MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Curtis Monroe,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 23, 3021

Court of Appeals Case No. 20A-CR-2095

Appeal from the Monroe Circuit Court

The Honorable Valeri Haughton, Judge

Trial Court Cause No. 53C02-1909-F2-1076

Bailey, Judge.

Case Summary

[1] Curtis Monroe ("Monroe") appeals his conviction, following a jury trial, of burglary, as a Level 2 felony,[1] and his twenty-two-year sentence for the same.

[2] We affirm.

Issues

[3] Monroe raises three issues on appeal which we restate as follows:

I. Whether the trial court committed fundamental error when it allowed the State to admit evidence under Indiana Rule of Evidence 404(b) to prove Monroe's motive, intent, opportunity, and/or plan to commit acts of domestic violence and/or burglary against Amanda Self ("Self").

II. Whether the prosecutor's closing argument constituted fundamental error.

III. Whether the trial court abused its discretion when it declined to find mitigating factors advanced by Monroe at sentencing.

Facts and Procedural History

[4] Beginning in July of 2018, Self and Monroe were in a romantic relationship and lived together in Self's apartment. Self and Monroe frequently fought over,

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[1] Ind. Code § 35-43-2-1(3)(A).

among other things, Monroe's consumption of alcohol. In October or November of 2018, Monroe moved out of Self's home.

[5] Soon after Monroe moved out, Self attempted to sever contact with him. However, Monroe began following Self, telephoning and/or texting her repeatedly, and "showing up where[ever]" Self and/or her children were located. Tr. v. II at 31. In June of 2019, Self obtained a protective order against Monroe which barred him from communicating with Self and her children and from going to Self's home or place of employment.

[6] On September 14, 2019, Self spent the day out with a friend, William Drais ("Drais"). Before leaving her home that day, Self locked the doors to the home and turned on her front porch light. When Self and Drais returned to Self's home late that night, Self noticed the front porch light was no longer lit, which led her to suspect Monroe had unscrewed the porch light bulb in order to enter her house undetected, as he had done in the past. Drais inspected the porch light and discovered that it had been unscrewed.

[7] Self and Drais entered Self's house and heard a loud thump coming from upstairs. They each grabbed baseball bats that were located by the front door, and they both headed up the stairs. As Self reached the top of the stairs, she saw Monroe, who was dressed in all black clothing. Monroe grabbed Self, pulled her to him, and held a knife to her throat. When Drais reached the top of the stairs, Monroe pointed the knife at Drais and ordered Drais to leave. Self then broke free from Monroe and ran to a bedroom. Monroe struck Drais with

the knife. Self then ran out of the bedroom and sprayed Monroe with mace. Self and Drais ran down the stairs toward the front door, and Monroe followed them. Drais ran out of the front door but, before Self could follow, Monroe grabbed her, slammed the front door closed, and locked it.

[8] Inside the house, Monroe pushed Self onto a loveseat and, while standing over her, began to strangle her with both of his hands around her throat. Self eventually lost consciousness. When Self regained consciousness, Monroe was dragging her by her shirt into the kitchen. Monroe accused Self of having sex with Drais and then pulled Self by her shirt and hair onto the floor. Monroe then beat Self and slammed her head into the concrete floor, at which point Self again lost consciousness. When Self regained consciousness, Monroe was pacing near the backdoor. Self then ran out of the front door, where she found Drais and the police.

[9] Monroe fought with the police when they attempted to arrest him. When Monroe was finally subdued and arrested, he was taken to the hospital for treatment of injuries sustained during the arrest. The police officer in the ambulance with Monroe smelled alcohol on Monroe's breath, and Monroe admitted he had been drinking prior to the events of that night.

[10] Police remained at Self's house to investigate. On an outdoor shelving unit near the back door, Police discovered cups filled with liquid, a bottle of alcohol, a screwdriver, and a "long object with a black handle that could be used as a pry iron." Tr. v. II at 210. Police also discovered that the backdoor "had been

tampered with" and pieces of the door frame had been removed. *Id*. The tools the police found did not belong to Self, and the tools had not been there when Drais and Self were smoking outside near the backdoor earlier that same day.

[11] In their search that evening, the police did not locate the knife Monroe had used against Self and Drais. However, the next day Self found the knife lying on a table in her home. The knife belonged to Self, but she normally kept it in a console of her car which was the last place she remembered leaving it before the events of September 14, 2019. Self also discovered in her house an unfamiliar cell phone that contained text messages to and from someone identified as "Meka." Tr. v. II at 61. On September 15, Self turned over to police the knife and the cell phone.

