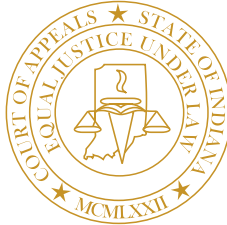


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

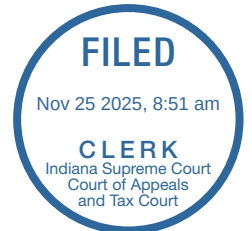


IN THE Court of Appeals of Indiana

Richard Cooley,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



November 25, 2025

Court of Appeals Case No.
24A-CR-2234

Appeal from the Porter Superior Court
The Honorable Jeffrey W. Clymer, Judge
Trial Court Cause No.
64D02-2302-MR-1474

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] Richard Cooley appeals his convictions of murder¹ and Level 6 felony pointing a firearm.² He presents three issues for our review, which we restate as:

1. Whether the trial court abused its discretion by admitting testimony about Cooley's prior suicide attempt and about rules of firearm safety;
2. Whether fundamental error arose from the admission of body camera footage containing an alleged custodial interrogation; and
3. Whether Cooley's convictions of murder and pointing a firearm violate Indiana's substantive double jeopardy protections.

We affirm Cooley's murder conviction, vacate his pointing a firearm conviction, and remand for the trial court to enter a new sentencing order.

Facts and Procedural History

[2] Cooley and D.C. met at work, married in 2016, and had a daughter together. By July or August of 2022, their marriage was deteriorating, and by February 2023, D.C. made plans to move to another residence where she would live with

¹ Ind. Code § 35-42-1-1.

² Ind. Code § 35-47-4-3(b).

their seven-year-old daughter. Cooley was sad, upset, and stressed about the marriage ending.

[3] On the morning of Monday, February 13, 2023, Cooley went to work as usual, but he left work around 10:00 a.m. to go home and confront D.C. about their relationship because “he wanted answers on to [sic] what was going to happen, if they were really going to separate or she was going to stay home.” (Tr. Vol. 4 at 163.) During their argument, when D.C. answered a call on her cell phone, Cooley went upstairs to his bedroom closet to retrieve a pistol. Cooley returned to the living room, pointed the 9 mm handgun at D.C.’s chest with his finger on the trigger and the safety off, and said: “you’re going to tell me the truth, that’s all there is to it.” (State’s Ex. 438 at 51:37-51:42.) Cooley thereafter pressed the gun against D.C.’s chest and pulled the trigger. After the shooting, Cooley swallowed some hydrocodone pills from a bottle on the kitchen counter and called 911 to report he had “accidentally shot” his wife during an “argument.” (State’s Ex. 1 at 00:30-00:34.) During that call, Cooley reported he “didn’t know it was loaded[.]” (*id.* at 01:39-40), and he claimed “it’s always unloaded[.]” (*Id.* at 3:16-19.) Cooley also called his adult daughter, Felicia, to tell her about the shooting and ask her to come to his house.

[4] Officer Hudson responded to the scene and found Cooley “visibly upset” in the driveway of the house. (Tr. Vol. 3 at 150.) Officer Hudson confirmed that Cooley did not have any weapons on him, and as Cooley said “oh my God” repeatedly, Officer Hudson asked him to step away from the house because Officer Hudson thought stepping away might help Cooley calm down. As they

walked down the driveway to the sidewalk, Cooley informed Officer Hudson that he had taken some pills because he did not “know what to do” and had wanted to hurt himself. (Ex. 2 at 2:18-2:20.) When Officer Hudson sent another officer to find the bottle of pills on the counter in the kitchen, Cooley covered his face with his hands and said, “I can’t live like this.” (*Id.* at 2:53-2:55.) At this point, Officer Hudson asked Cooley to sit in his police car with him. When in the car, Officer Hudson asked Cooley a number of questions about the pills he had taken. Officer Hudson then asked, “Do you recall what happened?” (State’s Ex. 2 at 5:47-5:49.) Cooley said they were arguing and “tussled over the gun” and “she reached for it.” (State’s Ex. 2 at 6:03-6:05, 6:14-6:16.)

