MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Kristin A. Mulholland
Office of the Lake County Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Evan M. Comer
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Lydia Theresa Conley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 22, 2023

Court of Appeals Case No. 22A-CR-1748

Appeal from the Lake Superior County

The Honorable Jamise Y. Perkins, Judge Pro Tempore

Trial Court Cause No. 45G03-2006-MR-20

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] This appeal arises from a complex murder trial. The appellant—Lydia Theresa Conley ("Conley")—however, asks us to answer only one question: whether the trial court erred in excluding evidence of the prior murder convictions of an alternative suspect. Even assuming error, we conclude that Conley's Sixth Amendment right to present a defense was not contravened, and, accordingly, any error was harmless. We affirm.

Facts and Procedural History

[2] The facts specifically relevant to this appeal are as follows: in 2019, Conley was involved in a love triangle. She had been dating Delilah Martinez ("Martinez") since the previous year but was simultaneously involved in a long-term relationship with Madeline Mendoza ("Mendoza").[1] When Mendoza discovered the affair, she terminated her relationship with Conley. Then, in October 2019, Martinez terminated her relationship with Conley. On October 27, 2019, Martinez's daughter discovered Martinez outside their house on the ground, shot three times. Martinez died later that day.

[3] After an investigation, the State charged Conley with Martinez's murder on June 12, 2020.[2] Conley's jury trial began on May 30, 2022. At the conclusion of the first day of testimony, the trial court heard argument regarding several motions in limine. Among them were the State's motions pertaining to several

---

[1] The record suggests that this relationship lasted some thirteen years, though there are significant discrepancies.

[2] The State added a sentencing enhancement for use of a firearm on February 14, 2022.

alternative suspect defenses.[3] None of the motions appear to have centered on Mendoza specifically, but during an argument regarding a different alternative suspect, Conley's counsel asserted that: "Lydia Conley was dating and considered herself to be married to a lady named [Mendoza]. What did the detective do to eliminate [Mendoza] as a suspect because her and [Martinez] were in this other relationship?" Tr. Vol. III p. 119. Conley suggested that excluding evidence pertaining to Mendoza would be detrimental to her defense, but no specific evidence regarding Mendoza was being considered by the trial court at that time.

[4] Evidence at trial subsequently revealed the tensions between Mendoza and Martinez. Then Mendoza took the stand. On cross-examination, Mendoza testified about discovering that Conley was having an affair with Martinez. She also described receiving a text message from Martinez depicting Conley and Martinez engaged in an act of oral sex. Finally, she denied having murdered Martinez. When cross-examining the detective ("Detective Webber") who conducted the murder investigation, Conley sought to make an offer of proof. Detective Webber had indicated that Mendoza was a person of interest in the investigation, and Conley wanted to explore the fact that Mendoza had twice previously been convicted of murder.[4] The State argued that any testimony

---

[3] On appeal, Conley only argues that the trial court erred in excluding evidence with respect to one of those theories: that Mendoza was the killer. Accordingly, we do not address any of the other theories or motions.

[4] The record suggests that these convictions were three decades old. Tr. Vol. VI p. 177.

related to Mendoza's criminal history was violative of Indiana Evidence Rule 404(b).

[5] The trial court denied Conley's request to allow Detective Webber to testify about Mendoza's murder convictions. Specifically, the trial court concluded that the "prejudicial impact that the testimony would have" would outweigh "any probative value" of Mendoza's criminal convictions, an apparent reference to Indiana Evidence 403. Tr. Vol. VI p. 129.

[6] After more testimony from Detective Webber, Conley sought a second offer of proof, this time relying on Indiana Evidence Rule 609, and arguing that the prior convictions were probative of Mendoza's credibility because she had explicitly denied murdering Martinez. Additionally, some discrepancies in Mendoza's testimony with respect to when she had last been in contact with Martinez had already been revealed. The trial court again denied the request, apparently relying on Rule 403 once more.

[7] The jury convicted Conley, and the trial court sentenced her to an aggregate sentence of seventy years. Conley now appeals.

