

Slip Copy, 2011 WL 285062 (Table) (Ind.App.)

Unpublished Disposition

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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.

Court of Appeals of Indiana.

Robert A.C. MURPHY, Appellant-Defendant,

v.

STATE of Indiana, Appellee-Plaintiff.

No. 18A02-1003-CR-299.

Jan. 27, 2011.

Appeal from the Delaware Circuit Court No. 5; The Honorable [Thomas A. Cannon, Jr.](#), Judge; Cause No. 18C05-0903-MR-1.

[L. Ross Rowland](#), Public Defender's Office, Muncie, IN, Attorney for Appellant.

[Gregory F. Zoeller](#), Attorney General of Indiana, J.T. Whitehead, Deputy Attorney General, Indianapolis, IN, Attorneys for Appellee.

MEMORANDUM DECISION-NOT FOR PUBLICATION

[RILEY](#), Judge.

STATEMENT OF THE CASE

*1 Appellant-Defendant, Robert A.C. Murphy (Murphy), appeals his conviction and sentence for murder, a felony, [Ind.Code § 35-42-1-1\(1\)](#).

We affirm.

ISSUES

Murphy raises four issues on appeal, which we restate as follows:

(1) Whether the trial court abused its discretion by admitting Murphy's statement to the police into evidence even though Murphy alleged that the police officers continued their questioning after he requested an attorney;

(2) Whether the State presented sufficient evidence to prove beyond a reasonable doubt that Murphy had committed the murder despite a complete lack of Murphy's fingerprints or blood at the victim's residence and of Murphy's DNA at the crime scene;

(3) Whether the State laid a proper foundation for the admissibility of exhibits which showed the police officers' use of luminol in the victim's residence and vehicle; and

(4) Whether Murphy's sentence is appropriate in light of his character and the nature of the crime.

FACTS AND PROCEDURAL HISTORY

In late February or early March of 2009, Jason Osborne (Osborne) and Jennifer Stafford (Stafford) were in a relationship. They rented a trailer together in Muncie, Indiana. Osborne met Murphy when Murphy was looking for work. They started talking and eventually began spending time together. Both Osborne and Murphy bought their drugs from Jeffrey Allen (Allen).

Stafford owned a Wii game system and a Play Station 2, which were both kept in the trailer. Murphy indicated to Osborne that he wanted the Wii and told Osborne that he could buy it from him and "make it look like a robbery." (Transcript p. 353). Osborne declined. However, unbeknownst to Stafford, Osborne sold some of her Wii and Play Station 2 games and used the money to purchase cocaine. Over time, Osborne incurred a thirty dollar drug debt with Allen. Stafford did not know about the drug purchases or the debt.

From March 15 to March 21, 2009, Osborne was living at his mother's home in Baltimore, Ohio, and working for his uncle and cousin. During this time, Murphy contacted Osborne inquiring about the money to pay off the drug debt. Osborne promised to get him the money that weekend. On March 18, 2009, Murphy left a voicemail for Osborne's mother and father respectively indicating that Osborne owed money and that Murphy was stuck with it. Believing that he and Murphy had made plans by phone to make the payment, Osborne asked Stafford to wire him some money. It was Osborne's plan to give Murphy the money because he did not know how to reach Allen.

That same night, March 18, 2009 at around 7:55 p.m., Stafford spoke on the phone with her mother, Deborah Stafford (Deborah). She told Deborah that Murphy was at her trailer looking for Osborne because of the money owed and was playing with the Wii system. This was Deborah's last conversation with her daughter. Even though she attempted to reach Stafford the next day, she never received an answer. That same night, Stafford's brother, Clyde Stafford, Jr. (Clyde), also called Stafford's residence. He spoke with Murphy who wanted to know how to reach Osborne, and Clyde informed Murphy that Osborne was in Ohio. When the receiver was returned to Stafford, Clyde asked her to call him later that night to ensure that she was all right. She never contacted him.

*2 Later that evening and early the next morning, Stafford made money withdrawals from two different banks. Both times, the transactions were recorded. Sometime after 1 a.m., Stafford, together with Murphy, drove to the Speedway Gas Station in her car, a Grand Am, to send a money gram for sixty dollars to Osborne. She was upset and was crying. Osborne received the money gram at approximately 4:30 a.m. in Ohio.

