

STATEMENT OF THE CASE

Barbara Earle¹ appeals her conviction and sentence for murder.²

We affirm.

ISSUES

1. Whether the trial court abused its discretion in denying Barbara's motion for mistrial.
2. Whether the trial court abused its discretion in admitting evidence.
3. Whether trial court abused its discretion in sentencing Barbara.

FACTS

Prior to marrying Barbara in December of 1985, Wallace William Earle ("Bill") had been married several times. Two of those marriages had been to Patricia Fitzgerald, with whom he had a son, Wallace William ("Billy"). Bill had another son, Jonathan, from a different marriage. He also had two daughters, Judith and Felicia, with a previous wife. Barbara had a son, David Jenkins, from a prior relationship. During their marriage, Bill and Barbara often fought, usually over matters concerning David.

In June of 2009, Bill and Barbara lived at 5328 South County Road 925 East, Oakland City, in Gibson County. The property included three separate residences. Bill and Barbara lived in one house (the "Earle residence"). Jonathan lived in a nearby house with his wife, Joyce. David owned a trailer on the property but did not live there.

¹ Because the defendant, the victim, and several witnesses share a surname, we will refer to these persons by their first names when necessary to avoid confusion.

² Ind. Code § 35-50-2-3.

The morning of Friday, June 5, 2009, Jonathan and Joyce rented a car and drove to Louisville, Kentucky to pick up Joyce's son, Mikey Carr. They arrived in Louisville at approximately 8:00 a.m. After picking up Mikey, they intended to stop at the Earle residence "to see if [Bill] was there and so he could see Mikey." (Tr. 705). They then planned to drive to Petersburg and drop off Joyce at the family business, Parkview Sales.

During the drive back to Indiana, Joyce received several text messages. Joyce told Jonathan that the text messages were from Barbara and read them aloud to Jonathan as she received them from Barbara.

Joyce informed Jonathan that one of the texts stated "to slow down and take [their] time." (Tr. 709). A later text message stated for them "[n]ot to go home." (Tr. 709). Shortly thereafter, another text from Barbara read Joyce "[n]ot to go to Petersburg." (Tr. 711). Approximately forty-five minutes later, Joyce read another text message. This message instructed them "[n]ot to respond or to answer the phone—or calls from [Bill]'s phone." (Tr. 712).

Concerned, Jonathan and Joyce drove to Petersburg. When they got to the office, they found Barbara and Patricia there. Jonathan "didn't understand because it was unusual for [Patricia] to be there at the office." (Tr. 715). "[N]othing," however, "seemed out of the ordinary other than Pat[ricia] being there at the office." (Tr. 759). Jonathan, who was feeling sick, tried to get into the bathroom, but it was occupied by Barbara. Jonathan saw Barbara "[v]ery briefly" when she came out of the bathroom but did not speak with her. (Tr. 714). Jonathan, Joyce, and Mikey then left the office.

In the meantime, Barbara and Patricia had eaten lunch at the office at approximately 1:45 p.m. After Jonathan, Joyce, and Mikey left the office, Barbara wet down her hair. She informed Patricia that she did so because she had a migraine. At some point before 2:30 p.m., Barbara told Patricia that she had to go to the Earle residence to change her clothes because “she had an accident[.]” (Tr. 1362).

When Barbara returned to the office, her hair was still wet, and she had not changed her clothes. Barbara told Patricia that Bill had been playing on the computer when she arrived home. Barbara then made a telephone call. Barbara and Patricia drank some beer and discussed life insurance. At some point during the conversation, Barbara became upset and began to cry. She then told Patricia that she was upset because “she’s been trying to get ahold [sic] of Bill on the phone, and he’s not responding back to her calls.” (Tr. 1381).

After leaving the office, Jonathan, Joyce and Mikey ran some errands before driving home. On their way home, Joyce received a text message from Barbara but did not immediately relay its contents to Jonathan.

Jonathan, Joyce, and Mikey arrived home at approximately 5:00 p.m. As Jonathan and Mikey unloaded their purchases from the vehicle, Joyce walked to the Earle residence “[t]o check on [Bill].” (Tr. 722). Soon after, Joyce came “running out of the house[,] screaming and hollering” about Bill. (Tr. 722). Jonathan immediately went to the Earle residence. When he got to “where [Bill’s] office was,” he found Bill “laying

[sic] down in his own” blood. (Tr. 723). Bill appeared to be dead. Joyce and Jonathan separately telephoned 9-1-1 at approximately 5:09 p.m. Joyce also telephoned Barbara.

