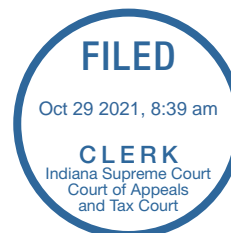


MEMORANDUM DECISION

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



ATTORNEY FOR APPELLANT

Matthew J. McGovern
Fishers, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ian McLean
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Ernest Douglas,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 29, 2021

Court of Appeals Case No.
21A-CR-763

Appeal from the Vanderburgh Circuit
Court

The Honorable David D. Kiely,
Judge

Trial Court Cause No.
82C01-1908-MR-5832

Brown, Judge.

[1] Ernest Douglas (“Douglas”) appeals his two convictions for murder, claiming the prosecutor committed misconduct and requesting a new trial. We affirm.

Facts and Procedural History

[2] Douglas and Satanna Douglas (“Satanna”) were married in November 2018. In December 2018, Douglas went to live with a friend and Satanna separated from him and did not live with him. At some point in early 2019, Satanna renewed her relationship with Donte Meriwether, her former husband whom she had divorced around 2017, and they moved to the Crescent Valley Apartments on Plantation Court. On August 12, 2019, Satanna asked her mother, Amy, for money to pay for plates for her vehicle, and Douglas spoke with Satanna’s father, George, and told him that Satanna had taken money from Douglas’s wallet. George had previously given Douglas money for a down payment on a silver Mitsubishi Outlander.

[3] At approximately 10:00 a.m. on August 13, 2019, George sent a message to Satanna stating “You took [Douglas’s] money, he needs gas and food” and “What’s he going to live on for two weeks.” Transcript Volume III at 192. Amy also sent messages to Satanna stating “You need to call your dad” and “Ernie [Douglas] is pissed.” *Id.* at 176. Amy sent another message stating “[Douglas] wants you to come over and tall [sic] or he’s going to Ameriquial [Satanna’s employer] and cause a scene.” *Id.* at 177. Douglas sent numerous text messages to Satanna on August 13, 2019. The messages included the statements “It will be worldwide on the news and papers, not f---ing around,” “Get your ass here now, 3:00, I’m driving through your job and they will kill

me cause I will force them to,” “I was calm, you didn’t answer the phone and you didn’t show up . . . I’d rather be dead on my mother and dead father, you better show,” “On my way to your job,” “You not going to win in this, not this time,” and, at 2:05 p.m., “I am coming.” *Id.* at 164-166. Meanwhile, Douglas sent George a message stating “I am on my way. I sent her the text, let her know,” George sent a message stating “Over \$100, you are smarter than that,” and Douglas sent a reply to George at 2:03 p.m. stating “She cost me too much, she has to pay for her own action.” *Id.* at 173. Meanwhile, at 1:55 p.m. on August 13, 2019, Douglas contacted his employer and stated that he would be late for work.

[4] According to phone location data, Douglas’s phone was in the area of his residence at 1:53 p.m. on August 13, 2019, was moving between locations between approximately 1:58 and 2:17 p.m., was at or near Satanna and Meriwether’s apartment on Plantation Court between approximately 2:17 p.m. and 2:24 p.m., and moved back to Douglas’s residence by 2:59 p.m. A surveillance video recording from a gas station located three to four blocks from Plantation Court shows a silver vehicle similar to that owned by Douglas drive by the station at about 2:17 p.m. on August 13, 2019. Michael Duckworth was washing his vehicle in a parking area on Plantation Court, saw a gray SUV pull into a parking spot, saw a man exit the SUV “[w]ith a sense of urgency,” enter the apartment across the street from him, and, “[b]arely 10 minutes” later, exit the apartment with fresh blood on his shirt and return to his vehicle. Transcript Volume IV at 19, 21. Johnathin Pye was with Duckworth and saw a man exit

the apartment with his face down and blood on his shirt, enter the silver SUV, and drive away. Douglas clocked in at work at 5:38 p.m. on August 13, 2019.

[5] On August 18, 2019, Douglas was at work and told his co-worker Stephen Robinson that he “was leaving town in about four days.” Transcript Volume III at 235. Douglas said that he was in trouble, Robinson asked him what he had done, and Douglas told him “double homicide.” *Id.* at 237. Robinson asked him “well who,” and Douglas told him “Satanna and Donte [] Meriwether,” that “they was at Plantation Court,” and that “he stabbed one of them a couple times and slit another one’s throat.” *Id.* at 237-238.

