

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Samajui Devonta Barnes,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 8, 2023

Court of Appeals Case No.
22A-CR-2390

Appeal from the
Vanderburgh Circuit Court

The Honorable
David D. Kiely, Judge

Trial Court Cause No.
82C01-2110-MR-5380

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] Samajui Devonta Barnes appeals his conviction and sentence for murder, alleging prosecutorial misconduct, the use of an improper jury instruction, and that his sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On the morning of October 1, 2021, Eric Reid, the property manager of an apartment building in Evansville, noticed two male teenagers, later identified as seventeen-year-old Barnes and fifteen-year-old Arkee Coleman, walk through the building. As Reid spoke to them, an apartment resident, Jonathan Stitts, came out of his apartment and told Reid that Barnes and Coleman were looking for him. Reid then went back to his office, and Barnes and Coleman went into Stitts's apartment.
- [3] A few minutes later, gunfire erupted. Surveillance footage shows that Barnes exited Stitts's apartment holding a handgun and, from the hallway, shot several times into the apartment. Ex. 2, 0:07-0:11. Stitts fell to the ground in the doorway, and more shots were fired from inside the apartment. *Id.* at 0:16. Coleman, holding a revolver, then jumped over Stitts's body, and he and

Barnes fled the apartment complex. *Id.* at 0:17-0:19.¹ Police and emergency medical personnel quickly arrived and pronounced Stitts dead. He suffered six gunshot wounds, one of which was a fatal wound to the upper torso.

[4] Four .38 caliber bullets were recovered from Stitts's body, one of which caused the fatal injury. However, both .38 caliber and .40 caliber shell casings were found at the scene. Based on Reid's description to police and the surveillance video, Barnes and Coleman were identified and arrested at a nearby apartment. A search of that apartment revealed a .38 caliber Taurus revolver. Later testing of the revolver showed it contained both Coleman's and Barnes's DNA and that it fired the bullets recovered from Stitts's body. During the search, officers also found .40 caliber bullets and an extended magazine containing .40 caliber bullets, although no gun capable of firing .40 caliber bullets was found.

[5] The State charged Barnes with murder and filed a firearm enhancement, alleging he used a firearm in the commission of the offense.² A jury trial was held in August 2022. During voir dire, the State asked a panel of prospective jurors,

And the primary thing here as I mentioned is I just want to make sure that if we do our job, you're capable of doing yours. So, [prospective juror], let's assume that you've heard all of the

¹ Due to the quality of the footage, it is difficult for us to make out the type of gun Coleman was carrying. But the parties agree that Coleman was carrying a revolver. *See* Tr. Vol. III pp. 20, 23; Appellant's Br. p. 33; Appellee's Br. p. 14.

² Coleman was also charged with murder. *See* Case No. 82C01-2111-MR-6046. He later pled guilty and received a forty-five-year sentence.

evidence, you go back and you deliberate with your fellow jurors, and you believe that the State has proved its case beyond a reasonable doubt, how would you vote, guilty or not guilty?

Tr. Vol. II p. 29. Barnes objected, arguing the question was “not a true statement of law,” but the objection was overruled. *Id.* The prospective juror answered “guilty,” and the State then went down the line and asked each prospective juror the same question, to which they all replied “guilty.” *Id.*

[6] At trial, the State’s theory was that Coleman fired the shot that killed Stitts, as Coleman was armed with the .38 caliber revolver and Stitts’s fatal injury was caused by a .38 caliber bullet. However, based on the video of Barnes also shooting at Stitts, the additional gunshot wounds sustained by Stitts, and the .40 caliber shell casings found at the scene, the State argued that “[Barnes] and Coleman were working in concert together to murder [Stitts].” Tr. Vol. III p. 19. As such, once all the evidence had been presented, the jury was given both an instruction on the elements of murder and the following instruction on accomplice liability:

INSTRUCTION NO. 3

Aiding, Inducing or Causing Murder is defined by law as follows: A person who knowingly or intentionally kills another human being commits Murder, a felony. A person who, knowingly or intentionally aids, induces or causes another person to commit an offense commits that offense.

Before you may convict the Defendant of Aiding, Inducing or Causing Murder, a felony, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant, Samajui Devonta Barnes,
2. knowingly or intentionally
3. aided or induced or caused
4. Arkee Coleman to commit the offense of Murder, defined as:
 - a. Arkee Coleman
 - b. knowingly or intentionally
 - c. killed
 - d. Jonathan Stitts.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Aiding, Inducing or Causing Murder, a felony.

Before you may convict the Defendant of this crime, you must find there is evidence of the Defendant's affirmative conduct, either in the form of acts or words, from which an inference of a common design or purpose may be reasonably drawn. The Defendant's conduct must have been voluntary and in concert with the other person.

The Defendant's mere presence at the scene of the crime, or mere acquiescence in the commission of the crime, is insufficient to convict for aiding, inducing, or causing the crime charged.

