ATTORNEY FOR APPELLANT

Riley L. Parr
Lebanon, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Justin F. Roebel
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Willie Mills, Sr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 10, 2022

Court of Appeals Case No. 22A-CR-591

Appeal from the Wayne Superior Court

The Honorable Charles K. Todd, Jr., Judge

Trial Court Cause No. 89D01-2005-F2-12

Bailey, Judge.

Case Summary

[1] Willie Mills, Sr. ("Mills") appeals his convictions,[1] following a jury trial, for burglary, as a Level 2 felony;[2] burglary, as a Level 3 felony;[3] armed robbery, as a Level 3 felony;[4] and battery by means of a deadly weapon, as a Level 5 felony.[5]

[2] We affirm.

Issues

[3] Mills raises the following three restated issues:

I. Whether the trial court committed fundamental error by infringing upon Mills's right to confront witnesses.

II. Whether the trial court committed error when it admitted into evidence the statement Mills voluntarily gave to law enforcement after he had been appointed legal counsel.

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[1] Mills also received an enhanced sentence based on his admission to being a habitual offender. While Mills does not specifically address the habitual offender enhancement, his admission to it was based in part on the convictions he now challenges on appeal.

[2] Ind. Code § 35-43-2-1(3)(A).

[3] I.C. § 35-43-2-1(2).

[4] I.C. § 35-42-5-1(a).

[5] I.C. § 35-42-2-1(c), (g).

III. Whether the State provided sufficient evidence to support Mills's convictions.

Facts and Procedural History

[4] On May 26, 2020, Jeffrey Scott Johnson ("Johnson") returned home from work and fell asleep on his couch. Johnson's front door was open, with the screen door shut. Johnson later awoke to two men standing over him and beating him with their fists. One of the men—Johnson did not know which—was also hitting Johnson with a hammer and "brass knuckles or maybe a glove." Tr. v. II at 205. Johnson later observed marks on his back, chest, and head and damage to his television, all consistent with being hit with a "claw hammer."[6] As a result of the attack, Johnson suffered injuries to his right eye, mouth, head, and torso.

[5] Johnson was "basically knocked out" and later regained consciousness to find "two males, one going through all [his] drawers and [his] house, dumping [his] drawers out on the floor and going through [his] stuff, and … [the other] one sitting right beside" him on the couch. *Id*. at 205, 206. Johnson later identified the man sitting next to him as Mills. At that time, Mills was "doing nothing," but Johnson recognized Mills as one of the men who had been hitting him earlier. *Id*. at 207. Johnson later identified the man gathering items and putting

[6] Johnson testified that, by "claw hammer," he meant "a regular hammer" with "a claw" on one end used to "pull a nail out." Tr. v. II at 204.

them in a pillowcase as Mills's son, Willie Mills, Jr. ("Junior"). Junior asked Johnson, "[W]here's the rest of your money at[?] If you don't give it to me, I'm going up to the truck and get my gun and I'm killing you." *Id.* at 209.

[6] Brandon Fillinger ("Fillinger"), one of Johnson's neighbors, approached Johnson's house to investigate. Fillinger went to the front door and asked if everything was all right. Johnson yelled, "[N]o, it's not," and Junior approached Fillinger and asked if he was Johnson's son. Tr. v. III at 3. When Fillinger replied, "No," Junior and Mills left the house. *Id.* at 4. Fillinger observed that Junior was carrying a pillowcase and had a hammer in his waistband. Fillinger also observed that Mills appeared intoxicated, and he heard Mills yell, "Black Mambo will be back" as he exited the house. *Id.* at 18.

[7] Fillinger called 9-1-1, reported that "a guy" had "been beaten," and provided a description of Mills and Junior and the vehicle in which they had left the scene. *Id.* at 8. Soon thereafter, law enforcement apprehended Mills and Junior at a nearby gas station. One officer observed that Mills had "what appeared to be blood on his leg, … his shin[,]" his shoes, and his clothing. *Id.* at 57. During a pat down of Junior, officers discovered a knife, a hammer sheath with no hammer in it, $463 in loose currency, and a wallet containing Johnson's identification card.