Discussion and Decision

[8] Conley asks us to find that the exclusion of evidence of Mendoza's prior murder convictions violated her right to present a defense under the Sixth Amendment to the United States Constitution. Ordinarily, "[o]ur standard of review of a trial court's determination as to the admissibility of evidence is for an abuse of discretion." *Jones v. State*, 957 N.E.2d 1033, 1037 (Ind. Ct. App.

2011) (citing *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001)). "We will reverse only if a trial court's decision is clearly against the logic and effect of the facts and circumstances." *Id*. "We will not reweigh the evidence and will consider any conflicting evidence in favor of the trial court's ruling." *Id.* (citing *Collins v. State,* 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), *trans. denied*). "When we review a trial court's decision to determine if there was an abuse of discretion regarding the admission of evidence, 'we may affirm the trial court's decision to admit evidence seized as a result of a search based on any legal theory supported by the record.'" *Whitenack v. State*, 68 N.E.3d 1123, 1126 (Ind. Ct. App. 2017) (quoting *Johnson v. State*, 38 N.E.3d 658, 661 (Ind. Ct. App. 2015)). However, where, as here, an evidentiary claim raises constitutional issues, our standard of review is de novo. *See, e.g., Jones v. State, 982 N.E.2d 417, 421 (Ind. Ct. App. 2013), trans. denied.*

[9] It has long been settled law that the Sixth Amendment to the United States Constitution protects a defendant's right to present a defense in order to secure a full and fair trial. *See, e.g.*, *Washington v. Texas*, 388 U.S. 14, 22 (1967); *Bubb v. State*, 434 N.E.2d 120 (Ind. App. 1982). The right encompasses, at a minimum, the right to call witnesses, *Chambers v. Mississippi*, 410 U.S. 284 (1973), the right to confront witnesses against you, *Pointer v. Texas*, 380 U.S. 400, 403 (1965), and in some instances, the right to a bifurcated trial. *Hines v. State*, 801 N.E.2d 634 (Ind. 2004).

[10] When it comes to the presentation of evidence, the potential for conflicts between this Sixth Amendment right and the restrictions enumerated in the

Indiana Evidence Rules arises. "A criminal defendant does not enjoy an unlimited constitutional right to offer exculpatory evidence." *Hubbard v. State*, 742 N.E.2d 919, 922 (Ind. 2001) (citing *Roach v. State*, 695 N.E.2d 934, 939 (Ind. 1998)). Rather:

> [T]he right to present a defense is not absolute. "The accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Taylor v. Illinois*, 484 U.S. 400, 410 (1988).
>
> Thus, both a defendant and the prosecutor "must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973).

Schermerhorn v. State, 61 N.E.3d 375, 379 (Ind. Ct. App. 2016). Additionally:

> [W]hen the defendant's Sixth Amendment right to present a defense collides with the State's interest in promulgating rules of evidence to govern the conduct of its trials, the merits of the respective positions must be weighed, [and] the State's interest must give way to the defendant's rights if its rules are "mechanistically" applied to deprive the defendant of a fair trial.

Id. (quoting *Huffman v. State*, 543 N.E.2d 360, 375 (Ind. 1989), *overruled in part on other grounds*).

[11] Here, evidence of Mendoza's prior murder convictions would ordinarily be categorically inadmissible under Indiana Evidence Rule 404(b) which provides that evidence of prior criminal convictions is not admissible as evidence of a

person's character if its purpose is to show that the person acted in conformity with that character on a particular occasion. We have little difficulty identifying that—at least initially—this is the primary aim that Conley had in mind.[5] So the thinking goes: Mendoza had committed murders in the past, and that, coupled with her motive in this case makes it more likely that she committed the murder of Martinez.[6] It would also make it more likely that Detective Webber conducted a faulty investigation.

[12] Here however, Conley offered a second, plausible basis for admitting evidence of the prior convictions during the second request for an offer of proof: an exception to the prohibition enshrined in Rule 404. Mendoza testified unequivocally that she did not murder Martinez. Thus, Conley asserted, the prior convictions were being submitted to refute or undermine that denial, thereby undercutting Mendoza's credibility. Because the convictions were for murder, Conley argues, they must be admissible under Indiana Evidence Rule 609.[7]

---

[5] Conley appears to concede as much in her brief. Appellant's Br. p. 10.

