

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Vernon Joseph Farmer,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 23, 2022

Court of Appeals Case No.
21A-CR-2185

Appeal from the Jasper Superior
Court

The Honorable Russell D. Bailey,
Judge

Trial Court Cause No.
37D01-2007-F1-623

Najam, Judge.

Statement of the Case

- [1] Vernon Joseph Farmer appeals his conviction for attempted voluntary manslaughter, a Level 2 felony. Farmer raises one issue for our review, namely, whether the trial court abused its discretion when it instructed the jury on attempted voluntary manslaughter and sudden heat.
- [2] We affirm.

Facts and Procedural History

- [3] In July 2020, Farmer lived at a home in Remington, Jasper County, Indiana with his wife, Stephanie Farmer (“Stephanie”); the couple’s six-month-old twins; and Stephanie’s mother, Joan Girard (“Joan”), who owned the home. At the time the events relevant to this appeal took place, Farmer and Stephanie had been romantically involved for around ten years and had been married for four. Farmer is a below-the-knee amputee.
- [4] On July 23, Farmer traveled to Louisville, Kentucky to be fitted for a new prosthetic leg. Stephanie, Joan, and the twins remained at their home in Remington. While driving, Farmer called Stephanie, referred to her by a derogatory name, and asked her what she was doing. Stephanie could tell by the tone of his voice that Farmer was “clearly drunk.” Tr. Vol. 2 at 120. She told Farmer that she was “feeding and bathing [the] babies.” *Id.* at 121. Farmer replied, “[W]ell, how are you doing both at the same time[?]” *Id.* When Stephanie told Farmer that her mother was helping her with the twins,

Farmer became very upset. He and Joan did not get along, and he did not want his mother-in-law involved in the care of the twins. The call between Farmer and Stephanie was disconnected, and Farmer called Stephanie again. During the second call, Stephanie confronted Farmer about his drinking problem. Farmer replied, “I’m going to have to use something other than my hands because my hands are hurting.” *Id.* at 122. Stephanie asked Farmer if he was “talking about hitting” her, and Farmer said, “yeah.” *Id.* at 122-23. Stephanie “hung up [the phone]” on Farmer and told her mother to call the Jasper County Sheriff’s Department. *Id.* at 123. Stephanie was crying, shaking, and upset, and she was “certain that [Farmer] was going to come home and hit” her. *Id.* at 126. Joan called 9-1-1 and then called her brother, Daniel Henry (“Dan”), who lived nearby.

[5] Dan arrived at Joan’s home first. Jasper County Deputy Sheriff Alex Jerzyk responded to the 9-1-1 call and arrived at Joan’s home at around 7:35 p.m., ten to fifteen minutes after Dan had arrived. Deputy Jerzyk spoke with Stephanie and Joan and told them that “there wasn’t a whole lot [he] could do . . . at the moment until [he talked] to [Farmer,]” but indicated that he would remain in the area and that they should call 9-1-1 if an emergency arose. *Id.* at 208.

[6] After the deputy left, Joan, Stephanie, and Dan stood outside talking, and Dan indicated that he would “stay for a little bit and see . . . if [Farmer] showed up[,]” to “make sure that nothing . . . happened to [Stephanie or Joan].” *Id.* at 127. Dan sat underneath the carport and waited for Farmer to arrive. When Farmer arrived at the home, Dan remained outside but told Stephanie and Joan

to go inside the home and lock the doors. Dan did not want Farmer to gain entry into the house. Farmer exited his car and walked toward the house. Dan approached Farmer and told him, “we need to talk.” Tr. Vol. 3 at 103. Farmer responded by asking Dan, “who the ‘f [he] was,” and Dan replied, “I’m Joan’s brother.” *Id.* at 104, 145.

[7] Farmer walked toward Dan in an aggressive manner and told Dan that he did not belong there. When Farmer came within a “couple steps” of Dan, Dan put his hands up and told Farmer to stop. *Id.* at 104. The two then began to yell and shout at each other, and Farmer attempted to wrap his arms around Dan. The two men then began to wrestle, Dan placed Farmer in a neck hold, and they both “went over sideways” and ended up on the ground. *Id.* at 132. Farmer cursed at Dan and told Dan that he was going to kill him.

