

STATEMENT OF THE CASE

Jack Edwards, Jr. appeals his convictions for two counts of murder and one count of attempted murder following a jury trial. He presents the following issues for our review:

1. Whether the trial court abused its discretion when it excluded from evidence the testimony of a defense witness.
2. Whether the State presented sufficient evidence to rebut his claim of self-defense and to support his convictions.
3. Whether the trial court abused its discretion when it sentenced him.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 25, 2008, David Summerlin, Cindy Mauntel, and Ranear Kirksey were staying with Edwards in his residence in Jefferson County and dealing in crack cocaine. Early that morning, Summerlin awoke to find Edwards covered in blood and holding a piece of wood. Kirksey was lying on a couch, and Summerlin heard Mauntel calling for Kirksey from outside of the house. Suddenly, Edwards began yelling, and he ran towards Summerlin and attempted to strike him in the head with the wooden board. Summerlin ducked out of the way and fell through a screened door to the outside. Summerlin then watched as Edwards struck a sleeping Kirksey with the board hard in the head.

Edwards then ran out of the house towards Summerlin. Summerlin was trying to get to his car, but tripped and fell to the ground. Summerlin stood up again and asked Edwards if he wanted some crack cocaine. Summerlin threw a bag of crack cocaine at Edwards, but Edwards continued to come after Summerlin and ultimately knocked him unconscious with the board.

One of Edwards' neighbors who heard some of the commotion called police. When they arrived at the scene, officers found Mauntel's body underneath a vehicle outside of Edwards' house, and Summerlin was found in the backseat of the vehicle. Summerlin was unresponsive. Edwards was standing on the sidewalk in front of his house ranting incoherently. When police entered Edwards' house, they found Kirksey on the couch. Both Mauntel and Kirksey died as a result of the blunt force injuries each received to their heads. Summerlin received medical treatment for his injuries and survived. Police interviewed Edwards several times, and he ultimately admitted that he struck the victims with a piece of landscaping timber, but he claimed that each attack was in self-defense.

The State charged Edwards with two counts of murder and one count of attempted murder. At trial, Edwards proffered a defense theory that Summerlin had killed Mauntel. The jury found Edwards guilty as charged. The trial court imposed sentences as follows: sixty years for each murder conviction and forty years for the attempted murder conviction, with the three sentences to run consecutively, for an aggregate term of 160 years. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Exclusion of Evidence

Edwards first contends that the trial court abused its discretion when it excluded certain testimony from a defense witness. The admission or exclusion of evidence rests within the sound discretion of the trial court, and generally we review its rulings for an abuse of that discretion. Hinds v. State, 906 N.E.2d 877, 879 (Ind. Ct. App. 2009). An abuse of discretion occurs where the trial court's decision is clearly against the logic and

effect of the facts and circumstances before it. Id. And even if the trial court errs in admitting or excluding evidence, this court will not reverse the defendant's conviction if the error is harmless. See Ind. Trial Rule 61. An error is harmless when the probable impact of the erroneously admitted or excluded evidence, in light of all the evidence presented, is sufficiently minor so as not to affect the defendant's substantial rights. Fleener v. State, 656 N.E.2d 1140, 1141-42 (Ind. 1995).

Here, during trial, Shantella Kirby testified that she and Jason McCoskey were at Edwards' house around the time of the murders and that McCoskey had been arguing with Edwards. Kirby also testified that she saw an African-American man, whom she did not recognize, sitting in a chair inside Edwards' house, and that the man had a gun. Kirby then encouraged McCoskey to leave the house, and they did. As they were leaving, Kirby

heard a lot of commotion, and then the screen door opened, and [a] . . . blonde-haired lady . . . came running out the door, and after that [she] seen [sic] some other people come out the door. It was a smaller figure, the second person that came out.

Transcript at 1889. As Kirby started walking down the alley behind Edwards' house, she "heard screaming and . . . some whacking[.]" Id. at 1890. When McCoskey caught up with her in the alley a short time later, he was "real white-faced" and "was really freaked out." Id. at 1892. Kirby described Edwards' house as "flooded with people" and she saw "several" people leaving his house. Id. at 1893.

On cross-examination, Kirby admitted that she had given contradictory statements to police, stating both that she had been present at Edwards' house at the time of the offenses and that she had not been present. The prosecutor generally challenged Kirby's

recollection of the events, the quality of her eyesight, the lack of light when she had supposedly witnessed the events, and inconsistencies between her statements to police and her trial testimony. McCoskey had died prior to trial.

In response to the State's cross-examination of Kirby, Edwards filed with the court an "Accused Supplemental List of Witnesses, Identification Information and Summary of Testimony." Edwards sought to present the testimony of Cecil Carter and George Edwards ("George"). In the pleading, Edwards stated that "the proffered testimony is offered primarily in rebuttal of State's proof [sic] that alleged victims Kirksey and Summerlin were asleep at the time of the outbreak of violence." Appellant's App. at 26. Edwards further stated, the witnesses "will offer testimony of statements made by Jason McCoskey and his behavior after his arrival at work on the morning of August 25, 2008 at Madison Precision to Cecil Carter, who relayed these statements to IRE 803(1) [sic]." Id. at 27.

During an offer of proof outside the presence of the jury, Carter testified in relevant part that McCoskey had arrived uncharacteristically early to work on the morning of August 25, 2008, and Carter described McCoskey as "real hyper and bouncing around" like he was "on something." Transcript at 2042. McCoskey had told Carter that "three people had had their brains beat out down on Walnut Street, and he kept saying, 'They're going to come and get us.'" Id. McCoskey never stated who he suspected was coming to "get" him, but Carter speculated that he meant the police.

