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IN THE
COURT OF APPEALS OF INDIANA

Mark Anthony Jaramillo,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 26, 2023

Court of Appeals Case No.
22A-CR-1759

Appeal from the Lake Superior
Court

The Honorable Kathleen B. Lang,
Senior Judge

Trial Court Cause No.
45G04-2104-MR-28

Crone, Judge.

Case Summary

- [1] Mark Anthony Jaramillo appeals his conviction, following a jury trial, for level 2 felony voluntary manslaughter. He contends that the trial court abused its discretion in excluding certain evidence. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] Jaramillo moved in with his girlfriend, Koreena Henry, in February 2021. Henry's daughter, Jillian, moved out of the home and in with her boyfriend, twenty-seven-year-old Rafeal Marcano, but Jillian's son stayed with Henry and Jaramillo. Jaramillo did not like Marcano and remarked "daily" about these feelings of dislike. Tr. Vol. 2 at 160.
- [3] In March 2021, Henry hosted a birthday party for Jillian. At the party, Jaramillo suggested to Marcano that they could "squash any beef or bad blood" between them and that Marcano could prove to Jaramillo "whether he was tough or not." Tr. Vol. 3 at 75; Tr. Vol. 2 at 162. Jaramillo told Marcano that "he could have 12 free licks to the chest. That [Marcano] could punch him 12 free times to the chest without repercussions." Tr. Vol. 2 at 161-62. Jaramillo also told Jillian that she could punch him. Marcano and Jillian both punched Jaramillo in the chest twelve times.
- [4] On April 15, 2021, Henry dropped Jillian's son off at Jillian's house so that she and Jaramillo could go out to bars. The next morning, Henry was getting ready to pick up Jillian's son, and Jaramillo asked her if she wanted him to go too. He had never ridden to Jillian's home with her before. Henry told Jaramillo that it was okay for him to come. As they were getting ready to leave, Jaramillo asked Henry where his knife was. Henry gave Jaramillo his knife. Jaramillo generally only carried his knife to work, but this day he wanted to bring it with him.

[5] When Henry and Jaramillo arrived at Jillian’s house, Jaramillo immediately “jumped out” of the car and went inside. *Id.* at 166-67. Henry followed behind. Jaramillo, who was twice the size of Marciano, put his arm around Marciano and started taunting him. Marciano tried to talk to Jaramillo. Marciano’s voice was “very high pitched[,]” and he sounded “very scared.” *Id.* at 168. At one point, Jaramillo was “hovering over [Marciano] and cornering him.” Tr. Vol. 3 at 81-82. The two men began rolling on the floor, wrestling, and fighting. Henry grabbed her grandson and Jillian, and pushed them toward the door. After the women and the young boy were outside, Jillian could see Jaramillo and Marciano at the door. Jaramillo “dragged [Marciano] outside and got him in like a headlock.” *Id.* at 84. Jillian observed that Marciano already had two stab wounds to his back and that there was “a lot of blood.” *Id.* at 85. As they came outside, Jaramillo was holding Marciano “by his neck” and had the “knife to his throat.” *Id.* at 84. Jaramillo began “sawing at [Marciano’s] neck” with the knife. *Id.* at 85. Marciano asked Jillian for help, and she tried to get to him, but Henry jumped in front of her. Marciano and Jaramillo were on the ground, and Jaramillo was on top of Marciano. Jillian screamed. Marciano rolled on top of Jaramillo and then got up and ran down the street screaming for help. Meanwhile, Jaramillo, Henry, Jillian, and Jillian’s son got in Henry’s car and drove away. Neighbors encountered Marciano and observed that his shirt was “in tatters” and that he had clearly been stabbed. *Id.* at 145. One neighbor called 911 while another applied pressure to Marciano’s wounds.

[6] Marcano informed those helping him that Jaramillo had stabbed him. Marcano subsequently died from his injuries. After dropping Jillian off at her grandmother's and her son off at school, Jaramillo and Henry went to a motel. Jaramillo called some friends to bring him money, clothes, and food so that he could start a new life in Louisville. Jaramillo and Henry left the motel, and Jaramillo threw the knife out the car window. They then stopped at a house they had been remodeling, and Jaramillo stashed the clothes he had been wearing underneath the floor. Learning that the police were looking for them, Jaramillo and Henry went back to the motel and hid behind a fence. Police located them and arrested them.