When the first responding officers arrived at the scene, the Earle residence “appeared to be in order and tidy” (Tr. 1070). Officers found Bill’s body in the home office. He was “lying partially on his left side partially facedown near the computer desk.” (Tr. 1071). It appeared to officers that Bill had been sitting in front of the computer when he was shot; a game of solitaire remained open on the computer.

Although Bill’s face was bloody, officers did not observe any obvious wounds to his face or head. The officers observed a hole in the stomach area of Bill’s shirt and “some bleeding that appeared consistent with a gunshot wound” in that area. (Tr. 1072). They did not observe any other gunshot wounds.

Sergeant James Dotson, a crime scene investigator with the Indiana State Police, arrived at the Earle residence at 7:11 p.m. Sergeant Dotson found a Rossi .38 caliber model M-68 revolver in the top right desk drawer. (Tr. 393). When Sergeant Dotson removed the gun from its holster, he noticed that there were “five fired casings in the cylinder” (Tr. 393).

Records indicated that the Rossi found in the Earle residence belonged to Barbara. Bill also owned a second Rossi .38 caliber model M-68 revolver. He kept that revolver in a compartment in the driver’s side panel of his vehicle, which he always locked. He kept the “regular set [of keys to the vehicle] on him at all times, and the spare set was always in [a] lockbox,” located in the Earle residence. (Tr. 1340). The keys to the lockbox were

“on [Bill’s] set of keys and on [Barbara]’s set of keys.” (Tr. 1347). Despite an extensive search, officers never located the second handgun.

Indiana State Police Detective Loren Brooks conducted an initial interview with Barbara. She admitted that she had left the office in Petersburg and returned to the Earle residence at some point during the day because “she had a[n] incontinence problem and she had messed herself”; she therefore changed her underwear. (Tr. 1489). She also stated that Bill “was alive and well when she left to go back” to the office. (Tr. 1487).

Indiana State Police Detective William W. George also interviewed Barbara that evening. Detective George believed that Barbara seemed “tired,” and he “could tell she had been drinking a little bit.” (Tr. 662). Given Barbara’s state, Detective George arranged for an interview the next day. Before leaving, however, he asked Barbara for her cell phone. “[A]t that point she got very irritated and mad. She stood up and slammed the phone on the desk and broke it.” (Tr. 664).

Officers remained at the scene for several hours. At approximately 2:00 a.m. on June 6, 2009, State Police Trooper Edward Kaucher observed Barbara “storm off the porch” of Jonathan and Joyce’s residence. (Tr. 1131). She walked past Trooper Kaucher and got into her vehicle. As she sat in the vehicle, Patricia approached, “and they started talking.” (Tr. 1131). Initially, Trooper Kaucher “couldn’t understand what they were saying, but eventually their voices were starting to get louder and louder to the point it was almost a heated argument.” (Tr. 1131). He then heard Barbara state, “‘If I’m going down for murder, then I’m taking you with me,’ to [Patricia].” (Tr. 1131-32). The

following day, Barbara informed Detective George that she “had contacted a lawyer,” who “had advised her not to say anything.” (Tr. 665).

Jonathan, Joyce, Mikey, and Barbara stayed at a hotel that night. Jonathan became concerned because Barbara “kept saying she was going to be accused and the wife was always the first one to be accused” (Tr. 733).

The morning of June 6, 2009, Jonathan drove Barbara to Chandler, Indiana because Barbara “said that she had to meet David.” (Tr. 734). After they met, David and Barbara communicated by typing in messages to each other on Barbara’s cell phone, which Jonathan found “weird.” (Tr. 736). After passing the cell phone between themselves “two or three times,” Barbara asked to speak with David in private. (Tr. 735).

Later that day, Jonathan telephoned the Gibson County coroner, who informed Jonathan only that Bill had died from multiple gunshots. The coroner did not reveal the number of gunshot wounds; the wounds’ locations; or make and model of the gun used. When Jonathan told Barbara what the coroner had said, Barbara told Jonathan that one of the bullets “went into the shoulders, and . . . then one by the neck.” (Tr. 744).