[12] The State charged Monroe with (1) burglary with a deadly weapon, a Level 2 felony, (2) criminal confinement as a Level 3 felony,[2] (3) intimidation as a Level 5 felony,[3] (4) battery as a Level 5 felony,[4] (5) domestic battery as a Level 5 felony,[5] (6) domestic battery as a Level 6 felony,[6] (7) strangulation as a Level 6

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[2] I.C. § 35-42-3-3(b)(3).

[3] I.C. § 35-45-2-1(b)(2)(A).

[4] I.C. § 35-42-2-1(c)(1), (g)(2).

[5] I.C. § 35-42-2-1.3(a)(1), (c)(2).

[6] I.C. § 35-42-2-1.3(a)(1), (b)(1).

felony,[7] (8) intimidation as a Level 6 felony,[8] and (9) resisting law enforcement, as a Class A misdemeanor.[9] Although Monroe initially was appointed counsel, on March 6, 2020, he moved to represent himself pro se and the trial court granted that motion.

[13] On August 26, 2020, the State filed a notice of intent to offer at trial, pursuant to Indiana Evidence Rule 404(b), evidence related to Monroe's violence toward Self prior to the date of the charged crime. On September 8, 2020, Monroe filed his written objection to the State's notice. On September 15, 2020, following a hearing on the State's 404(b) notice, the trial court ruled that the State could offer the proposed evidence for reasons other than to show Monroe's "propensity" to act in conformity therewith. Tr. v. I at 117.

[14] At the September 21, 2020, jury trial—where Monroe continued to represent himself—the State admitted, without objection from Monroe, evidence regarding the following facts.

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[7] I.C. § 35-42-2-9(c)(1).

[8] I.C. § 35-45-2-1(b)(1)(A).

[9] I.C. § 35-44.1-3-1(a)(1).

Monroe's actions in June of 2019

[15] In June of 2019, Monroe began following Self and her children. Monroe would "sit on [Self's] front porch for hours." Tr. v. II at 31. Monroe broke into Self's car and her house. When he broke into Self's house, Monroe scared Self's daughter by being in the house when Self's daughter came home late that night.

July 2, 2019, incident

[16] On July 2, 2019, Monroe approached Self as she was leaving her place of employment and then followed Self when she drove to a friend's home. In the parking lot of the friend's apartment complex, Monroe approached Self as she attempted to exit her car and began to strangle Self by placing his hands around her throat. While strangling Self, Monroe pinned Self to the side of her car and lifted her off the ground. Monroe released Self when a passerby said something to Monroe, and Self then attempted to run away. Monroe grabbed Self by her hair and pulled her back toward the parking lot. Monroe released Self once again when another person said something to Monroe, and Self then ran into her friend's home.

[17] State's admitted Exhibit 43 was an "Affidavit for Escape/Failure to Return to Lawful Detention" which stated that, on September 5, 2019, Monroe was ordered to be placed on home detention for the offenses of criminal confinement, strangulation, and domestic battery under cause number 53C02-1907-F5-730. Ex. at 43.

House arrest and ankle bracelet

[18] Following the July 2 incident, Monroe was in jail and subsequently released on house arrest. On the day he was released from jail, Monroe walked through the woods near Self's house and came to her home. Monroe asked Self to drop the charges that were filed against him as a result of the July 2 incident.

[19] The officer who accompanied Monroe to the hospital after his September 14, 2019, arrest conducted a pat-down search of Monroe at the hospital. During that search the officer found that Monroe was not wearing an electronic-monitoring ankle bracelet used to monitor individuals placed on house arrest.

[20] State's Exhibit 43 stated that, on September 15, 2019, Monroe "knowingly or intentionally violated a home detention order by intentionally removing an electronic monitoring device or GPS tracking device." Ex. at 43.

Monroe's intimate relationship with Tameka Roberts

[21] After discovering the unfamiliar cell phone in her home, Self learned that the text messages to and from "Meka" referred to Tameka Roberts ("Tameka"). Tameka was Self's neighbor, and Self passed by Tameka's apartment each time Self left her own apartment. Monroe and Tameka had been involved in an "intimate" relationship while Monroe was living with Tameka and her husband, Brent Roberts ("Brent"), who was Monroe's friend. Tr. v. II at 89-90.