At the conclusion of Carter's testimony for the offer of proof, Edwards' counsel argued that Carter's testimony was not hearsay and was relevant to explain McCoskey's "high level of anxiety and why he believed the police might be coming to get him." Id. at

2048. The State argued that Carter's testimony was hearsay and did not fall under a hearsay exception. The trial court sustained the State's objection and excluded Carter's proposed testimony.

On appeal, Edwards' argument on this issue is difficult to discern. The State maintains that Edwards has waived this issue for failure to make cogent argument. While we tend to agree with the State, we will nonetheless attempt to address Edwards' contentions on the merits.

To the extent that Edwards contends that he had a right to present evidence of a third party's guilt, we certainly agree. However, Edwards asks that we subordinate the rules of evidence for him to exercise that right, which we will not do. In essence, Edwards appears to argue that Carter's testimony should have been permitted despite the fact that it contained hearsay. We are not persuaded. In the alternative, Edwards asserts that Carter's testimony regarding McCoskey's statement was admissible under the excited utterance or present sense impression exceptions to hearsay.

First, Edwards has waived any contention that the excited utterance exception applies, because he did not argue that exception to the trial court. It is well settled that a party is limited to the specific grounds argued to the trial court and cannot assert a new basis for admissibility for the first time on appeal. Taylor v. State, 710 N.E.2d 921, 923 (Ind. 1999). Second, Edwards does not support his contention that the testimony is admissible as a present sense impression with cogent argument or citation to any authority. Edwards has not demonstrated that the trial court abused its discretion when it

excluded Carter's testimony.¹ Further, even if we were to hold that the trial court abused its discretion in excluding the testimony, in light of all the evidence presented, the error, if any, would be sufficiently minor so as not to affect Edwards' substantial rights. Fleener, 656 N.E.2d at 1141-42.

Issue Two: Sufficiency of the Evidence

Edwards next contends that the evidence was insufficient to rebut his claim of self-defense or to support his convictions. If a person is convicted despite his claim of self-defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Wilson v. State, 770 N.E.2d 799, 800-01 (Ind. 2002). The standard on appellate review of a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. Id. at 801. When the sufficiency of the evidence to support a conviction is challenged, we neither reweigh the evidence nor judge the credibility of the witnesses, and we affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Wright v. State, 828 N.E.2d 904, 905-06 (Ind. 2005). It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court's ruling. Id. at 906.

First, Edwards makes a bare assertion that his testimony "met the burden" required to prove that he acted in self-defense. Brief of Appellant at 38. Edwards does not support that contention with cogent argument, and the issue is waived. Waiver

¹ Edwards did not make an offer to prove regarding any proffered testimony of George Edwards.

notwithstanding, the State presented evidence sufficient to negate Edwards' claim of self-defense beyond a reasonable doubt. See Wilson, 770 N.E.2d at 800-01. For example, Summerlin's eyewitness testimony counters Edwards' claim of self-defense. And we will not reweigh the evidence.

Next, Edwards contends that Summerlin's testimony "runs counter to human experience and no reasonable person could believe it and it fits squarely into the parameters of the 'incredible dubiousity' rule." Brief of Appellant at 34. But, again, Edwards does not support that assertion with cogent argument. Moreover, the incredible dubiousity rule applies only where there is a single witness presents "inherently improbable testimony" and there is a "complete lack of circumstantial evidence." See Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). Here, Edwards has not demonstrated that Summerlin's testimony was inherently improbable, and there is ample circumstantial evidence of Edwards' guilt. For instance, the State presented evidence that the DNA of both Kirksey and Mauntel was found both on Edwards' clothing and on a piece of landscaping timber police recovered from Edwards' house. Edwards cannot prevail on this issue.

Finally, Edwards maintains that his own "fourth and fifth statements" to police "lack the reliability and credibility necessary to sustain his convictions." Brief of Appellant at 37. Edwards makes no contention that the trial court abused its discretion when it admitted those statements into evidence at trial. Rather, he appears to argue that those statements are not, by themselves, sufficient to support his convictions. But again, the State presented ample other evidence of Edwards' guilt, including Summerlin's eyewitness testimony. Edwards' contentions on appeal amount to a request that we

reweigh the evidence, which we will not do. The evidence is sufficient to support his convictions.

Issue Three: Sentence

Edwards contends that the trial court abused its discretion when it sentenced him.² Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds on reh'g, 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” Id. (quotation omitted).

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.

Id. at 490-91 (emphasis added).

Edwards contends that the trial court abused its discretion when it did not identify certain mitigating circumstances, namely: the support of twenty-five people who wrote letters to the trial court regarding his “valuable character traits;” his long-time addiction

² While Edwards sets out the standard of review under Appellate Rule 7(B), he does not make cogent argument that his sentence is inappropriate in light of the nature of the offenses or his character. As such, we address only his contention that the trial court abused its discretion when it did not identify certain mitigators in imposing his sentence.

to crack cocaine; and the fact that Summerlin, Mauntel, and Kirksey came to his house “uninvited” and started dealing drugs there. Brief of Appellant at 40. Initially, we note that Edwards does not direct us to any part of the record showing that he proffered those mitigators to the trial court. It is well settled that a defendant who fails to raise proposed mitigators at the trial court level is precluded from advancing them for the first time on appeal. Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005). Without citation to evidence that Edwards proffered these mitigators to the trial court, we hold that the issue is waived.

Waiver notwithstanding, a trial court is free to disregard mitigating factors it does not find to be significant. See Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999). And Edwards carries the burden on appeal of showing that a disregarded mitigator is significant. See id. Edwards has not supported any of his contentions on this issue with cogent argument. Thus, Edwards has not met his burden to show that any of the allegedly proffered mitigators were significant enough to require mitigating weight.

Affirmed.

ROBB, C.J., and CRONE, J., concur.