[8] Dan attempted to hold Farmer down, but Farmer freed himself, got up from the ground, ran toward his car, and got into the driver’s seat. By the time Dan got to Farmer’s car, Farmer was “laying across the driver’s seat [and] the console,” with his feet extending outside of the car, and Dan “could see [Farmer] was reaching underneath the passenger seat.” *Id.* at 105. Farmer again told Dan that he was going to kill him. Dan, concerned about what Farmer might have in his car, then jumped on top of Farmer and tried to grab Farmer’s hands and wrists to “regain control” of Farmer. *Id.* at 106. But Dan “came up short.” *Id.*

[9] Farmer retrieved a knife with a seven-inch blade from under the seat and “manipulated [it] around,” “turned [it] up,” rolled himself over, brought the

knife toward Dan's torso, and cut Dan across the left forearm. *Id.* at 107. Dan was then able to "gain a little leverage on [Farmer,]" turn the knife and shove the knife blade into the seatback of the car's seat. *Id.* at 108. Dan eventually wrested the knife from Farmer and exited and backed away from the car because he "had no intentions of hurting [Farmer]" and "was there just to keep him out of the house." *Id.* Farmer then righted himself, exited his car, stepped toward Dan, and swung his arm at Dan. Either Farmer's hand or an object Farmer was holding connected with the center of Dan's ear and knocked Dan's glasses from his face. Dan suffered a cut to his jawline. Dan picked up his glasses, and he and Farmer stood looking at one another. Suddenly, Farmer "bolted back to [his] car, jumped in, slammed the door, cranked it up, and flew out of the driveway" in reverse gear. *Id.* at 109.

[10] Joan heard Farmer cursing and yelling, and she and Stephanie watched the interaction from the living room window. When Stephanie saw Farmer on the driver's side of his car, she said to her mother, "you know he has a knife in there." Tr. Vol. 2 at 129. Joan placed another 9-1-1 call and told the dispatcher that Farmer was at her house. After the confrontation between Farmer and Dan ended, Joan saw Farmer's car "go out of [her] yard like a bullet." Tr. Vol. 3 at 74.

[11] Dan, now bleeding, went inside the house, directly to the kitchen, and began to rinse the blood from his arm. Dan had a large gash on his arm, and he was carrying the knife that he had taken from Farmer. Dan rinsed the blood from the knife, gave the knife to Stephanie, and told her to hide it in case Farmer

returned. Stephanie hid the knife in a closet. Joan, a retired nurse, grabbed bandages and dressed Dan's wound.

[12] Shortly after leaving Joan's home, Farmer pulled his car to the side of the road and called 9-1-1. He told the dispatcher in an excited voice that "someone just [f***]ing stabbed [him]"; that he drove away to escape; that someone had "f***ing ambushed . . . and attacked [him]"; and that he needed an ambulance. Ex. Vol. 5, State's Ex. 30 at 0:05, 0:14, 0:20, 0:37.

[13] At around 8:40 p.m., Deputy Sheriff Jerzyk was again dispatched to Joan's home. The first message he received from dispatch indicated that a "physical fight" had taken place at the residence and "someone had been cut with a knife." Tr. Vol. 2 at 211-12. A second message issued from dispatch indicated that Farmer was involved in the incident and that he had left Joan's residence driving a blue Dodge Dart. While enroute to Joan's house, Deputy Jerzyk saw Farmer's vehicle on the side of the road. As Deputy Jerzyk passed by, Farmer exited his vehicle and waved his hands to get the deputy's attention. The deputy activated his emergency lights, performed a u-turn, and pulled his cruiser behind Farmer's vehicle, exited the cruiser, and approached Farmer. Officer Andrew Lanoue, with the Wolcott Police Department, and Deputy Dakota Partin, with the Jasper County Sheriff's Department, also responded to the scene. Officer Lanoue's body camera captured Farmer's interactions with law enforcement.

[14] When Deputy Jerzyk encountered Farmer, he noticed that Farmer was “highly agitated,” used a “loud tone of voice,” and had a large amount of blood on his shirt and his skin. *Id.* at 214. Farmer told the deputy that he had been stabbed “a few” times. *Id.* Farmer also told the deputy that he had been in a physical altercation, “that someone had jumped him [out of nowhere] at his residence,” and that he had “stabbed someone.” *Id.* at 219. Deputy Jerzyk briefly examined Farmer for puncture wounds and attempted to calm Farmer down. At some point during the encounter, Deputy Jerzyk approached Farmer’s vehicle, and saw, through the open driver’s-side door, large amounts of blood in the vehicle’s interior. The deputy then walked to the passenger-side of the vehicle, opened the passenger-side door, and saw a knife on the front passenger seat and a knife sheath tucked into the center console. The knife had a six-inch blade, and there was blood on the edge of the knife. The deputy secured the vehicle to preserve the evidence.¹