At some point during the evening of June 6, 2009, Felicia and Barbara were discussing Bill’s death when Barbara said “that she would probably be arrested over this because they think she did it and that it was [Bill]’s gun that had killed him.” (Tr. 1246). Barbara informed Felicia that Bill’s gun had “five bullets and that the gun had been unloaded into [Bill].” (Tr. 1246). When Felicia told Barbara that she “had heard that

[Barbara] had did [sic] it,” Barbara responded, ““Well, fuck it. I killed him.”” (Tr. 1248). When Felicia inquired further, Barbara denied killing Bill.

On June 8, 2009, Joyce and several of Bill’s children, including Felicia, Billy and Judith, confronted Barbara regarding the murder. Barbara agreed to ““let [them] know what [she] supposedly did.”” (Tr. 1258).

According to Barbara, after she left the office, she “went home, unlocked [Bill]’s car, got the gun out of the compartment, went in the house, got undressed.” (Tr. 1258). She then walked into the home office and shot Bill in the back. “He turned and said, ‘Oh, fuck.’ He fell to the floor and started gurgling.” (Tr. 1258). Barbara then “unloaded the rest of the gun into him, took a shower. She got dressed, got a black bag to put the gun in, went down 550 headed . . . west, . . . threw the gun out on 550 and went back to the office.” (Tr. 1258-59). Barbara then “called David for David to go get the gun.” (Tr. 1261).

Cell phone records subsequently verified that a call was made from Barbara’s cell phone to David’s cell phone at 3:54 p.m. on June 5, 2009. David admitted that Barbara had telephoned him that day “and wanted him to come to Petersburg and maybe take care of a package,” but he denied doing so. (Tr. 1514).

Dr. E. Allen Griggs, a forensic pathologist, performed the autopsy on Bill. The autopsy revealed that Bill had been shot five times at close range with .38 caliber bullets; three of the gunshot wounds “were fatal or produced potentially fatal injuries.” (Tr. 560).

One of the bullets entered Bill's "right shoulder from above" before "pass[ing] through the right upper arm." (Tr. 593). The autopsy did not reveal any signs of a struggle.

Dr. Griggs opined that the blood found on Bill's face and under his head likely was due to "injury to the lung, coughing up blood." (Tr. 605). The blood coming up from the lungs would cause a person to "make a coughing, a rasping, a gurgling sound" (Tr. 606).

Dr. Griggs estimated the time of death to have been on June 5, 2009, at approximately 2:00 p.m., "plus or minus four" hours. (Tr. 613). Based on dispatch records and the 9-1-1 calls, however, Bill had been shot before 5:09 p.m.

A forensic scientist examined the revolver found in the desk drawer as well as the five bullets removed from Bill's body. He identified the five bullets as having been fired from the same firearm. Based on markings observed on the bullets, he determined that the bullets were fired from a Rossi handgun.

On June 9, 2009, the State charged Barbara with murder. The State filed an amended information on September 16, 2009.

In October of 2009, Joyce died in a car accident, before her deposition could be taken. On December 4, 2009, Barbara, by counsel, filed a motion in limine, seeking to exclude testimony regarding Joyce's out-of-court statements "concerning the events surrounding the allegations against [Barbara.]" (App. 51). The trial court held a hearing on Barbara's motion on December 16, 2009. On December 23, 2009, the State filed a motion to allow Joyce's statements to Jonathan regarding the text messages she received

from Barbara, with the exception of the last text message. The State argued that Joyce's statements fell under the hearsay exception for present sense impressions. As to any statements Joyce immediately made to Jonathan after receiving Barbara's text messages, the trial court denied Barbara's motion.

The trial court commenced a seven-day jury trial on January 11, 2009. Jonathan testified extensively regarding the events of June 5, 2009. Specifically, he testified as to the contents of several text messages Joyce received from Barbara. The State, however, admonished him to refrain from "talk[ing] about" the last text message Joyce received. (Tr. 721).

During cross-examination, counsel for Barbara asked Jonathan when he "first learn[ed] that someone thought that Barbara had" murdered Bill, to which Jonathan replied, "[a] day, date, or time I can't tell you, but I can tell you it was on a phone call." (Tr. 764). On redirect, Jonathan testified as follows:

Q Okay. [Barbara's counsel] asked you about learning about your dad's possible murder and your mom's involvement from a phone call. Who was this phone call from when you first learned that she might have been the murderer?