- [5] Paramedics arrived at the scene and determined D.C. was dead. One of the police officers on the scene informed Paramedic Aaron Wirtz that Cooley “had made some suicidal comments and . . . had taken some medication after this [shooting] had happened.” (Tr. Vol. 3 at 164.) Paramedic Wirtz went outside, found Cooley in the back of Officer Hudson’s police cruiser, and began asking medical questions. Paramedic Wirtz noted Cooley was sweating and very anxious, and he asked Cooley what pills he might have taken. Cooley said that he did not know but that he had taken them from a large bottle in the kitchen. A police officer retrieved a bottle, which contained hydrocodone, and Cooley reported he had taken a “handful[.]” (*Id.* at 165.) Paramedic Wirtz asked Cooley why he had taken the pills and Cooley reported “that he wanted to die because of that [shooting].” (*Id.*) At this point, Wirtz asked about prior suicide

attempts, and Cooley stated he had thought about suicide in the past week. Paramedics took Cooley to the hospital, where he was monitored for six hours before being released into police custody.

[6] The police took Cooley back to the station for an interview with Detective Kurt Biggs. During the interview, Cooley repeatedly insisted his shooting of D.C. was accidental. He asserted he always held a gun with his finger on the trigger so he had a better grip on the gun and he denied ever accidentally shooting a gun before killing D.C. Cooley claimed he did not know how a round got into the chamber of the handgun because he keeps bullets in the magazine but not in the chamber. Cooley reported that, the prior week, he had taken twenty anxiety pills and retrieved the gun because he was going to kill himself, but he fell asleep from the drugs before shooting himself. Cooley acknowledged he may have chambered a bullet when he was suicidal.

[7] An autopsy on D.C. revealed the “gun was pushed up against the body when it was fired.” (Tr. Vol. 5 at 165.) The bullet struck her lung, heart, and aorta, which caused blood to pool rapidly in her chest cavity. The medical examiner testified D.C. likely would have lost consciousness within thirty seconds. Forensic testing determined Cooley’s gun was not susceptible to accidental firing, as it would not fire without the trigger being pulled and it would not fire if the safety was engaged.

[8] The State charged Cooley with murder and pointing a firearm. Prior to trial, the State filed notice under Evidence Rule 404(b) of its intent to introduce

evidence of Cooley’s suicide attempt one week prior to D.C.’s death and of Cooley’s training and experience with firearms. During trial, the court found evidence about Cooley’s prior suicide attempt had probative value that outweighed any prejudicial impact, and it admitted that evidence over defense objections. The trial court also permitted Detective Biggs to testify over defense objection about “golden rules of firearm safety.” (*Id.* at 214.) The jury found Cooley guilty of both counts. After a sentencing hearing at which the trial court found no aggravators and lack of criminal history as a mitigator, the trial court sentenced Cooley to concurrent terms of 55 years for murder and one year for pointing a firearm.

Discussion and Decision

1. Evidentiary Rulings

- [9] We afford trial courts broad discretion regarding the admission of evidence, and we usually review such decisions for an abuse of that discretion. *Wanke v. State*, 231 N.E.3d 878, 882 (Ind. Ct. App. 2024). “A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it, or if the court has misinterpreted the law.” *Scanland v. State*, 139 N.E.3d 237, 242 (Ind. Ct. App. 2019).

1.1 Evidence of Prior Suicide Attempt

- [10] Cooley first challenges the admission of evidence regarding his attempted suicide approximately one week before the shooting. Cooley argues this evidence was not relevant to whether he intentionally shot D.C. and that any

minimal relevance was substantially outweighed by the prejudicial impact of the evidence. The State argues the evidence was admissible under Evidence Rule 404(b) to establish Cooley's motive and to disprove his claim that the shooting was accidental.

[11] Evidence of other crimes, wrongs, or acts is inadmissible to prove character, but it may be admissible for other purposes, including proof of motive or lack of accident. Ind. Evidence Rule 404(b). When the State seeks to admit other-bad-acts evidence, the trial court must determine: (1) the evidence is relevant to a matter at issue other than propensity to commit the crime charged; and (2) the probative value is not substantially outweighed by prejudicial effect under Rule 403. *Attkisson v. State*, 190 N.E.3d 447, 451-52 (Ind. Ct. App. 2022), *trans. denied*.