The morning of March 19, 2009, Murphy returned to the residence where he was living with his fiancée and her family, including her son, Kenneth Watson (Watson). While Watson was in the shower, Murphy asked to borrow his car. It was the first time Murphy had made such a request, and he did not say why he needed the car or where he was going. Watson called Murphy later that day, asking him to return the vehicle as he needed his car. Even later, Murphy contacted Watson asking him for a ride to pick up another car. When Watson saw Murphy, he was upset and crying and was speaking with his pastor. Murphy was in possession of a Play Station 2 game, which Watson thought belonged to his younger brother, so Watson took it and put it in his brother's room. When Watson took Murphy to the other car, he noticed that it was Stafford's Grand Am. Murphy entered Stafford's car and sped away. Watson did not see Murphy again until Murphy returned to the residence that Murphy shared with his fiancée and her family.

Murphy parked the Grand Am behind the home and packed his belongings in the vehicle. He informed Watson he was taking the car to a “chop shop” and driving to Michigan. (Tr. p. 631).

Later on March 19, 2009, Murphy spoke with Allen by phone. He told Allen that he had a Wii game system for sale and would bring it to Allen's residence, who was on house arrest. Murphy sold Allen the Wii for fifty dollars, with a thirty dollar down payment. It was later determined that the Wii belonged to Stafford.

Meanwhile, Stafford had failed to show for work on the morning of March 19, 2009. At 8 a.m., Stafford's employer called her home and cell phone lines but received no reply. Other employees also unsuccessfully tried to contact Stafford. The next morning, March 20, 2009, Stafford again failed to show for work and Stafford's employer contacted Stafford's mother. That same morning, Stafford's parents went to Stafford's trailer. When they arrived, they saw that Stafford's car was not in the driveway. Upon entering the trailer, they noticed several items missing: the Wii game system, the Play Station 2; the shower curtain, and a candle holder from the table in the front room. Walking into Stafford's bedroom, they saw blood all over the wall and Stafford laying on her bed with her head smashed in. There was no sign of a forced entry and there were no broken windows. Stafford's parents called 911.

During the ensuing police investigation, police officers contacted Osborne in Ohio who advised them that he believed Murphy had murdered Stafford. Osborne returned to Muncie to show the officers where they might find Murphy and Allen. When the officers talked with Allen, Allen provided them with the Wii game system while admitting that he thought it was stolen. The officers also retrieved the Play Station 2 from Watson. In the meantime, police officers in Michigan retrieved Stafford's car. The contents of the car were missing, all that remained was dirt and traces of blood, as revealed by the officers' use of luminol.

*3 The police officers took samples for DNA testing and blood evidence from Stafford's home and car. Sergeant Rodney Frazier with the Muncie Police Department (Officer Frazier) found blood traces in Stafford's bedroom consistent with blood dispersed through forceful impact upon Stafford, onto another surface, indicative of multiple blows inflicted. The patterns were also consistent in shape and size with an exact replica of Stafford's candleholder. No fingerprints or DNA evidence of Murphy was found. Linda McDonald (McDonald), a DNA analyst with the Indiana State Police DNA Unit, explained that “Stafford's blood overwhelmed just about everything I tested.” (Tr. p. 844). Pathologist Dr. Paul Mellen (Dr. Mellen) opined that Stafford had suffered more than twenty blunt force injuries caused with a heavy, blunt instrument consistent with the candlestick holder from Stafford's home. He concluded Stafford's manner of death to be homicide.

On March 21, 2009, Murphy turned himself in to the Muncie Police Department. Officers James Johnson (Officer Johnson) and Al Williams (Officer Williams) led Murphy's interrogation. After having advised Murphy of his *Miranda* rights, the officers verified that Murphy understood these rights. Initially interrogating Murphy about his personal information, the officers turned the conversation to Stafford and her death. At that point, Murphy asked to “get an attorney here because this is about to get real deep.” (State's Exh. 87, p. 13). The officers replied that they would “stop talking then” and asked him if he had an attorney. (State's Exh. 87, p. 14). Murphy denied having an attorney nor could he provide the officers with the name of an attorney he wanted to talk to. Upon stopping the interview, the officers placed Murphy in a holding cell until they could process the appropriate paperwork to arrest him. They told him that he would be charged with Stafford's murder.

While they were drafting the paperwork, Murphy banged on the wall between the holding cell and the officers' office. When the officers entered the holding area, they informed Murphy that they could not talk to him because he had requested an attorney. However, Murphy indicated that he wanted to resume talking. Officer Williams advised Murphy that his *Miranda* rights still applied; the officers then resumed the interview. Later, during the interview, Murphy admitted to beating Stafford.