[15] Deputy Jerzyk then left the scene and drove to Joan’s house. Deputy Partin and Officer Lanoue remained with Farmer. Deputy Partin noticed that Farmer showed signs of intoxication, and, regarding Farmer’s “attitude,” that he would “start very quiet and then get very elevated with his voice, kind of boil over, and

¹ Deputy Jerzyk believed that the bloody knife he saw in Farmer’s vehicle was the weapon Farmer used to cut Dan. Tr. Vol. 2 at 234, 236. However, he was unaware, at that time, that the knife Farmer used to cut Dan was at Joan’s house. When Trooper Brian Olehy, with the Indiana State Police, searched Farmer’s vehicle on July 31, 2020, with a search warrant, he found two knives in the vehicle. *Id.* at 182. Law enforcement did not recover the knife Farmer used to cut Dan until approximately one week after Farmer’s vehicle was searched.

then go back down and get very quiet, and then start to amp up again, unable to control his emotions essentially, keep them in check.” Tr. Vol. 3 at 22. Deputy Partin also saw that Farmer had an open alcoholic beverage container in his vehicle, and the deputy smelled alcohol on Farmer’s breath. When the EMT arrived at the scene, Farmer told the EMT that he had been “stabbed a couple of times with a dull knife by somebody” and that he had stabbed someone else multiple times. Tr. Vol. 2 at 158. The EMT observed that Farmer had blood stains on his arms and his clothing but did not have any stab wounds, puncture wounds, or cuts. The only injury Farmer had was a scraped left knee to which the EMT applied an adhesive bandage. The EMT noticed that Farmer was “pretty amped up,” “definitely excited,” and that Farmer smelled of alcohol. *Id.* at 159, 163. Farmer refused further medical treatment from the EMT.

[16] When Deputy Jerzyk arrived at Joan’s house, he saw Dan, Joan, and Stephanie standing near the front porch steps. The deputy observed that Dan had “a very large amount of blood . . . on the front of his shirt,” and the blood was “dripping down his boots . . . and onto his pants.” *Id.* at 220. Dan had a cut on his left forearm that had been covered with a large bandage and an exposed cut on his face that ran along his jawline. The deputy also saw blood in the driveway and the walkway leading to the home’s front steps. Dan told the deputy that he had exchanged words with Farmer, and the incident escalated to a physical altercation with Farmer. However, Dan did not tell the deputy about

the knife he had given to Stephanie for safe-keeping.² The cut to Dan's forearm required sixteen stitches, and the cut along his jawline required four.

[17] After speaking with Dan, Deputy Jerzyk left Joan's house and returned to where Farmer and his vehicle were located. Farmer was arrested and transported to the Jasper County Jail, and his car was impounded. On July 28, 2020, the State charged Farmer with attempted murder, a Level 1 felony, aggravated battery, as a Level 3 felony, and battery by means of a deadly weapon, as a Level 5 felony.

[18] On June 22-24, 2021, the trial court held a three-day trial. At the close of the presentation of evidence, the State requested that the jury be instructed on attempted voluntary manslaughter, as well as attempted murder. The parties presented argument, and the court determined, over Farmer's objection, that the jury should be instructed on attempted voluntary manslaughter because there was "some evidence" of sudden heat and, therefore, the matter should be decided by the jury. Tr. Vol. 3 at 173.

[19] At the conclusion of the trial, the jury found Farmer not guilty of attempted murder and not guilty of aggravated battery, but found Farmer guilty of attempted voluntary manslaughter, a Level 2 felony, as a lesser included offense

² Approximately two weeks after the incident between Farmer and Dan occurred, Joan remembered that the knife was hidden in her house, and she called the Jasper County Sheriff's Department to have law enforcement retrieve the knife. On August 7, 2020, Patrol Sergeant Russell Shouse travelled to Joan's house, collected the knife, and placed the knife in an evidence storage locker.

of attempted murder, and battery by means of a deadly weapon, as a Level 5 felony. At sentencing, which occurred on September 8, 2021, the court merged the battery by means of a deadly weapon conviction into the attempted voluntary manslaughter conviction³ and sentenced Farmer to seventeen-and-one-half years executed in the Indiana Department of Correction, with two years suspended to probation. This appeal ensued.

Discussion and Decision

Standard of Review

[20] Farmer contends that the trial court abused its discretion when it instructed the jury on attempted voluntary manslaughter and sudden heat. The existence of a lesser included offense is a question of law, which we review de novo. *Young v. State*, 699 N.E.2d 252, 255 (Ind. 1998).