[8] The vehicle in which Mills and Junior had left Johnson's house was registered to Mills. During a subsequent search of that vehicle, officers discovered a weighted glove with metal knuckles, a hammer on which there appeared to be

blood, and a pillowcase containing Johnson's possessions. Later DNA testing showed that Johnson's blood was on Mills's shirt, Junior's necklace, the weighted glove, and the hammer. Junior's DNA was also found on the hammer and the weighted glove.

[9] The State charged Mills with burglary, armed robbery, and battery by means of a deadly weapon and sought a habitual offender enhancement. At his initial hearing, Mills was appointed a public defender. At the conclusion of that hearing, Mills told the court, "I would really [like to] talk to somebody." Tr. v. II at 10. The court responded, "[w]ell, I've appointed a lawyer for you" and then explained how Mills could contact the attorney. *Id*. Mills then asked, "Is there any way possible that I could talk to the prosecutor?[,]" and the court responded, "They won't talk to you because you're represented by counsel. They're not allowed to talk to you." *Id*. Mills then stated, "Well, I would just really like to get this all took [sic] care of because, you know, this ain't [sic] me, man." *Id*. The court again described ways in which Mills could speak to his attorney and then ended the hearing.

[10] Immediately following the initial hearing, Mills asked the officer who led him from the courtroom if he "could get [Mills] somebody that [he] could talk to," specifically, "any officers." Tr. v. III at 227-28. At that time, Mills's counsel had not yet filed an appearance. "[A] couple hours" later, Mills provided a recorded statement to officers after signing a waiver of his *Miranda* rights and being advised verbally that he had the right to an attorney and did not have to give a statement. *Id*. at 228. In his statement, Mills claimed that only Junior

went into Johnson's residence and that Mills later approached the screen door after hearing yelling inside and observed from outside that Junior was "beatin' on the dude" on the couch with "a stick or something." Tr. v. IV at 30.

[11] At trial, Mills raised no objection when the Court explained its COVID-19 mask policy, including a "Wayne County requirement that all visitors into the courthouse wear a mask." Tr. v. II at 133. At the beginning of the trial, the trial court explained to the jurors that all parties would be required to wear masks due to COVID-19. During trial, Mills was instructed to lower his mask for purposes of identification and was permitted to remove his mask when he testified.

[12] During its case-in-chief, the State did not present evidence of Mills's recorded statement to police. However, when Mills later testified in his own defense, he claimed that Junior and Johnson had been fighting in the doorway of Johnson's residence. Mills claimed he had intervened between the two men at the doorway and tried to stop the fight. Mills stated that he had been pushing on both men and they fell through the door and into the residence. Mills denied ever hitting Johnson and claimed that he did not "know when" Junior collected items from the house in the pillowcase. Tr. v. III at 210.

[13] Based on Mills's testimony, the State questioned Mills on cross-examination about an inconsistency between Mills's recorded statement and his trial testimony. Mills objected and requested that the recorded statement be suppressed on the grounds that counsel had already been appointed for Mills at

the time he gave the recorded statement and counsel was not present during that statement. The State argued the statement could at least be used for impeachment purposes. After an evidentiary hearing and further argument from Mills outside the presence of the jury, the trial court found the statement was admissible because Mills "reached out" to the police and voluntarily waived his right to counsel. Tr. v. III at 239. The State then played the statement for the jury and questioned Mills about the differences between that statement and his testimony.

[14] The jury was instructed that it could convict Mills as either a principle or an accomplice for each charge. The jury found Mills guilty as an accomplice as charged. Mills then admitted to being a habitual offender. The court sentenced Mills to incarceration for eighteen years on the Level 2 burglary felony, nine years on each of the Level 3 burglary and robbery felonies, and three years on the Level 5 battery felony, all to be served concurrently. The Court enhanced Mills's sentence by nine years based on his habitual offender status, for a twenty-seven-year total sentence with no time suspended. This appeal ensued.

Discussion and Decision

Indiana's Confrontation Clause

[15] Mills contends that the trial court's face mask policy violated his constitutional right to confront witnesses. However, Mills failed to raise any such objection in the trial court; therefore, he has waived that issue on review unless he can establish that the trial court committed fundamental error. *See Hughes v. State*,

153 N.E.3d 354, 360 (Ind. Ct. App. 2020), *trans. denied*. "Fundamental error is an extremely narrow exception to the waiver rule where the defendant faces the heavy burden of showing that the alleged errors are so prejudicial to the defendant's rights as to 'make a fair trial impossible.'" *Id*. (quoting *Benson v. State*, 762 N.E.2d 748, 756 (Ind. 2002)).