[12] Evidence of motive is always relevant in proving a crime. *Davis v. State*, 186 N.E.3d 1203, 1212 (Ind. Ct. App. 2022). Cooley's suicide attempt was directly connected to his deteriorating relationship with D.C. Cooley told Detective Biggs that he contemplated suicide because he was "tore up" about his marriage. (State's Ex. 438 at 47:03-47:08.) This evidence showed Cooley's emotional state when D.C. confirmed their relationship was over, making it

more likely he intentionally killed her. *See Stephenson v. State*, 29 N.E.3d 111, 119-20 (Ind. 2015) (suicide attempt admissible as evidence relevant to motive).³

[13] The evidence also helped rebut Cooley’s accident defense. Cooley consistently claimed he did not know the gun was loaded. However, during his interview, Cooley acknowledged he may have chambered a round when he was suicidal the week before. (State’s Ex. 438 at 1:11:15-20.) Cooley’s handling of the gun one week prior with the intention to use it made it more likely Cooley knew or should have known the gun was loaded, which undermined his argument that the shooting was an accident. Thus, the evidence was relevant for two permissible purposes under Evidence Rule 404(b).

[14] As for whether the probative value outweighed the unfair prejudice under Evidence Rule 403, we first note that “all relevant evidence is necessarily prejudicial in a criminal prosecution.” *Bowman v. State*, 73 N.E.3d 731, 734 (Ind. Ct. App. 2017), *trans. denied*. The question at issue is whether the evidence admission creates unfair prejudice because it prompts the jury to determine the defendant’s guilt or innocence on an improper basis or illegitimate means. *Id.*

³ Cooley attempts to distinguish *Stephenson*, contending that case involved a suicide attempt after the charged crimes, not before. However, the timing difference does not impact the relevance analysis. In both cases, the suicide attempt evidence was probative of the defendant’s motive – in *Stephenson*, it corroborated the defendant’s distress about his finances, which motivated his robbery and murder, and here it corroborated Cooley’s emotional distress over his failing marriage, which motivated his shooting of D.C.

[15] Herein, the trial court found the evidence had probative value because it went to “the state of Mr. Cooley’s mind given the toxic relationship that existed a week before.” (Tr. Vol. 5 at 228.) The trial court also determined “the probative value actually outweighs the prejudicial” impact. (*Id.* at 230.) We agree that the evidence was highly probative of both Cooley’s motive and his knowledge that the gun might be loaded. Moreover, any unfair prejudicial impact jurors might have experienced if they were opposed to suicide generally was mitigated by the fact that Cooley himself used evidence of his emotional distress – including his pill-taking after the shooting – to suggest he was so overcome with guilt that he “couldn’t live” with what he had done. (Tr. Vol. 6 at 93.) The trial court properly admitted this evidence.

1.2 “Golden Rules” of Firearm Safety

[16] Cooley contends the trial court erred in allowing Detective Biggs to testify about “golden rules” of firearm safety, which Detective Biggs described thus:

One being, never point a firearm at something you don’t intend to shoot or destroy. Another one, keep your finger off the trigger until you’re ready to fire. And another one is treat every weapon as if it’s loaded. And the fourth one is be aware and manipulate if that weapon has as[sic] safety -- be aware of its condition when handling a firearm.

(Tr. Vol. 5 at 214.) Cooley maintains this evidence was not relevant because the State did not establish that Cooley knew these rules and, therefore, the rules could not be probative of his intent when D.C. was shot. He further contends

that any limited relevance was substantially outweighed by the risk of unfair prejudice and confusing the jury.

[17] When the trial court admitted the evidence, it did so based on the State's explanation that it was "relevant to just show the level of expertise and experience he has in conducting the interview in this case." (*Id.*) To the extent the jury may have used the golden rules for more than context for Detective Biggs's interview questions, we cannot say Cooley was prejudiced in light of the abundant evidence in the record about Cooley's knowledge and handling of firearms on occasions other than when he shot D.C. *See Pelissier v. State*, 122 N.E.3d 983, 988 (Ind. Ct. App. 2019) ("The erroneous admission of evidence may also be harmless if that evidence is cumulative of other evidence admitted."), *trans. denied*.