On March 25, 2009, the State filed an Information charging Murphy with Count I, murder, a felony, [I.C. § 35-42-1-1](#)(1) and Count II, murder while committing or attempting to commit a robbery, a felony, [I.C. § 35-42-1-1](#)(2). On January 7, 2010, Murphy filed a motion to suppress his statement to the police. On

January 28, 2010, after a hearing, the trial court denied Murphy's motion. On February 1 through February 5, 2010, a bench trial was held. At the close of the evidence, the trial court found Murphy guilty as charged, but because of double jeopardy grounds only entered judgment of conviction on Count I. On March 9, 2010, during the sentencing hearing, the trial court sentenced Murphy to sixty-five years at the Department of Correction.

*4 Murphy now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Murphy's Statement

Murphy first contends that the trial court erred when it denied his motion to suppress the statement he made to the police officers. In particular, he maintains that when the right to counsel is invoked, but a defendant thereafter nevertheless resumes to talk to the officers, the defendant needs to have his rights read to him again. In addition, Murphy asserts that the officers threatened his family. Although Murphy originally challenged the admission of the evidence through a motion to suppress, he now appeals following a complete trial and challenges the admission of his statement at trial. "Thus, the issue is ... appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial." [Washington v. State, 784 N.E.2d 584, 587 \(Ind.Ct.App.2003\)](#). We have previously held that our standard of review on rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. [Ackerman v. State, 774 N.E.2d 970, 974-75 \(Ind.Ct.App.2002\)](#), *trans. denied*. We do not reweigh the evidence and we consider conflicting evidence most favorable to the trial court's ruling. [Overstreet v. State, 724 N.E.2d 661, 663 \(Ind.Ct.App.2000\)](#), *trans. denied*. However, we must also consider the uncontested evidence favorable to the defendant. *See id.*

Initially, we note that Murphy's argument with respect to this first issue fails to comply with [Indiana Appellate Rule 46\(A\)\(8\)](#). Murphy's sole development of this issue amounts to the enumeration of case law regarding the assertion of *Miranda* rights and the voluntariness of a statement. Blatantly missing from his brief, is the application of these precedents to the facts presented to us by way of cogent reasoning. It is well settled that we will not consider an assertion on appeal that does not include cogent argument supported by authority and references to the record as required by the Appellate Rules. [Shepherd v. Truex, 819 N.E.2d 457, 463 \(Ind.Ct.App.2004\)](#), *reh'g denied*. As such, Murphy has waived this argument for our review. Nevertheless, because of the importance of the issue, we will attempt to address the merits of his claim.

Murphy first challenges the admission of his statement on the ground that he requested an attorney after voluntarily initiating an interview. He claims that upon his request, the officers failed to stop questioning him and honor his call for counsel. We have previously held that when the right of counsel is asserted during questioning, the interview process must cease, and a confession procured by interrogators thereafter is *per se* inadmissible in the absence of a new waiver of counsel evidenced by proof that the suspect initiated the resumption of questioning. [Minnick v. State, 467 N.E.2d 754, 756 \(Ind.1984\)](#), *cert. denied, 472 U.S. 1032*. In [Edwards v. Arizona, 451 U.S. 477, 484, 101 S.Ct. 1880, 1884, 68 L.Ed.2d 378, 386 \(1981\)](#), the United States Supreme Court elaborated that

*5 an accused, [], having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversation with the police.

However, the initiation of further communication by an accused, standing alone, is not sufficient to establish a waiver of the previously asserted right to counsel. [Osborne v. State, 754 N.E.2d 916, 922 \(Ind.2001\)](#). If the accused is found to have initiated further communication, then the subsequent inquiry is whether there is a valid waiver of the right to counsel; that is, whether the purported waiver was knowing and intelligent and found to be so under the totality of the circumstances. *Id.*

The record reflects that prior to questioning, the officers advised Murphy of his *Miranda* rights and verified that he understood these rights. Murphy signed a waiver of his rights. After some questions about

his personal information, the officers started asking him questions about Stafford, whereupon Murphy stated “[c]an I get an attorney because this is about to get real deep?” (State's Exh. 87, p. 13). The interrogating officers stopped the questions. When they asked Murphy to provide them with the name of his attorney, Murphy could not give the officers a name. Nonetheless, Officer Williams told Murphy “[w]e'll go ahead and stop.” (State's Exh. 87, p. 14). At that point, the officers ended the interview and placed Murphy back in the holding cell.

The record next indicates that as the officers started the paperwork to arrest Murphy, Murphy started knocking on the wall between the holding cell and the officers' office. The officers returned to the holding cell, and Murphy asked them what he was going to be charged with. Officer Williams explained that he was going to be charged with murder. After Murphy replied, “I don't think that's right[,]” Officer Williams responded that they could not talk to him as he had requested an attorney. (Tr. p. 163). Murphy replied that he wanted to continue talking. Officer Williams testified about what transpired next as follows:

I again told him his rights still applied, and he had asked for an attorney, and we could not talk to him at this time again. He then said he wanted to talk to us without an attorney. I said, “Well, that will be fine. It's up to you. You have requested an attorney but we will talk to you again if you want to.” He said he did.