When[, as here,] the trial court makes an express finding on the existence of an evidentiary dispute between the charged and lesser included offenses . . . , we review for an abuse of discretion. *Brown v. State*, 703 N.E.2d 1010, 1020 (Ind. 1998). Such abuse occurs when the trial court “misinterprets the law,” *Yao v. State*, 975 N.E.2d 1273, 1276 (Ind. 2012), or its “decision is clearly against the logic and effect of the facts and

³ At the sentencing hearing, the trial court noted that it had “erroneously entered . . . a judgment of conviction” for the battery by means of a deadly weapon charge, and the court indicated that it would issue a “nunc pro tunc [order to] correct that, and merge the lesser charge into the Level 2 charge and enter a judgment of conviction on . . . Attempted Voluntary Manslaughter, as a Level 2 [felony].” Tr. Vol. 3 at 250, Vol. 4 at 34; *see also* Ind. Code § 35-38-1-6 (1983). The court issued its nunc pro tunc sentencing order on September 16, 2021. Appellant’s App. Vol. 2 at 78-80.

circumstances before it,” *Hoglund v. State*, 962 N.E.2d 1230, 1237 (Ind. 2012).

Larkin v. State, 173 N.E.3d 662, 667 (Ind. 2021), *reh’g denied* (Nov. 18, 2021).

Attempted Voluntary Manslaughter and Sudden Heat Instructions

[21] Farmer argues that it was “inappropriate, and constituted reversible error, for the trial court to give” the attempted voluntary manslaughter and sudden heat instructions because, according to Farmer, “there was no serious evidentiary dispute over sudden heat at trial[.]” Appellant’s Br. at 6, 9. Farmer maintains that “the demeanor [he] had while on the phone [with Stephanie] before he arrived at home is too far removed from his [later] actions to constitute sudden heat.” *Id.* at 6-7. He further argues that, “even if the physical altercation with [Dan] could be a situation that placed [Farmer] in a mental state . . . sufficient to obscure his reason, he was able to break away from the struggle at some point[,] get into his vehicle . . . [, and] proceed in a manner to defend himself[,]” which demonstrated “clear thought[] as a result of cool reflection.” *Id.* at 7. In response, the State argues that the trial court properly instructed the jury on attempted voluntary manslaughter because there was “sufficient evidence from which a jury could find the presence of sudden heat.” Appellee’s Br. at 11.

[22] During a criminal trial, either party can request a jury instruction on a lesser included offense. *Webb v. State*, 963 N.E.2d 1103, 1108 (Ind. 2012).

When this occurs, the court must engage in the analysis we set forth in *Wright v. State*, 658 N.E.2d 563, 566-67 (Ind. 1995). First, the court must determine whether the lesser offense is inherently or factually included in the charged offense. *Id.* If it is either, the court must then determine whether “a serious evidentiary dispute” exists between the elements that distinguish the offenses. *Id.* at 567. In other words, there must be sufficient evidence for the jury to find the defendant committed the lesser offense but not the charged offense. *Id.* If a dispute exists, the court must give the instruction. *Id.*

Larkin, 173 N.E.3d at 668.

[23] Voluntary manslaughter is a knowing or intentional killing committed while acting under sudden heat, a mitigating factor, but not an element of the crime. Ind. Code § 35-42-1-3(a) (2018); *Champlain v. State*, 681 N.E.2d 696, 702 (Ind. 1997). Sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter. I.C. § 35-42-1-3(b). A person “attempts to commit a crime when, acting with the culpability required for commission of the crime, the person engages in conduct that constitutes a substantial step toward commission of the crime[,]” and the attempted crime is “a felony or misdemeanor of the same level or class as the crime attempted.” Ind. Code § 35-41-5-1(a) (2014).

[24] As our Supreme Court opined in *White v. State*:

It is well-established that voluntary manslaughter is an inherently included offense of murder because it requires proof of the same material elements as murder. *See Champlain*[], 681 N.E.2d [at] 701-02. . . . This is true because voluntary manslaughter is

murder with the mitigating factor that it was committed while acting under sudden heat. *Id.* For the same reasons, attempted voluntary manslaughter is an inherently included offense of attempted murder.

