

Appellant/Defendant Victoria Graham appeals her conviction for Murder, a felony.¹ Specifically, Graham challenges the trial court's admission of a certain statement which was attributed to the deceased victim at trial. We conclude that the trial court erred in admitting the statement at issue pursuant to Indiana Evidence Rules 401 and 402, but that any potential harm suffered by Graham as a result of the admission of the statement was harmless in light of the overwhelming evidence of Graham's guilt. Thus, we affirm.

FACTS AND PROCEDURAL HISTORY

In October of 2008, Barbara Meadows was a sixty-two-year-old resident of Indianapolis. Meadows was the mother of two adult children, Graham and Edward Whitted. Meadows suffered from diabetes as well as other diabetes-related ailments, including poor vision. As a result of her poor vision, Meadows could no longer drive, and she required assistance for certain tasks, such as writing checks.

On Friday, October 17, 2008, Meadows asked her niece, Lisa Poulakis, to drive her to the bank because Meadows believed that someone had "gotten into" her bank account. Tr. p. 61. Poulakis told Meadows that she hoped it was not identity theft, and Meadows replied "Oh, I hope it's not daughter theft." Tr. p. 61. Meadows told Poulakis that Graham had earlier agreed to take her to the bank, but that Graham had later revoked her offer and was no longer available. Poulakis agreed to drive Meadows to the bank. Poulakis and Meadows arrived at the bank minutes after the bank closed for the weekend.

After leaving the bank, Poulakis drove Meadows to Mary Ward's home. Ward was

¹ Ind. Code § 35-42-1-1 (2008).

Poulakis's mother and Meadows's sister. While at Ward's home, Poulakis attempted to create an online bank account to help Meadows monitor her account activity online until Meadows could visit the bank on Monday morning. Poulakis discovered that an online account existed for Meadows's bank account. Meadows was surprised that an account existed because she did not own a computer, did not know how to use computers, and had not previously set up an online account. Poulakis and Meadows agreed to return to the bank on the following Monday morning, October 20, 2008.

Upon returning to Meadows's home, Poulakis and Meadows encountered Graham. Graham inquired as to whether Meadows had made it to the bank before it closed. Meadows informed Graham that she had not, but that she had planned to return to the bank on Monday morning. Meadows and Graham also engaged in a conversation about a hammer that was lying in Meadows's bathroom.

On Monday, October 20, 2008, Poulakis spoke with Meadows at approximately 7:40 a.m. when she called to inform Meadows that she was on her way to pick Meadows up to drive her to the bank. Poulakis arrived at Meadows's home at approximately 7:57 a.m. Upon arriving at Meadows's home, Poulakis saw Graham's vehicle in the driveway. Poulakis was aware that Graham did not live at Meadows's residence. Poulakis knocked on the front door, which was the only operable door to the home, but no one answered. Having become concerned when Meadows did not answer the door, Poulakis called Ward at approximately 8:00 a.m. because she knew that Ward had a key to Meadows's home. Poulakis continued to knock on the door as she waited for Ward to arrive but received no

answer. Poulakis did not see anyone enter or leave Meadows's home as she waited for Ward to arrive.

Ward arrived at Meadows's home at approximately 8:15 or 8:20 a.m. Ward attempted to unlock the front door, but she was unsuccessful. Poulakis stayed at the front door while Ward walked around the house banging on windows and calling out Meadows's and Graham's names. Ward received no response. When Ward approached Meadows's bedroom window, she heard movement. As Ward returned to the front of the house, Graham opened the front door, holding her three-year-old granddaughter. When Graham opened the door, she had blood on her hands, forehead, and clothing. It was later determined that this blood belonged to Meadows. Graham appeared to be calm and did not speak to either Poulakis or Ward.

Poulakis entered the home and found Meadows lying in a pool of blood on her bed with significant injuries to the left side of her head. Poulakis saw a bloody hammer on the floor near Meadows's body. Meadows did not appear to be breathing or conscious. Poulakis called 911 before trying to revive Meadows. Emergency personnel arrived within a few minutes, but they were unable to revive Meadows. Emergency personnel noted that the only individuals in the home upon their arrival were Meadows, Poulakis, Graham, and Graham's three-year-old granddaughter. Emergency personnel also noted that Meadows suffered blunt force trauma to the head as well as injuries to both sides of her neck. Meadows also suffered injuries to her hands and wrists. It was later determined that Meadows died from blunt force trauma to the head combined with asphyxia from ligature strangulation. Investigators

recovered a wooden-handed claw hammer, black power cord, and white extension cord from Meadows's bedroom. Each of these objects had traces of Meadows's blood on it. Investigators also determined that none of the windows had been disturbed and that the only way to gain entry into Meadows's home was through the front door which could only be unlocked from both sides with a key.