A person may be convicted of aiding, inducing or causing Murder even if the other person has not been prosecuted for the Murder, has not been convicted of the Murder, or has been acquitted of the Murder.

Appellant's App. Vol. II p. 72.

- [7] The jury found Barnes guilty of murder and that the firearm enhancement applied. At sentencing, the trial court found one aggravator—Barnes's history of juvenile adjudications for auto theft, battery, and disorderly conduct—and one mitigator—that he was a minor when he committed the offense. The court sentenced him to fifty-five years for murder, enhanced by ten years for using a firearm, for an aggregate sentence of sixty-five years.

[8] Barnes now appeals.

Discussion and Decision

I. Prosecutorial Misconduct

[9] Barnes first argues the prosecutor committed misconduct during voir dire by “ask[ing] each juror how they would vote if the prosecutor proved his case, which caused a drumbeat repetition of guilty votes before the trial commenced.” Appellant’s Br. p. 27. Specifically, he contends that the questioning and repetitive answers “condition[ed] the jury to behave in a certain manner and to be receptive to the prosecutor’s position.” *Id.* at 29.

[10] But Barnes did not object to the questioning on this ground.³ Therefore, he must establish not only prosecutorial misconduct but also that the misconduct constituted fundamental error. *Ryan v. State*, 9 N.E.3d 663, 667-68 (Ind. 2014). “Fundamental error is an extremely narrow exception to the waiver rule where the defendant faces the heavy burden of showing that the alleged errors are so prejudicial to the defendant’s rights as to make a fair trial impossible.” *Id.* at 668. To establish fundamental error, the defendant must show that, under the circumstances, the trial judge erred in not sua sponte raising the issue because the alleged error constituted a clearly blatant violation of basic and elementary

³ Barnes did object to this questioning on the grounds that it contained an incorrect statement of law. A party may not object on one ground at trial and raise a different ground on appeal. *Glover v. State*, 179 N.E.3d 526, 535 (Ind. Ct. App. 2021), *trans. denied*.

principles of due process and presented an undeniable and substantial potential for harm. *Id.* In evaluating whether fundamental error occurred, we look at the alleged misconduct in the context of everything that happened—including the evidence admitted at trial, closing arguments, and jury instructions. *Id.* A defendant is “highly unlikely” to prevail on a claim of fundamental error relating to prosecutorial misconduct. *Id.*

[11] The purpose of voir dire is to determine whether a prospective juror can render a fair and impartial verdict in accordance with the law and evidence. *Gregory v. State*, 885 N.E.2d 697, 706 (Ind. Ct. App. 2008), *trans. denied*. More specifically, such examination of prospective jurors is used to discover whether a prospective juror has any opinion, belief, or bias that would affect or control his determination of the issues to be tried, providing a basis to exercise the right of challenge. *Id.* Our Supreme Court has condemned the practice of counsel using voir dire as an opportunity to “brainwash” or “attempt to condition the jurors to receive the evidence with a jaundiced eye.” *Robinson v. State*, 365 N.E.2d 1218, 1222 (Ind. 1977).

[12] We do not believe the prosecutor’s questioning here rose to the level of such “conditioning.” The prosecutor asked each potential juror how they would vote if the State proved its case beyond a reasonable doubt, and each replied “guilty.” Barnes argues the repetition of the term “guilty” conditioned the jurors to vote guilty. While the best practice may be to rephrase this question to avoid the repetitious “guilty” answers, we do not believe this placed Barnes in grave danger. The prosecutor’s question did not suggest the jurors must vote

guilty if certain evidence was presented, nor did it relay any specifics about Barnes or his case. See *Emerson v. State*, 952 N.E.2d 832, 837 (Ind. Ct. App. 2011) (no fundamental error where the challenged voir dire question by the prosecutor was “asked in general terms and w[as] not put in context to any specific hypothetical circumstance”), *trans. denied*.

- [13] We cannot say the repetition of the phrase “guilty” by prospective jurors during voir dire constituted fundamental error.

II. Jury Instruction

- [14] Barnes next argues the trial court erred in instructing the jury on accomplice liability. “The purpose of a jury instruction is to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict.” *Batchelor v. State*, 119 N.E.3d 550, 553 (Ind. 2019) (quotation omitted). We review a trial court’s decision to give a jury instruction for an abuse of discretion. *Hernandez v. State*, 45 N.E.3d 373, 376 (Ind. 2015). We must 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.* (quotation omitted).

- [15] Because Barnes did not object to any instruction at trial, his claim is waived. Thus, he must demonstrate fundamental error before we may reverse. *Pattison v. State*, 54 N.E.3d 361, 365 (Ind. 2016). Again, “[e]rror is fundamental if it is a

substantial blatant violation of basic principles and where, if not corrected, it would deny a defendant fundamental due process.” *Id.* (quotation omitted).