699 N.E.2d 630, 634 (Ind. 1998).

[25] “Sudden heat” is characterized as anger, rage, resentment, or terror sufficient to obscure the reason of an ordinary person, preventing deliberation and premeditation, excluding malice, and rendering a person incapable of cool reflection. *Dearman v. State*, 743 N.E.2d 757, 760 (Ind. 2001). Anger alone is not sufficient to support an instruction on sudden heat. *Wilson v. State*, 697 N.E.2d 466, 474 (Ind. 1998). Nor will words alone “constitute sufficient provocation to warrant a jury instruction on voluntary manslaughter,” and this is “especially true” when the words at issue are not intentionally designed to provoke the defendant, such as fighting words. *Allen v. State*, 716 N.E.2d 449, 452 (Ind. 1999). However, the standard for determining whether a voluntary manslaughter instruction is proper is not a high one: the instruction is justified if there is “any appreciable evidence of sudden heat.” *Roark v. State*, 573 N.E.2d 881, 882 (Ind. 1991).

[26] Although Farmer argues otherwise, we hold that a serious evidentiary dispute over sudden heat existed, and there was sufficient evidence of sudden heat from which the jury could conclude that Farmer committed attempted voluntary manslaughter and not attempted murder. While driving home from Louisville on July 23, 2020, Farmer consumed alcohol. When Stephanie told Farmer that

her mother, Joan, was helping her with the twins, Farmer became very upset and threatened to hit Stephanie when he got home. When Farmer arrived at Joan's home, Farmer approached Dan in an aggressive manner, the two men began to fight, and Farmer threatened to kill Dan. During the ensuing scuffle, Farmer cut Dan's face and arm.

[27] Farmer then sped away from Joan's house but, within a very short period of time, pulled to the side of the road and called 9-1-1. In an excited voice and, at times, yelling, he told the dispatcher that "someone just [f***]ing stabbed [him]"; that he drove away to escape; that he "pulled up to his [f***]ing house"; that someone had "f***ing ambushed . . . and attacked [him]"; and that he needed an ambulance. Ex. Vol. 5, State's Ex. 30 at 0:05, 0:14, 0:18, 0:20, 0:37. Several members of law enforcement, as well as medical personnel, responded to the call. When Deputy Jerzyk encountered Farmer, he noticed that Farmer was "highly agitated," used a "loud tone of voice," and had a large amount of blood on his shirt and his skin. Tr. Vol. 2 at 214. Farmer told the deputy that he had been in a physical altercation, "that someone had jumped him [out of nowhere] at his residence," and that he had "stabbed someone." *Id.* at 219. Deputy Partin observed that Farmer showed signs of intoxication and was "unable to control his emotions[.]" Tr. Vol. 3 at 22. The EMT who arrived and examined Farmer noticed that Farmer was "pretty amped up," "definitely excited," and smelled of alcohol. Tr. Vol. 2 at 159, 163. Officer Lanoue's body camera captured footage showing Farmer fly in and out of an enraged state, spew hateful and foul language, and raise his voice, yell, and become angry

whenever he spoke about his earlier confrontation with Dan. Ex. Vol. 5, State's Ex. 26.

[28] On appeal, Farmer relies on *Dearman* to support his position that there was no appreciable evidence of sudden heat to justify the attempted voluntary manslaughter and sudden heat instructions, and that the trial court committed reversible error by giving the instructions. However, *Dearman* is factually distinguishable. In that case, the only evidence of alleged sudden heat was contained in Dearman's out-of-court statement to police, which the State introduced at trial. Our Supreme Court determined that, "[a]t best, the statement show[ed] that Dearman got into a scuffle with [the victim] when [the victim] made sexual advances toward him," yet the evidence showed that Dearman lifted a thirty-four-pound concrete block and struck the victim twice in the head with it, killing the victim. 743 N.E.2d at 762. The Court found that there was no indication in the record that Dearman was in such a state of terror or rage that he was rendered incapable of cool reflection. *Id.* Thus, the Court concluded that "there was no appreciable evidence of sudden heat and thus no serious evidentiary dispute on the element distinguishing murder from voluntary manslaughter" and that the trial court properly refused to give Dearman's tendered instruction on voluntary manslaughter. *Id.*

[29] Here, however, a serious evidentiary dispute over sudden heat existed, there was sufficient evidence of sudden heat from which the jury could conclude that Farmer committed the lesser included offense of attempted voluntary manslaughter and not the greater offense of attempted murder, and the

evidence supports the trial court's determination that the attempted voluntary manslaughter and sudden heat instructions were warranted. If a dispute exists, the court must give the instruction. *Larkin*, 173 N.E.3d at 668. Therefore, we hold that the trial court did not abuse its discretion when it gave the instructions. The judgment of the trial court is affirmed.

[30] Affirmed.

Bradford, C.J., and Bailey, J., concur.