof to support her argument. However, she did not raise the trial court's refusal to admit the evidence as a separate issue on appeal. Moreover, Ruiz's testimony solicited during the offer of proof does not support Gordon's argument. Ruiz testified that she did not know what side effects a person could suffer from taking too much Ambien. Tr. Vol. 2, p. 115. She stated that Gordon seemed alert and oriented toward the situation when she was combative with the nursing and security staff. *Id*.

Inappropriate Sentence

[22] Finally, Gordon argues that her 540-day aggregate sentence is inappropriate in light of the nature of the offenses and her character. For Gordon's Level 6 battery conviction, the trial court was allowed to sentence Gordon to a fixed term between six months and two and one-half years. Ind. Code § 35-50-2-7(b). Gordon's 540-day sentence is 175 days more than the advisory one-year sentence for a Level 6 felony. *Id.* The trial court imposed maximum, but concurrent 180-day terms, for Gordon's two Class B misdemeanor convictions. *See* Ind. Code § 35-50-3-3.

[23] Under Indiana Appellate Rule 7(B), we may modify a sentence that we find is "inappropriate in light of the nature of the offense and the character of the offender." Making this determination "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under Rule 7(B), however, is reserved for "a rare and exceptional case." *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam).

[24] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to "leaven the outliers," not to achieve what may be perceived as the "correct" result. *Id.* Thus, deference to the trial court's sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling

evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[25] Gordon does not argue that her sentence is inappropriate concerning the nature of her offenses. She bit and scratched Miller, and spit in Carder's and Ruiz's faces causing all of them concern about the possibility of infection. She also screamed obscenities at security officers and hospital staff and threatened to kill Miller.

[26] Gordon argues that her character does not support the sentence imposed in light of her mental illness, and she claims the trial court "gave too much weight to Gordon's behavior at prior hearings[.]" Appellant's Bt. at 9. The trial court considered Gordon's mental illness and commended her for actively participating in mental health treatment. And Gordon's criminal history is relatively minor consisting of a misdemeanor conviction and a felony battery conviction. The court also noted and provided examples of Gordon's disrespectful and combative behavior throughout the trial proceedings and contrasted that behavior with her calm demeanor at the sentencing hearing.

[27] The nature of Gordon's offenses against her three victims more than supports the trial court decision to impose a 540-day aggregate sentence. And Gordon

has not persuaded us that her character warrants a downward revision of her less than maximum sentence.

Conclusion

[28] We reject Gordon's claim that the trial court abused its discretion when it refused to tender her proposed instructions to the jury. Gordon's convictions are supported by sufficient evidence and her 540-day aggregate sentence is not inappropriate in light of her offenses and her character.

[29] Affirmed.

Vaidik, J., and Pyle, J., concur.