Brent found out about Tameka's and Monroe's intimate relationship, and Brent then required Monroe to move out of the Roberts's apartment.

[22] Beginning in July of 2019, Tameka and Monroe stayed in contact via text messages, and Monroe frequently asked Tameka to determine whether Self was at home by checking whether Self's car was parked at the apartment complex. Prior to September 14, 2019, Monroe informed Tameka by text message that he planned to get "his stuff back" from Self's apartment, stating that he would "break into the bitch's house and wait until she got there and do her bad." Tr. v. II at 96, 97.

Alcohol use and ownership of firearms

[23] Self and Monroe's relationship began to deteriorate when Monroe began drinking alcohol "every night." *Id*. at 29.

[24] At some point prior to September 14, 2019, Monroe texted Tameka to check whether Self was at home because Monroe wanted to retrieve some of his belongings, including "some pistols," from Self's home. *Id*. at 98.

* * *

[25] The jury found Monroe guilty of each of the charged offenses. Following a sentencing hearing, the trial court accepted the jury verdicts on all counts but, presumably due to double jeopardy concerns, entered a judgment and sentence only upon Count I, the burglary offense. The court sentenced Monroe to

twenty-two years in the Department of Correction on the Level 2 felony burglary. Monroe now appeals both his conviction and his sentence.

Discussion and Decision

Admissibility of Extrinsic Acts Evidence

[26] Monroe challenges the trial court's decision to admit certain evidence which he contends was evidence of crimes, wrongs, or other acts[10] that was inadmissible under Indiana Rule of Evidence 404(b)(1) because it was introduced to prove (1) his character, and (2) that, on September 14, 2019, he acted in conformity with that character. A trial court has broad discretion in ruling on the admissibility of evidence, and we disturb the trial court's rulings only when the appellant has shown an abuse of that discretion. *E.g.*, *Bowman v. State*, 51 N.E.3d 1174, 1180 (Ind. 2016). An abuse of discretion occurs only when a ruling is clearly against the logic and effect of the facts and circumstances. *Id*.

[27] Monroe acknowledges that he did not object to the admission of any of the challenged evidence. Because he failed to object to the admissibility of the evidence, request an admonishment to the jury, or move for a mistrial, Monroe has waived his claims. *See Tate v. State*, 161 N.E.3d 1225, 1229 (Ind. 2021).

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[10] We refer to such evidence as "extrinsic acts" evidence.

Therefore, he must establish on appeal that the admission of the evidence was fundamental error. *Id*.

> Fundamental error is an exception to the general rule that a party's failure to object at trial results in a waiver of the issue on appeal. *C.S. v. State*, 131 N.E.3d 592, 595 (Ind. 2019). An error is fundamental if it made a fair trial impossible or amounted to a clear violation of basic due process principles. *Id*. This is a formidable standard that applies only where the error is so flagrant that the trial judge should have corrected the error on her own, without prompting by defense counsel. *Id*. at 596.

Id.

[28] Indiana Rule of Evidence 404(b)(1) provides that "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Such evidence, however, "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Evid. R. 404(b)(2).[11] The purpose of Rule 404(b) is to prevent "the jury from indulging in the forbidden inference that a criminal defendant's prior wrongful conduct suggests present guilt."

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[11] Monroe maintains that the exceptions in Rule 404(b)(2) are only available to the State when a defendant "goes beyond merely denying the charged crimes and affirmatively presents a specific claim contrary to the charge." Reply Br. at 10. However, our Supreme Court has made it clear that the latter requirement applies to the *intent* exception under 404(b)(2), but not to the motive exception, *Hicks v. State*, 690 N.E.2d 215, 222 n.12 (Ind. 1999), or the plan exception, *Goodner v. State*, 685 N.E.2d 1058, 1061 (Ind. 1997). *See also Fairbanks v. State*, 119 N.E.3d 564, 570 (Ind. 2019) (noting same). Here, the State does not argue that the 404(b) evidence was offered to prove Monroe's intent to commit crimes but to prove his motive and/or plan.

Fairbanks v. State, 119 N.E.3d 564, 568 (Ind. 2019) (quotations and citations omitted).