[7] The State charged Jaramillo with murder, a felony. The State also alleged that Jaramillo was a habitual offender. A jury trial was held in November 2021. Prior to trial, the State filed a motion in limine regarding a toxicology report of Marcano's blood sample collected from his autopsy. The report indicated that Marcano had both amphetamine and methamphetamine, as well as other substances, in his system. The State argued that because the defense did not intend to call the individual who prepared the toxicology report to testify to and interpret the results, the report was inadmissible hearsay. Following a hearing, the trial court granted the motion in limine, ruling that "defense witnesses and representatives are prohibited from commenting on or making any direct or indirect mention of, any evidence regarding the toxicology report[.]" Appellant's App. Vol. 2 at 188.

[8] During trial, Jaramillo sought to introduce the toxicology report and its contents through the testimony of the State’s witness, forensic pathologist Dr. Zhou Wang, who conducted Marcano’s autopsy. The State objected on hearsay grounds because Dr. Wang did not prepare the toxicology report; rather, it was prepared by an outside crime lab.¹ Jaramillo responded by arguing that the report satisfied the public records exception to the hearsay rule and was relevant to show that Marcano had amphetamine and methamphetamine in his system.² Jaramillo also argued that Dr. Wang should be allowed to answer questions about “the physiological impact on the human being from the in[gestion] of amphetamine products that are consistent with impacting both physical and mental aspects of that individual, which are relevant in terms of the defense of self-defense in this case.” Tr. Vol. 4 at 155-56. The trial court ruled the report inadmissible. Specifically, the court stated,

The questions regarding the toxicology report and the introduction of the toxicology report is denied. This report was prepared by a crime lab technician, not by this doctor. Even though it was ordered by this doctor, it’s not appropriate to bring that in through him since he did not prepare it. ... [I]n addition, the introduction of this evidence is more prejudicial than probative, so it’s disallowed.

Id. at 156-57.

¹ The record indicates that the report was prepared by Axis Forensic Toxicology.

² We note that Jillian testified that Marcano had been using methamphetamine.

[9] At the conclusion of trial, the jury found Jaramillo guilty of the lesser included offense of level 2 felony voluntary manslaughter. The court further determined that Jaramillo was a habitual offender. The trial court sentenced Jaramillo to twenty years for voluntary manslaughter, enhanced by fifteen years based upon the habitual offender finding, for an aggregate sentence of thirty-five years. This appeal ensued.

Discussion and Decision

[10] Jaramillo asserts that the trial court abused its discretion in excluding the toxicology report. We disagree. “A trial court has broad discretion to admit or exclude evidence, including purported hearsay.” *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). We will disturb the trial court’s ruling only if it amounts to an abuse of discretion, “meaning the court’s decision is clearly against the logic and effect of the facts and circumstances or it is a misinterpretation of the law.” *Id.*

[11] Hearsay is an out-of-court statement used to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). Hearsay is inadmissible unless it falls under a hearsay exception. *Teague v. State*, 978 N.E.2d 1183, 1187 (Ind. Ct. App. 2012) (citing, inter alia, Ind. Evidence Rule 802). Jaramillo concedes that the toxicology report is hearsay but maintains that it is admissible under Evidence Rule 803(8), the public records exception to the hearsay rule. That exception provides in pertinent part that “a record or statement of a public office” is not excluded by the rule against hearsay if

(i) it sets out:

(a) the office's regularly conducted and regularly recorded activities;

(b) a matter observed while under a legal duty to [observe and] report; or

(c) factual findings from a legally authorized investigation; and

(ii) neither the source of information nor other circumstances indicate a lack of trustworthiness.

Ind. Evidence Rule 803(8).

[12] Jaramillo has failed to meet his burden of proving that the toxicology report in this case falls within this exception to the hearsay rule. *See Schnitzmeyer v. State*, 168 N.E.3d 1041, 1044 (Ind. Ct. App. 2021) (noting that the trial court's ruling on admissibility of evidence is presumptively correct and a challenger bears the burden on appeal of persuading us that the trial court erred in its exercise of discretion). The toxicology report was not prepared by the Lake County Coroner's Office, or any other public agency, and therefore, standing alone, is not a record or statement of a public office. The mere fact that the toxicology report was ordered by the Lake County Coroner's Office and subsequently

attached to the autopsy report prepared by Dr. Wang is of no moment.³ In other words, we agree with the State that the toxicology report did not somehow “become a public record simply because it was attached to a public record.” Appellee’s Br. at 13. Indeed, “[t]he public records exception to the rule against hearsay exists because we may assume that ‘public officials perform their duties properly without motive or interest other than to submit accurate and fair reports.’” *McMillen v. State*, 169 N.E.3d 437, 443 (Ind. Ct. App. 2021) (quoting *Fowler v. State*, 929 N.E.2d 875, 878 (Ind. Ct. App. 2010)). The toxicology report here was inadmissible under the public records exception to the hearsay rule.