A That was from Joyce

A I was on the road.

. . . .

Q So you're saying sometime between Monday and coming back to the funeral Joyce called you and said, "Well, I think Barb murdered Bill"?

A Well, she had told me that Barb had confessed to her.

(Tr. 784-86). Barbara's counsel objected, and the trial court sustained the objection. Barbara's counsel did not seek an admonishment.

Following the conclusion of Jonathan's testimony, Barbara moved for a mistrial. Finding that "this so-called confession is also going to be subject to additional testimony from other witnesses" and "did not appear to be intentional to be an evidentiary harpoon," the trial court denied the motion. (Tr. 792).

The jury also heard testimony from Daniel Colbert, a forensic scientist with the Indiana State Police, specializing "in the area of firearm examinations and tool mark examinations." (Tr. 1167). Colbert testified that he analyzed both the firearm obtained from the desk drawer and the bullets extracted from Bill's body.

In examining the revolver, Colbert "test fire[d] the firearm, [and] recover[ed] bullets and cartridge cases from the firearm for test comparison purposes." (Tr. 1174). He testified that the test-fired revolver's barrel has "lands and grooves," which "leave lands and grooves impressions on the bullet projectile as it leaves the barrel." (Tr. 1179). According to Colbert, every bullet fired out of that revolver will have similar markings, referred to as "class characteristics, which are the characteristics that are predetermined prior to manufacture of that firearm." (Tr. 1180). In addition to class characteristics, firearms create "[i]ndividual characteristics," which "are random imperfections related to that firearm and that firearm alone." (Tr. 1181).

In examining the test-fired revolver found in the desk drawer and the bullets extracted from Bill's body, Colbert testified that he officially reported in his certificate of analysis that he "was unable to identify or exclude the . . . bullets as being fired from the firearm based on class characteristics of the projectiles that were found." (Tr. 1185).

Colbert then clarified his findings as follows:

We have protocols that we have to follow as far as our laboratory guidelines. If we cannot identify the bullet or the cartridge back to the particular firearm and it has the same class characteristics—the number of lands and grooves, the direction of twist, the actual width of the lands and grooves and things like that, the same caliber—we cannot exclude based on individual characteristics. We can identify [based on] an individual [characteristic], but we can't exclude on the individual [characteristics]. If you have the same class [characteristics], we have to call it similar because it's possible it could have been, not knowing the complete history of the firearm.

(Tr. 1186).

According to Colbert, the Indiana State Police's more conservative protocol did not allow him to exclude the revolver found in the desk drawer as the murder weapon in his "standardized" report. (Tr. 1188). He, however, testified that, in his opinion, "there was nothing to indicate [the bullets from the body] were fired from" the test-fired Rossi found in the desk drawer. (Tr. 1189). He based this opinion on individual characteristics observed on bullets test fired from the Rossi but not observed on the bullets removed from Bill's body.

Colbert also determined that all five bullets were fired from the same gun; specifically, a Rossi-model revolver. He based this determination on class characteristics observed on the bullets.

Following the seven-day trial, the jury found Barbara guilty as charged. The trial court held a sentencing hearing on February 18, 2010, after which it sentenced Barbara to fifty-five years.

Additional facts will be provided as necessary.

DECISION

1. Motion for Mistrial

Barbara asserts that the trial court abused its discretion when it denied her motion for a mistrial. Specifically, she asserts that the trial court should have granted a mistrial after Jonathan testified that Joyce had told him that Barbara had confessed to killing Bill.

“A mistrial is an extreme remedy warranted only when no other curative measure will rectify the situation.” *Harris v. State*, 824 N.E.2d 432, 439 (Ind. Ct. App. 2005). Whether to grant a mistrial is within the trial court’s discretion. *Id.* “To prevail on appeal from the denial of a motion for mistrial, the defendant must establish that the questioned information or event was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected.” *Id.* We determine the gravity of the peril by considering the misconduct’s probable persuasive effect on the jury’s decision. *Id.* “When a motion for mistrial has been denied, the defendant has the burden to demonstrate that he was placed in a position of grave peril to

which he should not have been subjected and that no other remedy can cure the perilous situation in which he was placed.” *Brooks v. State*, 934 N.E.2d 1234, 1243 (Ind. Ct. App. 2010).