[6] On August 19, 2019, the manager at the Crescent Valley Apartments called the police for a welfare inspection on Satanna and Meriwether. The police discovered Satanna and Meriwether’s bodies in their apartment and blood all over the apartment. Meriwether and Satanna had been stabbed multiple times, Meriwether had defensive wounds and suffered stab wounds to his windpipe and carotid artery, and Satanna suffered stab wounds to her larynx and carotid artery. A detective interviewed Douglas that evening.

[7] The State charged Douglas with the murder of Satanna under Count I and the murder of Meriwether under Count II. The State also requested life without parole. The court held a jury trial over five days in March 2021.

[8] During closing argument, Douglas’s defense counsel referred to the crime scene and argued “[w]e saw a lot of pictures of the crime scene technical unit and the swabbing’s [sic] and the evidence that they attempted to gather,” “[h]ow many

fingerprints did they develop; zero,” “I asked [a detective], did you find anything of any evidentiary value on that [vehicle’s] seat; none,” “[w]e go out to search Mr. Douglas’ residence Find anything of evidentiary value out there; nope. No knife. No blood.” Transcript Volume V at 52.

[9] During the State’s rebuttal argument, the prosecutor argued in part:

Defense mentioned DNA. Defense has no burden whatsoever to put any evidence on. It is the State’s burden for everything, they can put on defense, but they don’t have to. It’s our burden. I’m in no way implying they could have. You know what, DNA evidence, blood all over that place, DNA is also used to solve crimes if we don’t know who did it. What’s this DNA going to show you, their blood inside. We know that. They’re there. It’s not like the bodies were moved somewhere, they’re there. We’re not going to put on evidence that we already know. So, the DNA evidence, if he felt that that was so crucial, he has ability, he has no burden, but if he felt that DNA evidence was critical to his case, [defense counsel] knows how to subpoena, [defense counsel] knows how to get records.

Id. at 58. The court stopped the prosecutor, the prosecutor noted that he said four times that Douglas had no burden, and the court stated “[j]ust because you said it doesn’t permit you to switch the burden as you’re suggesting right now, so don’t go there.” *Id.* The prosecutor later argued:

So, what [defense counsel is] saying in his closing is, hey, my client was smart enough to cover his tracks, he hid the knife, he had time to do that. He ditched the blood[y] shirt so ignore all that evidence which the State presented and find him not guilty. He’s asking you to ignore our evidence and find him not guilty because his client had time to ditch key pieces of the evidence. You’re right, this is a circumstantial case, and we can convict based on circumstantial

evidence and I believe we presented that to you. That timeline is so critical of what happened with the text messages, it's all there. I agree, that is circumstantial evidence, but it all fits. It's all those pieces of the puzzle. So, let's look at that key State's evidence which Defense wants you to ignore.

Id. at 59-60. The prosecutor reviewed the phone data location evidence and text messages and argued: "So, what happens is he does all this and now it's time to start the covering of the tracks. Guess what, he's got the knife, he's got the bloody shirt, but what key evidence doesn't he have, Satanna's phone and Donte's phone." *Id.* at 60. The prosecutor reviewed Douglas's text messages to Satanna, the data location evidence, and the testimony of Duckworth and Pye and then played portions of Douglas's statement to police during which he stated he was not at Satanna and Meriwether's apartment on August 13th and did not remember the last time he was there. The prosecutor referred to "[a]ll those previous texts about money, going to see her, confronting her" and argued:

[H]ow long has he had to get his story together. When they break the news about Satanna, I'm going to cry. He had that much time to get this all together, but this looping snippet that we did shows he cannot explain certain parts. He thinks he's got it all figured out, I've got the knife hid, I've got the bloody shirt hid, check, check, check, when I found out she's dead, I've got oh, my God, I loved her. . . . He killed [Meriwether]; he kills her. We talked about this; you could do a lot in seven minutes.

Id. at 65. The prosecutor also pointed to the testimony that Douglas confessed to a co-worker that he killed Satanna and Meriwether. Following closing

argument, Douglas’s counsel stated “[i]n the course of the prosecution’s rebuttal [the prosecutor] made reference to certain things that the Court interrupted him on with regards to the essentially shifting of the burden and I think the Court was appropriate to that” and “I think I must ask that the Court, ask for a mistrial based on that because of the potential affect [sic] it may have on the shifting of the burden,” and the court denied the motion. *Id.* at 69.

[10] The jury found Douglas guilty of the murders of Satanna and Meriwether and recommended a sentence of a term of years. The court sentenced him to fifty-five years for each of his murder convictions and ordered that the sentences be served consecutively.