The State charged Graham with murder on or about October 21, 2008. Prior to the beginning of Graham's trial on September 14, 2009, Graham filed a motion in limine seeking to exclude certain evidence, including Meadows's statement regarding "daughter theft." Appellant's App. pp. 127-131. The trial court denied Graham's motion with respect to Meadows's statement. On September 15, 2009, the jury found Graham guilty of Meadows's murder. Graham was subsequently sentenced to sixty-three years executed in the Department of Correction. Graham now appeals.

DISCUSSION AND DECISION

On appeal, Graham challenges the trial court's admission of alleged hearsay evidence. The decision to admit or exclude evidence, including purported hearsay, is within a trial court's sound discretion and is afforded great deference on appeal. *Ballard v. State*, 877 N.E.2d 860, 861 (Ind. Ct. App. 2007). As such, we will not reverse it unless it represents an abuse of discretion that results in the denial of a fair trial. *Id.* at 862. 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 or where it misinterprets the law. *Id.*

Hearsay is an out-of-court statement offered in court to prove the truth of the matter

asserted. Ind. Evidence Rule 801(c). Hearsay is generally inadmissible under Indiana Evidence Rule 802. However, some out-of-court statements are either specifically excluded from the definition of hearsay or are considered exceptions to the general rule excluding hearsay evidence. *See* Ind. Evidence Rules 801(d), 803, 804.

Graham challenges the admissibility of a statement attributed to the deceased victim. The statement was admitted as part of Poulakis's trial testimony. As Poulakis was outlining the facts surrounding Meadows's murder, Poulakis testified that Meadows informed her that there might be a problem with Meadows's checking account. Poulakis told Meadows that she hoped it was not identity theft, and Meadows replied that she hoped it was not daughter theft. Tr. p. 61. At trial, Graham raised a continuing general hearsay objection to the admission of Meadows's statement. The State argued that Meadows's statement was not hearsay, and thus, should be admitted. The trial court determined that Meadows's statement that she hoped that she was not a victim of "daughter theft" was admissible as a statement of Meadows's then existing state of mind pursuant to Indiana Evidence Rule 803(3).

However, regardless of whether the statement was hearsay, the statement was clearly inadmissible on relevance grounds pursuant to Evidence Rules 401 and 402. A statement is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." Ind. Evidence Rule 401. Evidence that is not relevant is not admissible. Ind. Evidence Rule 402. At trial, Graham argued that Meadows's statement was not relevant to the crime for which she was being tried, *i.e.*, Meadows's murder. The State countered

Graham's argument by arguing that Meadows's statement was relevant to show that Graham had a motive for committing the murder. We are unable to see how Meadows's statement was relevant to prove motive when there is no evidence that Graham was aware that Meadows suspected her of theft or that Meadows had made this statement. Without any evidence linking Meadows's statement to Graham's motive, any attempt to connect the two must necessarily be based on mere conjecture. Thus, the trial court erred in admitting Meadows's statement in violation of Evidence Rules 401 and 402.

However, the trial court's erroneous admission of Meadows's statement does not require that Graham's conviction be reversed if the statement's "probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect a party's substantial rights." *Houser v. State*, 823 N.E.2d 693, 698 (Ind. 2005) (quoting *Bassett v. State*, 795 N.E.2d 1050, 1054 (Ind. 2003)).

Here, substantial independent evidence established that Graham was guilty of murdering Meadows. The evidence establishes that Meadows was murdered between 7:40 a.m. and 8:20 a.m. on October 20, 2008. Meadows suffered blunt force trauma to the head and injuries to both sides of her neck. Meadows also suffered injuries to both hands and wrists. Meadows died from blunt force trauma to the head combined with asphyxia from ligature strangulation. The evidence further establishes that the only individuals in Meadows's home at the time of her murder were Meadows, Graham, and Graham's three-year-old granddaughter, and there was no evidence that Graham's three-year-old granddaughter was capable of inflicting the injuries suffered by Meadows. In addition, there

was no evidence that any other individual could have entered or exited Meadows's home on the morning in question. Graham had a key to Meadows's home and had knowledge of and access to a hammer that was lying in Meadows's bathroom three days before the murder. It was later determined that Meadows's substantial head injuries resulted from being beaten with a hammer. In addition, Graham had Meadows's blood on her hands, forehead, and clothing when she opened the only operable door to the home for Poulakis immediately after the murder appeared to have occurred. Despite being covered in her mother's blood, Graham appeared to be calm when she opened the door. In light of this overwhelming evidence supporting the jury's determination that Graham was guilty of murdering Meadows, we are convinced that there is no substantial likelihood that the questioned statement contributed to the conviction. *See Mathis*, 859 N.E.2d at 1280. Thus, we conclude that any error in the trial court's admission of Meadows's statement was harmless.

The judgment of the trial court is affirmed.

RILEY, J., concurs in result.

MATHIAS, J., concurs.