“A timely and accurate admonishment is presumed to cure any error in the admission of evidence.” *Id.* at 1244. “[E]ven where a witness violates a motion in limine, a trial court may determine that a mistrial is not warranted and, instead, admonish the jury to disregard the improper testimony.” *Alvies v. State*, 795 N.E.2d 493, 507 (Ind. Ct. App. 2003).

Barbara did not request an admonishment. Thus, she has waived this issue. *See Stokes v. State*, 919 N.E.2d 1240, 1244 (Ind. Ct. App. 2010), *trans. denied*.

Waiver notwithstanding, Barbara has not demonstrated that she was placed in a position of grave peril as a result of Jonathan’s testimony. Again, the trial court has discretion in determining whether to grant a mistrial. *Harris*, 824 N.E.2d at 439. The trial court’s decision is “afforded great deference on appeal because the trial court is in the best position to gauge the surrounding circumstances of the event and its impact on the jury.” *Domangue v. State*, 654 N.E.2d 1, 3 (Ind. Ct. App. 1995).

Here, both Felicia and Judith testified that Barbara admitted to murdering Bill. Judith testified that she, Barbara, Joyce, Billy, and Felicia had convened at Jonathan and Joyce’s residence several days after the murder. Judith further testified that during this meeting, Barbara had said, “‘If you must—if you must know the way it supposedly fucking went down. I walked into the house and I stripped butt-ass naked and walked

through the house, and I shot him.” (Tr. 1436). Judith also testified that Barbara had “said that she emptied the weapon” (Tr. 1437).

Similarly, Felicia testified that Barbara admitted that “she had went [sic] home, unlocked [Bill]’s car, got the gun out of the compartment, went in the house, got undressed. She went into the computer room, and she shot [Bill]” in the back. (Tr. 1258). Barbara then admitted to “unload[ing] the rest of the gun into [Bill],” before taking a shower. (Tr. 1258).

Given this testimony implicating Barbara in the crime, we cannot say that Jonathan’s single statement in the midst of a seven-day trial had a probable persuasive effect on the jury’s decision. We therefore find no abuse of discretion in denying Barbara’s motion for a mistrial.

2. Admission of Evidence

Barbara contends that the trial court abused its discretion with respect to two evidentiary issues. She asserts that the trial court improperly admitted the opinion testimony of Colbert and autopsy photographs.

We note that the admission or exclusion of evidence is within the sound discretion of the trial court, and we will reverse the trial court’s determination only for an abuse of that discretion. An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the trial court. In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court’s ruling and any unrefuted evidence in the appellant’s favor. As a rule, errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party. In determining whether an evidentiary ruling affected a party’s substantial rights, we assess the probable impact of the evidence on the trier of fact.

Redding v. State, 844 N.E.2d 1067, 1069 (Ind. Ct. App. 2006) (citations omitted).

a. *Opinion testimony*

Barbara asserts that the trial court abused its discretion in admitting Colbert's testimony that "the bullets from the body did not come from the gun in the computer desk drawer" Barbara's Br. at 14. She maintains that the prejudicial effect of the testimony outweighed its probative value "by allowing the witness to opine as to his personal opinion" thereby "open[ing] the door for the jury to speculate about facts that were not in evidence." *Id.*

Indiana Evidence Rule 702(a) provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

"It is within the trial court's sound discretion to decide whether a person qualifies as an expert witness." *Hobson v. State*, 795 N.E.2d 1118, 1122 (Ind. Ct. App. 2003).

Here, Colbert testified that he has been employed by the Indiana State Police as a forensic scientist, specializing in firearms, since 1996. Since 1996, he has "gone through ongoing training every year" and is required to pass "yearly, quarterly proficiency tests every year" (Tr. 1168).

Colbert's training, education, and experience sufficiently qualified him as a firearms expert under Indiana Evidence Rule 702. Thus, his testimony was admissible "to understand the evidence or to determine a fact in issue"; namely, whether the test-

fired Rossi found in the desk drawer fired the bullets extracted from Bill's body. *See* Evid. R. 702(a).