[18] Cooley himself reported during his interview with Detective Biggs that he was knowledgeable and experienced with firearms. (State's Ex. 238 at 52:40.) Cooley served in the Army and had experience with multiple military weapons. (Tr. Vol. IV at 241.) Cooley's daughter testified that he taught her basic gun safety when she was young, including telling her not to put her finger by the trigger and not to point a gun at anyone. (*Id.* at 167-68.) James Podgorny – husband of D.C.'s best friend – testified that he had seen Cooley handle guns on three occasions and Cooley had "Never" put his finger on the trigger of the guns. (*Id.* at 240.) On each occasion, Cooley "would engage the safety, make sure there's not one in the [chamber] to show me that it was safety [sic] and I would double-check it as well out of force of habit, and he never handed me a

loaded gun.” (*Id.*) Cooley also informed James that he always kept a bullet in the chamber of his gun because “anybody that believes in home defense says you keep one in the chamber for home defense in case someone breaks in your house.” (*Id.*) That testimony about Cooley – all of which demonstrates Cooley’s behavior on other occasions abided by the “golden rules” of firearm safety – makes the testimony of Detective Biggs merely cumulative of other properly admitted evidence. The admission of Detective Biggs’s explanation of the “golden rules” was therefore harmless, even if erroneous. *See Pelissier*, 122 N.E.3d at 988 (holding admission of videotaped statements was harmless because it was cumulative of other properly admitted evidence).

2. Custodial Interrogation

[19] Cooley argues the trial court erred by admitting Officer Hudson’s body camera footage, which was labeled as State’s Exhibit 2, because it contained a custodial interrogation that occurred without Cooley receiving Miranda warnings.⁴ The State notes Cooley did not object to Exhibit 2 when it was offered at trial, and the State argues Cooley therefore must establish fundamental error⁵ to demonstrate reversible error. (Appellee’s Br. at 32-33.) Our review of the

⁴ Pursuant to *Miranda v. Arizona*, a defendant in custody must be informed that he has a right to remain silent, that anything he says can be used against him, that he has a right to an attorney, and that the court will appoint an attorney for him if he cannot afford one. 384 U.S. 436, 483 (1966).

⁵ “An error is fundamental if it ‘made a fair trial impossible’ or if it clearly and blatantly violated basic principles of due process resulting in ‘undeniable and substantial potential for harm.’” *Batchelor v. State*, 119 N.E.3d 550, 559 (Ind. 2019) (quoting *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018)).

record, however, leads us to conclude Cooley invited the error and cannot now challenge it.

[20] In 2019, Justice Massa explained the difference between waived errors and invited errors. *Batchelor v. State*, 119 N.E.3d 550, 556-559 (Ind. 2019). Waiver occurs when a party fails to object to an action taken by the trial court or opposing party. *Id.* at 556. Invited errors, on the other hand, require more than “passive lack of objection[.]” *Id.* at 558. Instead, they must arise from “counsel’s strategic maneuvering” during trial. *Id.* at 557. The party alleged to have invited an error must have performed “affirmative actions as part of a deliberate, ‘well-informed’ trial strategy.” *Id.* at 558. With this legal distinction in mind, we turn to the facts in this case.

[21] During trial, when the State was ready to offer State’s Exhibit 2, Cooley’s counsel informed the trial court that the footage from Officer Hudson’s body camera was being admitted pursuant to a “agreement” between the parties, (Tr. Vol. 3 at 152), and the trial court then allowed the body camera footage to “be published pursuant to the agreement.” (*Id.* at 153.) During closing argument, Cooley’s counsel played State’s Exhibit 2 for the jury in support of his argument that the shooting was accidental:

He immediately called 9-1-1 afterwards in a frantic state. We just heard a clip of it. He then calls [his adult daughter]. You saw her [testify]. As she was reliving that phone call; “I’ve never heard my dad sound like that. I’ve never heard my dad in all of my years cry like that. He was frantic. He was distraught.”

We have the body camera from Officer Hudson.

(State's Exhibit No. 2 played in open court.)

. . . Police arrive, he's still distraught. Took pills because he couldn't live with himself of what he just did. He was fully cooperative with police. Cooperative with them there, cooperative with them at the hospital, waived his right to an attorney and sat down with Detective Biggs for over three hours, waived his right to an attorney and consented to the search of his phone. All of that is corroborative of what he said to the police[.]

(Tr. Vol. 6 at 92-93.)