[6] Though we need not defer to a trial court's reasoning in admitting or excluding evidence, we note that this belies the trial court's conclusion that the evidence would somehow be unduly prejudicial. To the contrary, it is probative of the guilt of a third party. There is little chance a jury would misunderstand the import of such evidence. That is why Rule 404 prohibits the so-called "forbidden inference" of present guilt on the basis of past crimes: not because it is prejudicial, but because it is so reasonable as to be vulnerable to abuse. *See, e.g.*, *Cannon v. State*, 99 N.E.3d 274, 290 (Ind. Ct. App. 2018) (Robb., J. dissenting) ("We have previously explained that the reason the forbidden inference is forbidden is not because the inference is unreasonable, but because it is reasonable and thus susceptible to misuse.")

[7] The language of Rule 609 is not permissive. If being offered to attack the credibility of a witness, evidence of a murder conviction "must be admitted." Ind. Evidence Rule 609.

[13] We need not address the argument. Even assuming without deciding that the evidence should have been admitted,[8] we find that the exclusion of evidence of the convictions constituted harmless error. "An error is harmless when it results in no prejudice to the 'substantial rights' of a party." *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018) (citing *Camm v. State*, 908 N.E.2d 215, 225 (Ind. 2009); Ind. Trial Rule 61.5). "While there are important contextual variations to this rule, the basic premise holds that a conviction may stand when the error had no bearing on the outcome of the case." *Id*. "At its core, the harmless-error rule is a practical one, embodying 'the principle that courts should exercise judgment in preference to the automatic reversal for error and ignore errors that do not affect the essential fairness of the trial.'" *Id*. (quoting *United States v. Harbin*, 250 F.3d 532, 546 (7th Cir. 2001)).

[14] As we have noted, the substantial right in question is the Sixth Amendment right to assert a defense. We find that the right has not been prejudiced here. Evidence of decades-old convictions for unrelated crimes is—at best—an attenuated tool for undermining the credibility of Mendoza's denial, or the credibility of Mendoza herself. Evidence of a prior conviction does not directly contradict a denial of a murder that occurs thirty years hence. It is suggestive, in an opaque way, of a capacity to commit murder, which may tangentially

[8] We note that Rule 609 contains a restriction for convictions where "more than ten (10) years have passed since the witness's conviction or release from confinement for it, whichever is later." The parties seem to have agreed that Mendoza was released no more than ten years prior to Conley's trial, and, therefore, the restriction did not apply.

impact a witness's credibility. But the question before us is whether the denial of an opportunity to impeach the witness's credibility, in context, rose to the level of abridging Conley's right to meaningfully present her alternative suspect defense. We think not.

[15] Mendoza testified. Thus, the jury had a first-person opportunity to evaluate her credibility. And, we note, Conley did not attempt to admit evidence of the prior convictions then, but waited until the testimony of Detective Webber, suggesting that she hoped to undermine the credibility of his investigation, rather than that of Mendoza. Regardless, Conley was not restrained from presenting significant evidence of tensions between Mendoza and Martinez, as well as between Mendoza and Conley, through multiple witnesses. Conley was able to cross-examine Mendoza and adduced evidence regarding a possible motive that Mendoza had to murder Martinez. And the jury was afforded the opportunity to weigh all of that evidence against the substantial evidence presented of Conley's guilt. In brief, the fact that a defendant is not permitted to submit every piece of evidence she believes supports her defense does not mean that her right to present a meaningful defense has been abridged.

[16] We are unpersuaded that the evidence of the decades-old convictions—entirely unrelated to the murder of Martinez—in the context of Mendoza's credibility at trial would have tipped the scales enough to impact the outcome of the trial. Thus, we conclude that any error in excluding the evidence was harmless.

[17] Affirmed.

Vaidik, J., and Tavitas, J., concur.