Notwithstanding Colbert's qualifications, Barbara argues that the trial court improperly allowed Colbert's testimony because the testimony allowed the jury to speculate "that the murder weapon was hidden and that it somehow belonged to Barbara" Barbara's Br. at 15. She maintains that the probative value of such testimony was substantially outweighed by the danger of unfair prejudice under Indiana Evidence Rule 403, which provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice" We cannot agree.

The jury heard testimony that Bill and Barbara owned identical Rossi revolvers. The jury also heard testimony that several people knew that Bill kept his gun in his vehicle. The State presented evidence that the test-fired Rossi revolver discovered at the scene was registered to Barbara. The jury heard testimony that officers never found Bill's Rossi revolver after an extensive search for it. Furthermore, Colbert testified that the revolver registered to Barbara did not fire the bullets removed from Bill's body; however, the bullets were fired from another Rossi revolver.

Colbert's testimony merely eliminated Barbara's gun as the murder weapon. Barbara has not demonstrated how such testimony prejudiced her. We therefore find no abuse of discretion in allowing Colbert's testimony.

b. *Autopsy photographs*

Barbara argues that the trial court abused its discretion in admitting certain autopsy photographs. Specifically, she argues that the photographs depicting trajectory rods inserted into Bill's gunshot wounds were inadmissible as they depict the body in an altered or manipulated state.

"We review the admission of photographic evidence for an abuse of discretion." *Wheeler v. State*, 749 N.E.2d 1111, 1114 (Ind. 2001). Again, Indiana Evidence Rule 403 "prohibits the admission of photographic evidence if the probative value of the photograph is substantially outweighed by the danger of unfair prejudice." *Id.* "Photographs, even those gruesome in nature, are admissible if they act as interpretive aids for the jury and have strong probative value." *Corbett v. State*, 764 N.E.2d 622, 627 (Ind. 2002).

"Autopsy photos often present a unique problem because the pathologist has manipulated the corpse in some way during the autopsy. Autopsy photographs are generally inadmissible if they show the body in an altered condition." *Id.* There may be cases, however, "where some alteration of the body is allowed where necessary to demonstrate the testimony being given." *Id.* (quoting *Swingley v. State*, 739 N.E.2d 132, 134 (Ind. 2000)).

Here, Dr. Griggs testified that when performing autopsies on gunshot victims, he often inserts trajectory rods into bullet wounds to "see what [a bullet's] tract and trajectory is, the direction [it is] taking through the body and what organs and tissues and

what areas [it is] going through in the body.” (Tr. 579). The trial court admitted five photographs into evidence. These photographs showed Bill’s body with trajectory rods placed into his wounds.

Dr. Griggs then used the photographs to illustrate his testimony regarding how Bill may have been positioned when he was shot; the bullets’ paths as they entered and exited the body; and the injuries sustained by Bill due to the gunshot wounds. Notably, the photographs assisted in explaining how five bullets caused numerous gunshot wounds by illustrating where the bullets entered and exited the body.

Finally, the photographs depicted little blood, and none of the photographs were particularly gruesome in nature. Dr. Griggs also denied that he “deform[ed]” the wounds in any way by inserting the trajectory rods. (Tr. 636).

Given the demonstrative nature of the photographs; the extensive testimony explaining the use and purpose of the trajectory rods; and that the photographs were not particularly grisly, we cannot say that the probative evidentiary value of the photographs is substantially outweighed by the danger of unfair prejudice. Accordingly, we find no abuse of discretion in admitting the photographs.

3. Sentence

Barbara further argues that the trial court abused its discretion in sentencing her to the advisory sentence for murder. Specifically, she argues that the trial court failed to consider, or give adequate consideration to, her lack of criminal history.

A sentence that is within the statutory range is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). A trial court may abuse its discretion if the sentencing statement

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.

Id. at 490-91.

The record shows that the trial court “acknowledge[d]” Barbara’s lack of criminal history and considered it to be “certainly important[.]” (Sent. Tr. 55). Accordingly, we find no abuse of discretion regarding the finding of Barbara’s lack of criminal history to be a mitigating circumstance. As to the weight afforded to this mitigating circumstance, it is not subject to review. *Anglemyer*, 868 N.E.2d at 491 (Ind. 2007).

Affirmed.

NAJAM, J., and BAILEY, J., concur.