(Tr. p. 91). This entire episode took approximately fifteen minutes.

Based on the circumstances before us, it is clear that the officers ceased interrogating Murphy as soon as he requested counsel. After he was placed in the holding cell, Murphy initiated further conversation with the officers. Because the officers had elaborately informed Murphy about his *Miranda* rights prior to the interview and verified that he understood these, Officer Williams' caution that Murphy's rights still applied when Murphy restarted the interrogation is sufficient to establish that Murphy waived his right to counsel upon resumption of the police interview. See [Osborne, 754 N.E.2d at 922](#).

*6 In addition, Murphy alleges his statement to the officers was not voluntarily given as the officers threatened his family during the interrogation. In this regard, Murphy points to the officers' responses when he asked to see his son. Coercive police activity is a necessary prerequisite to finding a confession is not voluntary within the meaning of the Due Process Clause of the Fourteenth Amendment. [Light v. State, 547 N.E.2d 1073, 1077 \(1989\)](#), *reh'g denied*. A confession is voluntary if, in light of the totality of the circumstances, the confession is the product of a rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant's free will. [Ringo v. State, 736 N.E.2d 1209, 1212 \(Ind.2000\)](#). The critical inquiry is whether the defendant's statements were induced by violence, threats, promises or other improper influence. [Page v. State, 689 N.E.2d 707, 710 \(Ind.1997\)](#).

Upon review of the record, we cannot say that Murphy's confession was coerced by threats. The officers informed Murphy that they would let him see his son; they explained that his son was being questioned but was not in trouble. The officers also advised Murphy that “if he lies about any details about this, trying to help you out, yeah, that's a felony.” As such, the officers not only expressly stated that Murphy's son was not in trouble but they also rightly informed Murphy about possible charges if someone would lie for him. This does not amount to threats. Therefore, we conclude that the trial court properly admitted Murphy's statement to the police.

II. Sufficiency of the Evidence

Murphy contends that the State failed to present sufficient evidence to support his murder conviction beyond a reasonable doubt. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. [Perez v. State, 872 N.E.2d 208, 212-13 \(Ind.Ct.App.2007\)](#), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 213. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

In order to convict Murphy of murder, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally killed Stafford. See [I.C. § 35-42-1-1](#). In challenging the sufficiency, Murphy focuses on the absence of physical evidence tying him to the murder scene. Specifically, Murphy asks this court “[i]s it reasonable that a person could murder and rob a mobile home and not leave a single fingerprint?” (Appellant's Br. p. 22). We agree with the State that Murphy's statement to the officers speaks for itself when he admitted to beating Stafford. In addition, the State presented evidence establishing that Murphy and Stafford were together the night she was killed. Also, Murphy had Stafford's vehicle, her gaming systems and games, one of which he sold to Allen and one he gave to Watson both within twenty-four hours of Stafford's murder.

*7 While it is true that no fingerprints or DNA evidence of Murphy were found, McDonald, the DNA analyst, explained that “Stafford's blood overwhelmed just about everything [she] tested.” (Tr. p. 844). In support of his argument, Murphy now references McDonald's statement that she found DNA from an unknown contributor on two items in Stafford's bedroom. McDonald clarified that Murphy's DNA excluded him from being a contributor to the DNA on these items. However, Murphy's argument amounts to a reweighing of the evidence, which we cannot do. Nevertheless, in light of the overwhelming evidence, the absence of any physical evidence placing Murphy at the crime scene does not indicate that Murphy did not murder Stafford beyond a reasonable doubt. We affirm the trial court.

III. Use of Luminol

Next, Murphy contends that the trial court abused its discretion in admitting photographic evidence showing areas in Stafford's residence and car that had been treated with luminol. When the State requested the trial court to admit these photographs, Murphy objected

on the basis that insufficient foundation for the, on the use of luminol. I question the, the science behind luminol. The conclusion that the State wants the trier of fact, the [c]ourt, to draw from [the State's exhibits] is, in fact, that the chemical luminescence is, in fact, blood, when luminol doesn't really test blood. It tests iron, which could come from multiple different sources, and so their-their conclusion that they want to draw is that somehow there was blood in this area, when that's not really what luminol tests.