[13] Jaramillo directs us to *Wilbur v. State*, 460 N.E.2d 142 (Ind. 1984), for the proposition that “the toxicology report’s origination from a source outside the coroner’s office does not change its status as an admissible public record.” Appellant’s Br. at 13. *Wilbur* does not support this proposition. In *Wilbur*, the defendant objected on hearsay grounds to the testimony of the forensic pathologist who performed an autopsy on an individual who died following surgery to remove a blood clot near his brain. *Wilbur*, 460 N.E.2d at 143. The pathologist’s testimony referred directly to the content of medical reports prepared by the decedent’s treating physicians regarding the decedent’s age, time of death, and the removal of a large blood clot overlying the brain on the

³ Jaramillo’s reliance on *Ealy v. State*, 685 N.E.2d 1047, 1055 (Ind. 1997), and *Ackerman v. State*, 51 N.E.3d 171, 177 (Ind. 2016), *cert. denied*, cases concluding that an autopsy report was admissible based on exceptions to the hearsay rule, is misplaced.

right side of his head. *Id.* The pathologist stated that he relied on these reports to form the opinion that the death was the result of meningitis and pneumonia that developed during a coma following the operation to treat head injuries. *Id.*

[14] Contrary to Jaramillo's suggestion, the *Wilbur* court did not determine that the medical reports, which originated from a source outside the coroner's office, were admissible as public records. Rather, the court concluded that even assuming that the medical reports themselves did not qualify as public records and were inadmissible,

the testimony reflecting their factual content was nevertheless admissible in conjunction with the detailed findings of the witness who had performed the autopsy, as showing the basis for his own medical conclusions. Such medical reports are routinely relied upon by forensic pathologists in arriving at their opinions as to cause of death, and when presented to the trier of fact by such persons at a trial, in this form and manner, and for this purpose, testimony reflecting their content is not hearsay.

Id. at 143.

[15] As with medical reports, we acknowledge that toxicology reports are routinely relied upon by forensic pathologists in arriving at their opinions as to cause of death, and when the factual content of such reports is presented to the trier of fact by such persons for this purpose, the testimony reflecting their content would not be hearsay. Such is not the case here. Jaramillo sought to introduce the toxicology report itself as well as testimony from Dr. Wang reflecting and

interpreting its factual content.⁴ However, there is not even the slightest suggestion that Dr. Wang relied on the toxicology report in arriving at his opinion as to Marcano’s cause of death (homicide) or that the content of the toxicology report was being offered for this purpose. Accordingly, not only was the toxicology report itself inadmissible, absent further underlying foundational questioning as to Dr. Wang’s reliance on the toxicology report for his conclusions, the information contained in the report was also inadmissible. The trial court did not abuse its discretion in excluding the evidence.⁵ Jaramillo’s conviction is affirmed.

[16] Affirmed.

May, J., and Weissmann, J., concur.

⁴ In *Wilson v. Kauffman*, 563 N.E.2d 610, 615-16 (Ind. Ct. App. 1990), *cert. denied* (1991), this Court noted that the question of whether the reports on which experts rely are themselves admissible was not answered in *Wilbur*, but that other courts have considered the question and determined that “while it might have been better not to have admitted these documents directly into evidence” so long as no “attempt was made to assert that the facts contained” in the reports were true, their admission was not an abuse of discretion. Here, there is no question that Jaramillo intended not only to have the toxicology report directly admitted into evidence but also to assert that the facts contained in the report were true.

⁵ Jaramillo maintains that the exclusion of the toxicology report violated his constitutional right to present a complete defense. However, while the Sixth Amendment to the United States Constitution guarantees a criminal defendant a meaningful opportunity to present a complete defense, it is well established that this right is not absolute and that the defendant is required to comply with the rules of evidence. *Saintignon v. State*, 118 N.E.3d 778, 786 (Ind. Ct. App. 2019) (citing *Marley v. State*, 747 N.E.2d 1123, 1132 (Ind. 2001)), *trans. denied*.