[22] Cooley did not simply fail to object to the admission of State's Exhibit 2 containing the body camera footage of Officer Hudson's discussion with Cooley. Instead, Cooley told the trial court that the parties had agreed to the admission of the video into evidence, he played the video again for the jury during closing arguments, and he leaned on the footage in that video to support the overarching theme of his argument, which was that Cooley's distress following the shooting demonstrated the shooting was accidental. We cannot construe this as other than affirmative action taken as part of a deliberate trial strategy to demonstrate Cooley's innocence and therefore decline to address his argument. *See Batchelor*, 119 N.E.3d at 556 ("invited error typically forecloses appellate review altogether").

3. Double Jeopardy

- [23] Cooley argues his convictions of murder and pointing a firearm violate substantive double jeopardy protections. The State agrees. We review double jeopardy claims de novo. *A.W. v. State*, 229 N.E.3d 1060, 1064 (Ind. 2024).
- [24] Under the first step of our double jeopardy test, we determine whether the statutes defining either crime “clearly permits multiple punishment, either expressly or by unmistakable implication[.]” *Wadle v. State*, 151 N.E.3d 227, 248 (Ind. 2020). Neither the murder statute nor the pointing a firearm statute clearly permit multiple punishment, *see* Ind. Code §§ 35-42-1-1 & 35-47-4-3, so we move to step two.
- [25] Under the second step, we determine whether the lower-level crime is included in the other crime under the included offense definitions in Indiana Code section 35-31.5-2-168. *A.W.*, 229 N.E.3d at 1067. To complete this step, we first analyze the statutory language and then we analyze the language in the charging information. *Id.* If neither offense is included in the other, there is no double jeopardy violation and the analysis ends. *Id.*
- [26] Inherent inclusion occurs if one offense is an attempt to commit the other offense, *id.*, if one “‘may be established by proof of the same material elements or less than all the material elements defining the [other] crime charged’ or if ‘the only feature distinguishing the two offenses is that a lesser culpability is required to establish the commission of the lesser offense.’” *Wadle*, 151 N.E.3d at 251 n.30 (quoting *Young v. State*, 30 N.E.3d 719, 724 (Ind. 2015)). Here,

pointing a handgun is not inherently included in murder because murder requires a “killing” while the pointing a handgun offense requires “pointing a firearm.”

[27] Next under the second step, we turn to whether the offenses are factually included in one another as charged – in other words, we consider whether “the charging instrument alleges that the means used to commit the crime charged include all of the elements of the alleged lesser included offense.” *Wadle*, 151 N.E.3d at 251 n.30 (quoting *Young*, 30 N.E.3d at 724). As we undertake this analysis, we consider only the facts presented in the charging information, *A.W.*, 229 N.E.3d at 1067, and we construe any ambiguity in the facts in favor of the defendant. *Id.* at 1069. Herein, the State’s charging information provided no facts to distinguish the act of pointing a firearm from the act that resulted in D.C.’s death, and we therefore move to the third step of the analysis.

[28] Under the third step, we consider the evidence and arguments at trial to determine whether the State distinguished the two crimes from one another. *A.W.*, 229 N.E.3d at 1071. Herein, the State did not distinguish Cooley’s act of pointing the gun at D.C.’s chest from his act of firing the handgun, which resulted in her death. Thus, convicting Cooley of both crimes results constitutes impermissible double jeopardy. When a double jeopardy violation occurs, we eliminate that violation by vacating the conviction for the lesser offense. *O’Connor v. State*, 234 N.E.3d 242, 247 (Ind. Ct. App. 2024). We therefore vacate Cooley’s conviction of Level 6 felony pointing a firearm and

remand for the trial court to enter a corrected sentencing order. *See id.*
(remanding for new sentencing order).

Conclusion

[29] The trial court did not abuse its discretion in its evidentiary rulings, and Cooley is precluded from challenging the admission of Officer Hudson's body camera footage. However, Cooley's convictions of murder and pointing a firearm violate substantive double jeopardy principles, and we must remand for entry of a new sentencing order. We accordingly affirm Cooley's conviction of murder, vacate his conviction of pointing a firearm, and remand for the trial court to enter a new final order.

[30] Affirmed in part, vacated in part, and remanded.

Mathias, J., and Bradford, J., concur.

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