(Tr. pp. 994-95). In his appellate brief, Murphy now challenges that “[t]here was never a proper foundation set as to the effect of using luminol to enhance pictures. There was also an insufficient foundation as to qualify Officer Frazier as an expert witness on the liquid.” (Appellant's Br. p. 24).

Thus, whereas Murphy formulated a *Daubert*-type challenge before the trial court regarding the science underlying the use of luminol, on appeal he contests the effect of using luminol and the qualifications of the State's expert witness. A party may not present one ground for objection at trial and assert a different one on appeal. [Farris v. State, 753 N.E.2d 641, 646 \(Ind.2001\)](#). Thus, Murphy waived the issue for our review.

Nevertheless, this change in objection aside, we would still conclude that Murphy waived this issue. Murphy's foundational argument consists of a half-page in his appellate brief, without any standard of review, references to case law, or application of the law to the facts before us. As such, Murphy's argument does not comply with the requirements of [Indiana Appellate Rule 46\(A\)\(8\)](#).

III. Sentence

Lastly, Murphy contends that the trial court abused its discretion when it imposed a sixty-five year sentence for his murder conviction. A person who commits murder shall be imprisoned for a fixed term of between forty-five and sixty-five years, with the advisory sentence being fifty-five years. [I.C. § 35-50-2-3](#). Here, the trial court imposed the maximum sentence under the statute. In doing so, the trial court considered the following mitigating factors: (1) Murphy voluntarily returned to Muncie and turned himself in to the authorities; (2) Murphy has a close relationship with his family and he has their support; (3) Murphy appears to care for his children; and (4) imprisonment will result in hardship to his dependents. As aggravating factors, the trial court mentioned: (1) the nature and circumstances of the crime; (2) the degree

of care and planning in both the crime's commission and its cover-up; (3) Murphy attempted to cover-up the crime; (4) Murphy established a position of trust with Stafford; (5) prior rehabilitation attempts have failed; (6) victim impact; (7) Murphy has a history of substance abuse; and (8) Murphy has a criminal history that indicates an increasing propensity for more violent crime.

*8 As long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. [Anglemyer v. State, 868 N.E.2d 482, 490 \(Ind.2007\)](#), *aff'd 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.* One way in which a trial court may abuse its discretion is by failing to enter a sentencing statement at all. *Id.* Another example includes entering a sentencing statement that explains reasons for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. [Id. at 490-91](#).

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion by failing to properly weigh such factors. *Id. at 491*. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id.*

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id.* Although a trial court may have acted within its lawful discretion in determining a sentence, [Appellate Rule 7\(B\)](#) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id.* It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

A. Mitigator

Murphy's claim is mostly focused on a mitigating factor which he asserts should be given more weight. Specifically, Murphy argues that the trial court should have awarded the fact that he turned himself in to the authorities significant weight. However, whatever weight the trial court assigned to this specific mitigating factor, is no longer subject to our review. *See id.* at 491.

B. Nature and Character

With respect to Murphy's argument pursuant to [Ind. Appellate Rule 7\(B\)](#), we find Murphy's sentence of sixty-five years appropriate in light of the nature of the crime and his character. With respect to the nature of Stafford's murder, we note its overwhelming violent character. Stafford suffered more than twenty blunt force injuries caused with a heavy, blunt instrument and her blood was everywhere in her bedroom-all this for a thirty-dollar drug debt and two gaming systems.

*9 Turning to Murphy's character, his criminal history speaks for itself. Murphy's criminal history spans from 1982 to the present and includes juvenile true findings and adult convictions. During this time, he has been charged with 15 misdemeanors, and 13 felonies. As an adult, he has been convicted of battery, disorderly conduct, intimidation, and possession of cocaine. He was granted supervised probation on two occasions and had his probation revoked on one occasion. We affirm the trial court's imposition of a sixty-five year sentence.

CONCLUSION

Based on the foregoing, we conclude that (1) the trial court properly admitted Murphy's statement to the police into evidence; (2) the State presented sufficient evidence to prove beyond a reasonable doubt that Murphy had committed Stafford's murder; (3) Murphy waived his foundational argument with respect to



the admissibility of exhibits which showed the police officer's use of luminol in the victim's residence and car; and (4) Murphy's sentence is appropriate in light of his character and the nature of the crime.

Affirmed.

ROBB, C.J., and BROWN, J., concur.

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- [2010 WL 3969735](#) (Appellate Brief) Brief of Defendant-Appellant (Sep. 7, 2010)  [Original Image of this Document with Appendix \(PDF\)](#)
- [18-A-02-1003-CR-00299](#) (Docket) (Mar. 17, 2010)