[29] When ruling on extrinsic acts evidence introduced pursuant to Rule 404(b), the trial court must make three findings:

> First, the court must "determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant's propensity to commit the charged act." *Wilson v. State*, 765 N.E.2d 1265, 1270 (Ind. 2002) (internal citation omitted). Second, the court must determine that the proponent has sufficient proof that the person who allegedly committed the act did, in fact, commit the act.[12] *Clemens v. State*, 610 N.E.2d 236, 242 (Ind. 1993). And third, the court must "balance the probative value of the evidence against its prejudicial effect pursuant to Rule 403." *Wilson*, 765 N.E.2d at 1270.[13]

Camm v. State, 908 N.E.2d 215, 223 (Ind. 2009); *see also Smith v. State*, 116 N.E.3d 1107, 1115 (Ind. Ct. App. 2018), *trans. denied*. However, even "the erroneous admission of character and uncharged bad act evidence to prove guilt does not always require reversal." *Oldham v. State*, 779 N.E.2d 1162, 1173 (Ind. Ct. App. 2002), *trans. denied*. Such errors are harmless and not fundamental

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[12] Monroe does not challenge the sufficiency of the evidence to show that he engaged in the extrinsic acts; therefore, we do not address the second finding articulated in *Camm*.

[13] The State contends that Monroe has waived argument regarding the third finding—i.e., the balance of the probative value of the evidence against its prejudicial effect—by not raising it in his opening brief. Monroe's brief states that the alleged 404(b) evidence is more prejudicial than probative, but he does not specify how that is so. Therefore, his brief is inadequate as to that issue under Indiana Rule of Appellate Procedure 46(A). However, given our preference for addressing issues on the merits, we choose to address the balance of the probative value and prejudicial effect of the challenged evidence.

when, for example, other evidence of guilt is overwhelming. *See Haliburton v. State*, 1 N.E.3d 670, 683 n.7 (Ind. 2013) ("Where evidence of guilt is overwhelming any error in the admission of evidence is not fundamental.").

[30] Monroe asserts that the trial court committed fundamental error when it allowed the admission, under Rule 404(b), of evidence of the following extrinsic acts: (1) Monroe's actions toward Self in June and July of 2019, (2) Monroe's house arrest and removal of his monitoring ankle bracelet, (3) Monroe's intimate relationship with Tameka, and (4) Monroe's alcohol use and ownership of firearms. We address each set of acts in turn.

Monroe's actions toward Self in June and July of 2019

[31] Monroe challenges Self's and Tameka's testimony regarding Monroe's acts of stalking, harassment, burglary, and violence toward Self in June and July of 2019, contending such evidence was introduced only to prove his conformity with those prior acts on September 14, 2019. However, the State notes that the challenged evidence was relevant to Monroe's motive for burglarizing and attacking Self on the latter date and was offered only for that purpose.

[32] As our Supreme Court has noted, "evidence of motive is always relevant in the proof of a crime." *Camm*, 908 N.E.2d at 224. More specifically, a defendant's past violence toward the victim is relevant evidence of the defendant's hostility toward the victim, "which in turn [is] admissible to demonstrate [the defendant's] motive" for a crime involving an attack on the victim. *Embry v. State*, 923 N.E.2d 1, 10 (Ind. Ct. App. 2010), *trans. denied*; *see also, e.g.*, *Jackson v.*

State, 105 N.E.3d 1142, 1146 (Ind. Ct. App. 2018) (holding defendant's recent past threats to the victim were probative of defendant's hostility toward the victim and his motive for shooting the victim), *trans. denied*; *Iqbal v. State*, 805 N.E.2d 401, 408 (Ind. Ct. App. 2004) ("Where a relationship between parties is characterized by frequent conflict, evidence of the defendant's prior assaults and confrontations with the victim may be admitted to show the relationship between the parties and motive for committing the crime." (citing *Hicks v. State*, 690 N.E.2d, 215, 222 (Ind. 1999.)), *trans. denied*. The evidence of Monroe's actions toward Self in June and July of 2019 was highly relevant to something other than Monroe's propensity to burglarize and harm Self; that is, the challenged evidence was relevant to, and probative of, Monroe's motive for burglarizing Self's house and assaulting her there.

[33] Monroe does not say how the highly probative evidence of his past actions toward Self was prejudicial to him, much less show that the probative value was substantially outweighed by the prejudicial effect. Monroe simply states that the extrinsic acts evidence was "prejudicial and horrific," Reply Br. at 8, and had a "likely considerable" prejudicial effect on the jury, Appellant's Br. at 14. Given the relevant case law and Monroe's failure to show how he was harmed by the admission of the extrinsic evidence, the probative value of the evidence was not substantially outweighed by any prejudicial effect. *See, e.g.*, *Jackson*, 105 N.E.3d at 1146 (reaching the same conclusion regarding similar 404(b) evidence). The trial court did not abuse its discretion when it admitted such evidence.