Discussion

[11] Douglas requests a new trial and argues the prosecutor improperly attempted to shift the burden of proof to him by suggesting that he had the responsibility to present DNA evidence, argued facts not in evidence as there was no evidence that he hid the murder weapon or a shirt, and denigrated his defense counsel by suggesting his counsel had knowledge that he destroyed or concealed evidence. He states his defense counsel did not object to the prosecutor’s use of facts not in evidence or denigration of him and therefore he must demonstrate fundamental error as to those claims. The State maintains that the prosecutor’s remarks were proper and merely responsive to the defense’s arguments.

[12] In reviewing a properly preserved claim of prosecutorial misconduct, we determine whether the prosecutor engaged in misconduct and, if so, whether

the misconduct, under all of the circumstances, placed the defendant in a position of grave peril to which he or she should not have been subjected. *Cooper v. State*, 854 N.E.2d 831, 835 (Ind. 2006). Whether a prosecutor's argument constitutes misconduct is measured by reference to case law and the Rules of Professional Conduct. *Id.* The gravity of peril is measured by the probable persuasive effect of the misconduct on the jury's decision rather than the degree of impropriety of the conduct. *Id.*

[13] When an improper argument is alleged to have been made, the correct procedure is to request the trial court to admonish the jury. *Id.* If the party is not satisfied with the admonishment, then the party should move for mistrial. *Id.* Failure to request an admonishment or to move for mistrial results in waiver. *Id.* Where a claim of prosecutorial misconduct has not been properly preserved, the defendant must establish not only the grounds for the misconduct but also the additional grounds for fundamental error. *Id.* Fundamental error is an extremely narrow exception that allows a defendant to avoid waiver of an issue. *Id.* It is error that makes a fair trial impossible or constitutes clearly blatant violations of basic and elementary principles of due process presenting an undeniable and substantial potential for harm. *Id.* We presume the jury followed the trial court's instructions and applied the law to the evidence. *Fox v. State*, 997 N.E.2d 384, 390 (Ind. Ct. App. 2013), *trans. denied*.

[14] The record reveals that, while the prosecutor argued during the State's rebuttal, "he has no burden, but if he felt that DNA evidence was critical to his case, [defense counsel] knows how to subpoena [and] knows how to get

records,” Transcript Volume V at 58, the trial court promptly cautioned the prosecutor. The prosecutor’s argument focused primarily on the testimony of the numerous witnesses, the content and timing of the text messages, the phone data location evidence, and the timing of Douglas’s text messages relative to the movement of his phone. Although no witness observed Douglas dispose of a knife or bloody shirt, the State presented evidence that Satanna and Meriwether were stabbed and that eyewitnesses saw a man leave their apartment wearing a bloody shirt. Also, we do not read the prosecutor’s comments, including the argument “what he’s saying in his closing is, hey, my client was smart enough to cover his tracks, he hid the knife . . . [h]e ditched the blood[y] shirt” and “[h]e’s asking you to ignore our evidence and find him not guilty because his client had time to ditch key pieces of the evidence,” *id.* at 59, as a suggestion to the jury that defense counsel had knowledge that Douglas destroyed or concealed the murder weapon and his bloody shirt.

[15] Moreover, the jury was instructed that its decision must be based only on the evidence presented and the court’s instructions; the defendant was presumed to be innocent and, to overcome the presumption of innocence, the State was required to prove that he was guilty of each element of the crimes charged beyond a reasonable doubt; and the defendant was not required to present any evidence to prove his innocence or to prove or explain anything. The jury was also instructed that the burden was upon the State to prove beyond a reasonable doubt that the defendant is guilty of

the crime charged; the jury should fit the evidence to the presumption that the defendant is innocent if it can do so; the quantity of evidence or the number of witnesses need not control the jury's determination and it should give the greatest value to the evidence it found most convincing; the final arguments made by the attorneys were not evidence; and the attorneys are permitted to characterize the evidence, discuss the law, and attempt to persuade the jury to a particular verdict, and the jury may accept or reject those arguments as it sees fit. The jury was further instructed that the burden of proving the defendant's guilt rests upon the State throughout the entire trial and never shifts to the defendant and the defendant is not required to present any evidence to prove the defendant's innocence or to prove or explain anything; and where proof of guilt is by circumstantial evidence alone, it must be so conclusive and point so surely and unerringly to the guilt of the accused as to exclude every reasonable theory of innocence. Under the circumstances and in light of the record, we conclude Douglas has not demonstrated that a new trial is warranted.

[16] For the foregoing reasons, we affirm Douglas's convictions.

[17] Affirmed.

Najam, J., and Riley, J., concur.