When determining whether an incorrect jury instruction amounts to fundamental error, we look not to the erroneous instruction in isolation, but in the context of all relevant information given to the jury, including closing argument and other instructions. *McKinley v. State*, 45 N.E.3d 25, 28 (Ind. Ct. App. 2015), *trans. denied*.

[16] Barnes challenges Instruction 3, which states in part,

Before you may convict the Defendant of Aiding, Inducing or Causing Murder, a felony, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant, Samajui Devonta Barnes,
2. knowingly or intentionally
3. aided or induced or caused
4. Arkee Coleman to commit the offense of Murder, defined as:
 - a. Arkee Coleman
 - b. knowingly or intentionally
 - c. killed
 - d. Jonathan Stitts.

Appellant’s App. Vol. II p. 72. Specifically, he contends Instruction 3 contains an incorrect statement of law because “it failed to inform the jury that the State was required to prove that Barnes had [the] intent that Stitts be killed for the State to prevail under a theory of accomplice liability.” Appellant’s Br. p. 18.

[17] Instruction 3 follows Indiana Pattern Criminal Jury Instruction 2.16, which addresses aiding, inducing, or causing an offense. While pattern jury instructions are not always upheld as correct statements of law, the “preferred

practice is to use the pattern jury instruction.” *Gravens v. State*, 836 N.E.2d 490, 493 (Ind. Ct. App. 2005), *trans. denied*.

[18] Our Supreme Court has held that a defendant may be convicted of murder on a theory of accomplice liability where he knowingly or intentionally aided or abetted the principal and where (1) the principal killed the victim and (2) the defendant knew or intended that the victim would be killed. *Taylor v. State*, 840 N.E.2d 324, 336-37 (Ind. 2006). Barnes argues Instruction 3 is erroneous because it does not require the jury find that he knew or intended that Stitts would be killed. In short, Barnes argues Instruction 3 only calls for him to knowingly or intentionally aid, induce, or cause Coleman to commit a criminal offense, not specifically the offense of murder. He hypothesizes that under Instruction 3 the jury could have found he aided, induced, or caused Coleman to commit an offense other than murder, and therefore would not have found he had the required mens rea for accomplice liability.

[19] We do not agree with Barnes’s reading of Instruction 3. It clearly states that to find Barnes guilty of murder under accomplice liability, the jury needed to find he knowingly or intentionally aided, induced, or caused Coleman to murder Stitts. *See* Appellant’s App. Vol. p. 72 (Instruction 3 stating that to find Barnes guilty of murder under accomplice liability the jury had to find he knowingly or intentionally aided, induced, or caused “Arkee Coleman to commit **the offense of Murder**” (emphasis added)). This is the proper mens rea for the crime of aiding or abetting murder. And notably, we have previously upheld this

instruction as sufficient. *See Specht v. State*, 838 N.E.2d 1081, 1089 (Ind. Ct. App. 2005), *trans. denied*.

[20] Barnes directs us to *Rosales v. State*, 23 N.E.3d 8 (Ind. 2015). There, the defendant was charged with attempted murder premised on a theory of accomplice liability, and our Supreme Court found the jury instructions were erroneous for not informing the jury the State needed to prove the defendant “acted with specific intent to kill when he knowingly or intentionally aided, induced, or caused another person to attempt murder.” *Id.* at 9. Barnes argues the same should be said here. But as the State points out, *Rosales* involved accomplice liability for attempted murder. Attempted murder requires a finding of specific intent. *Id.* Murder, even under a theory of accomplice liability, does not. *Watson v. State*, 999 N.E.2d 968, 971 (Ind. Ct. App. 2013) (distinguishing the requisite mens rea for attempted murder and murder).

[21] Barnes has failed to show Instruction 3 was erroneous.

III. Inappropriate Sentence

[22] Barnes also contends his sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides that an appellate court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). “Whether a

sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[23] The sentencing range for murder is forty-five to sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3. If a person knowingly or intentionally uses a firearm during the commission of certain offenses, including murder, the trial court may enhance the sentence by five to twenty years. I.C. § 35-50-2-11. Here, the trial court imposed the advisory sentence of fifty-five years, enhanced by ten years for using a firearm in the commission of the offense, for an aggregate sentence of sixty-five years.

[24] Barnes argues his young age and the nature of the offense, specifically that he did not fire the fatal shot, warrant a “sentence at the low end of the range.” Appellant’s Br. p. 33. But Barnes’s sentence is already at the lower end of the range. The sentencing range for murder plus the enhancement was fifty to eighty-five years, and he received sixty-five. As to the nature of the offense, while Barnes may not have fired the fatal shot, the record shows this was a premeditated act. Barnes arrived at the apartment complex armed and he and Coleman—who was two years younger—began shooting at Stitts within minutes of their arrival. As to Barnes’s character, by age seventeen he had

several delinquency adjudications, including two that would have been felonies if committed by an adult. This supports his sentence.

[25] Affirmed.

Tavitas, J., and Foley, J., concur.