House Arrest and Monitoring Ankle Bracelet

[34] Monroe asserts that the "most prejudicial and least probative" of the extrinsic acts evidence was the evidence that, on September 14, 2019, he was on house arrest for another crime and had removed his electronic monitoring ankle bracelet before breaking into Self's home on that date. However, as the State points out, evidence of those facts is relevant to Monroe's opportunity, plan and/or preparation to break into Self's home on September 14, 2019. We agree. Had Monroe not removed the ankle bracelet he wore as a result of his home arrest prior to breaking into Self's home on September 14, he would not have been able to break in without alerting the authorities. Thus, his prior removal of the ankle bracelet is highly probative evidence of his preconceived plan and opportunity to illegally enter Self's home on that day. *See, e.g.*, *Piercefield v. State*, 877 N.E.2d 1213, 1216 (Ind. Ct. App. 2007) (holding evidence of minor victim's past massages of defendant's feet, back, and buttocks was relevant to establishing the defendant's preparation or plan in a trial for child molestation), *trans. denied*.

[35] Monroe contends that the evidence that he was on home arrest and required to wear an ankle bracelet was prejudicial in that it led to an "inference that he was dangerous." Appellant's Br. at 10. However, those two facts alone—which do not, in themselves, refer to the underlying prior crimes that led to his home arrest and GPS monitoring—do not tell the jury anything about whether

Monroe has a propensity to be dangerous.[14] Monroe has failed to establish that there was any prejudicial effect of the evidence relating to his home arrest and ankle bracelet that would substantially outweigh that evidence's highly probative value. The trial court did not err in admitting that evidence.

Monroe's intimate relationship with Tameka

[36] Monroe maintains that testimony about his "sexual relationship" with Tameka contained "lurid details" that "deliberately exceeded the bounds necessary to establish that relationship and veered into the prejudicial and tawdry." Reply Br. at 7. We discern no such "tawdry" or "lurid" details, and Monroe does not point to any in the record. Rather, the only words Tameka used to describe her relationship with Monroe were that it was a "friendship" which at one point became "serious" and "intimate." Tr. v. II at 89-90.

[37] Further, we agree with the State that the evidence of Tameka's and Monroe's relationship was relevant to and probative of Monroe's plan, opportunity, and motive for breaking into Self's home and harming Self. The relationship with Tameka is what allowed Monroe to monitor, through Tameka, Self's comings and goings at her home, thereby allowing him to plan an opportune time to break into the home. The close relationship with Tameka also led to Monroe's admission to Tameka that he wanted to "break into" Self's home to get "his

[14] And, as we have already noted above, the highly probative value of the evidence of Monroe's prior hostile acts against Self—i.e., the June and July 2019 acts that led to his home arrest and monitoring—was not substantially outweighed by Monroe's bald assertions of prejudice.

stuff back" from the home. *Id*. at 96 (Tameka testifying that Monroe texted to her prior to September 14, 2019, "that he was going to break into the bitch's house and wait until she got there and do her bad"). Such evidence was highly probative of Monroe's plan, opportunity, and motive for his actions on September 14.

[38] However, we agree with Monroe that the additional evidence that Tameka was married to Monroe's friend was not relevant to any issue other than Monroe's character. The fact that Monroe's relationship with Tameka involved adultery with the wife of Monroe's friend has no relevance to Monroe's plan, opportunity, motive, or any other permissible purpose as provided in Rule 404(b)(2). But, as we discuss in more detail below, any error in the admission of that evidence was harmless, not fundamental.

Monroe's alcohol use and ownership of firearms

[39] Finally, Monroe challenges the admissibility, under Rule 404(b), of evidence that he was "drinking every night" while living with Self, and that some of the items he wished to retrieve from Self's home were "pistols." Tr. v. II at 29, 98. He contends that this was extrinsic evidence "introduced to assassinate Monroe's character and demonstrate his propensity for criminal behavior." Appellant's Br. at 14-15. However, there is nothing illegal or intrinsically "bad" about drinking alcohol every evening or owning firearms. Rather, Monroe asserts that evidence of those acts was an "invitation for the jury to infer that Monroe was a man of generally bad character and reputation." Reply at 10.

[40] "Evidence which creates a mere inference of prior misconduct is not prohibited by Evidence Rule 404(b)." *Hinesley v. State*, 999 N.E.2d 975, 986 (Ind. Ct. App. 2013), *trans. denied*; *see also Maffett v. State*, 113 N.E.3d 278, 283 (Ind. Ct. App. 2018) (noting the same, and evidence that defendant owned a firearm was "so vague that [the court could not] say it demonstrate[d] a bad act that could be prejudicial"); *Dixson v. State*, 865 N.E.2d 704, 712 (Ind. C. App. 2007) (holding evidence of a conversation in which defendant's wife referenced "another woman" was not an assertion of misconduct to which Rule 404(b) would be applicable), *trans. denied*. The references to Monroe's alcohol use and ownership of firearms were not assertions of "misconduct" such that Rule 404(b) would potentially exclude the admission of that evidence.

[41] In sum, the trial court did not abuse its discretion when it admitted the extrinsic acts evidence of Monroe's June and July 2019 actions toward Self, his home arrest and removal of his ankle bracelet, and his intimate relationship with Tameka. Furthermore, although evidence that Monroe committed adultery with his friend's wife (Tameka) is arguably evidence of prior misconduct introduced solely to prove that Monroe had bad character, the admission of that evidence was harmless, not fundamental, as there was other overwhelming evidence of Monroe's guilt. Self testified that she locked her home prior to leaving it on September 14, 2019. Self and Drais both testified that they witnessed Monroe in Self's home when they arrived there on the night of September 14, and police body-camera footage showed Monroe exiting Self's home that night. Police later located a screwdriver and a tool that resembled a

pry bar outside of Self's backdoor, neither of which had been there earlier that day. The police also discovered missing trim around the backdoor, which was evidence that Monroe entered the home by breaking into the back door. Both Self and Drais testified that Monroe attacked them in her home on September 14 with a knife that was admitted into evidence. Tameka testified that Monroe had informed her prior to September 14 in a text message that he planned to "break into" Self's home and "do her bad." Tr. v. II at 96-97. This was overwhelming evidence supporting Monroe's conviction of burglary with a deadly weapon, a Level 2 felony. It is also overwhelming evidence of the other violent crimes of which the jury found Monroe guilty, but which were merged with the burglary conviction. Monroe has failed to establish that any error in the admission of the challenged extrinsic evidence was harmful, much less fundamental. *See Haliburton*, 1 N.E.3d at 683 n.7.

Prosecutor's Statements During Closing Argument

[42] Monroe maintains that the prosecutor engaged in misconduct when she stated in her closing argument that his actions on the evening of September 14 "sound[ed] like what an animal does. What a predator does to his prey. Before he eats it." Tr. v. III at 120. We employ a two-step analysis when reviewing a claim of prosecutorial misconduct:

> We must first consider whether the prosecutor engaged in misconduct. *Reynolds v. State*, 797 N.E.2d 864, 868 (Ind. Ct. App. 2003). We then consider all the circumstances of the case to determine whether the misconduct placed the defendant in a position of grave peril to which he should not have been

> subjected. *Id*. However, "[t]he gravity of the peril [i]s determined by considering the probable persuasive effect of the misconduct on the jury's decision, rather than the degree of the impropriety of the conduct." *Id*.

Thomas v. State, 9 N.E.3d 737, 742 (Ind. Ct. App. 2014).

[43] Monroe did not object to the prosecutor's statements. Therefore, to prevail on appeal he must show the statements were misconduct that resulted in fundamental error. *See, e.g.*, *Ryan v. State*, 9 N.E.3d 663, 667-68 (Ind. 2014). That is, he must show that the alleged error was so prejudicial to him that it made a fair trial impossible. *Id*. at 668. In evaluating the issue of fundamental error, we must "look at the alleged [prosecutorial] misconduct in the context of all that happened and all relevant information given to the jury—including evidence admitted at trial, closing argument, and jury instructions—to determine whether the misconduct had such *an undeniable and substantial effect on the jury's decision* that a fair trial was impossible." *Id*. (emphasis in original).

[44] Even assuming—without deciding—that the prosecutor's challenged comments constituted misconduct, Monroe has failed to establish that the comments amounted to fundamental error. "Where there is overwhelming independent evidence of a defendant's guilt, error made by a prosecutor during the closing argument is harmless." *Jerden v. State*, 37 N.E.3d 494, 500 (Ind. Ct. App. 2015) (citing *Coleman v. State*, 750 N.E.2d 370, 375 (Ind. 2001)). As we discussed above, there was overwhelming evidence in this case supporting the jury's guilty verdicts. Moreover, the trial court instructed the jurors that "final

arguments are not evidence but are given to assist [the jury] in evaluating the evidence," and the jury "may accept or reject these arguments as [the jury] see[s] fit." Tr. v. II at 18-19. Therefore, even if the prosecutor's challenged statements constituted prosecutorial misconduct, we cannot say that they had such an undeniable and substantial effect on the jury's decision that a fair trial was impossible. Monroe has failed to establish that the prosecutor's statements—even if misconduct—resulted in fundamental error.

Sentencing

[45] Monroe challenges his twenty-two-year sentence for his Level 2 felony burglary conviction, asserting that the trial court committed "prima facie error when it failed to consider mitigating factors properly entered into the record," specifically, the hardship to his minor daughter and the alleged likelihood that he would respond affirmatively to probation or short-term imprisonment. Appellant's Br. at 19.[15]

[46] Sentencing decisions lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn

[15] Although Monroe initially asserts that his appeal of his sentence is pursuant to Indiana Appellate Rule 7(B), he waives that issue by failing to provide cogent argument as to how the Rule 7(B) analysis applies to his case. App. R. 46(A). Rather, he argues at length that the sentence was erroneous due to the trial court's alleged failure to consider mitigating factors contained in the record. Therefore, we address the latter issue as the only one for which Monroe presented cogent argument.

therefrom." *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citation omitted), *trans. denied*. A trial court abuses its discretion in sentencing if it does any of the following:

> (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any[ ]—but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law."

Id. (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490-491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)).

[47] So long as a sentence is within the statutory range, the trial court may impose it without regard to the existence of aggravating or mitigating factors. *Anglemyer*, 868 N.E.2d at 489. If the trial court does find the existence of aggravating or mitigating factors, it must give a statement of its reasons for selecting the sentence it imposes. *Id*. at 490. However, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion, *Gross*, 22 N.E.3d at 869, and a trial court is under no obligation to explain why a proposed mitigator does not exist or why the court found it to be insignificant, *Sandleben v. State*, 22 N.E.3d 782, 796 (Ind. Ct. App. 2014), *trans. denied*.

[48] Here, the trial court gave both oral and written sentencing statements at the conclusion of the sentencing hearing when it imposed Monroe's twenty-two-

year sentence. The trial court found the following aggravating factors: Monroe's history of drug and alcohol abuse, Monroe's history of domestic violence, and Monroe's "extensive criminal history." Tr. v. III at 159. The trial court also acknowledged that Monroe has a thirteen-year-old daughter who "needed [him] and who could have benefitted from good parenting on [his] part, especially since her mother is deceased." *Id*. However, the trial court noted that Monroe's criminal actions "precluded [him] being involved in [his] daughter's life until she reaches adulthood," since there is a ten-year, nonsuspendible minimum sentence for Level 2 felonies. *Id*. Thus, the trial court considered potentially mitigating factors entered into the record, including the "Presentence Report" that suggested Monroe would respond affirmatively to probation or short-term imprisonment. Tr. v. III at 159. In fact, the trial court stated that it "looked for [mitigators] in the hopes of some sort of balance when it c[a]me to sentencing" Monroe. *Id*. However, ultimately, the trial court found that the weight of the aggravating factors merited a twenty-two-year sentence, which is within the ten- to thirty-year sentencing range for a Level 2 felony. I.C. § 35-50-2-4.5.

[49] The trial court did not omit reasons that were "clearly supported by the record and advanced for consideration" when imposing Monroe's sentence. *Gross*, 22 N.E.3d at 869. And we may not reweigh the aggravating and mitigating factors on appeal. *Id*. The trial court did not abuse its discretion in sentencing.

Conclusion

[50] Monroe failed to establish that the trial court committed fundamental error when it admitted into evidence, pursuant to Evidence Rule 404(b), extrinsic acts evidence. Monroe also failed to establish that the prosecutor engaged in misconduct that made a fair trial impossible and resulted in fundamental error. And the trial court did not abuse its discretion in sentencing.

[51] Affirmed.

Crone, J., and Pyle, J., concur.