[16] Mills raises his constitutional right to confrontation not under the Sixth Amendment to the United States Constitution,[7] but under Article I, § 13 of the Indiana Constitution. The latter provision states, in relevant part, "[i]n all criminal prosecutions, the accused shall have the right … to meet the witnesses face to face[.]" Ind. Const. art. I, § 13. "[T]he purposes of the confrontation clauses of the federal and state constitutions are to [e]nsure reliability by means of the oath, to expose the witness to the probe of cross-examination, and to permit the trier of fact to weigh the demeanor of the witness." *Casada v. State*, 544 N.E.2d 189, 192 (Ind. Ct. App. 1989), *trans. denied*.

[17] "To a considerable degree, the federal right of confrontation and the state right to a face-to-face meeting are co-extensive." *Brady v. State*, 575 N.E.2d 981, 987 (Ind. 1991). However, given the specific "face to face" language of Indiana's confrontation clause, the right to a face-to-face meeting "has a special concreteness and is more detailed" in Indiana. *Id*. Nevertheless, the right to confrontation under the Indiana Constitution is not absolute and "must

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[7] The Sixth Amendments states, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him…" U.S. Const. amend. VI.

occasionally give way to considerations of public policy and the necessities of the case." *State v. Owings*, 622 N.E.2d 948, 951 (Ind. 1993); *see also Pierce v. State*, 29 N.E.3d 1258, 1268 (Ind. 2015) (noting the right of confrontation is "subject to reasonable limitations, which we trust our trial judges to impose").

[18] Mills maintains that his state constitutional right to confront witnesses was denied by the court's requirement that he wear a face mask during trial. That requirement was created by the Indiana Supreme Court's Order on Continued Emergency Actions, issued on November 10, 2020, in response to the national COVID-19 pandemic. The Supreme Court's Order stated, in pertinent part,

> **At a minimum, however, all trial courts should do the following until further direction is given by this Court:**
>
> * * *
>
> 2. Require all participants of in-person court proceedings to wear appropriate masks or face shields … throughout the proceedings except for witnesses, who may remove their masks for the limited purpose of providing a verbal response to questions, and other limited individual circumstances.
>
> * * *
>
> **Moreover, the Court ORDERS as follows:**
>
> 1. Courts shall comply with, and enforce, local and statewide public health orders as they relate to court facilities, staff, and proceedings. …

Order on Continued Emergency Action, http://www.in.gov/courts/files/order-other-2020-20S-CB-123o.pdf (emphasis in original).

[19] The trial court in this case explained to the parties and the jurors that, pursuant to the Indiana Supreme Court and a Wayne County requirement, "all visitors into the courthouse [must] wear a mask." Tr. v. II at 133. The court explained that the judge and attorneys would be permitted to remove their masks when they were socially distanced from others. The court further explained that there was plexiglass around the witness stand "because you really want to view a witness's full face" while they are testifying, implying testifying witnesses would not be wearing masks. *Id*. at 19. During the trial, the court instructed witnesses that they could remove their masks while testifying but were required to put the mask back on when they stepped down from the witness stand. The trial court instructed Mills to lower his face mask when witnesses were identifying him and while Mills was testifying. Thus, the purposes of the confrontation clause were fulfilled because Mills and the jurors were able to observe the demeanor of each witness who testified. *See Casada*, 544 N.E.2d at 192.

[20] Moreover, while there are no published Indiana opinions regarding the constitutionality of COVID face mask requirements in courts, other state and federal courts have addressed the issue and determined that such requirements do not violate the defendant's constitutional right to confront witnesses. *See, e.g.*, *State v. Daniels*, No. E2021-00561-CCA-R3-CD, 2022 WL 2348234, *4-6 (Tenn. Crim. App. June 29, 2022) (finding no violation of the federal or state

constitutional right to confront witnesses where the defendant was required to wear a mask during trial, but testifying witnesses were not); *United States v. Tagliaferro*, 531 F.Supp.3d 844 (S.D.N.Y. 2021) (same, regarding the federal constitutional right to confront witnesses).

[21] In fact, courts have found no confrontation clause violation when even the testifying witnesses were required to wear masks. *See, e.g.*, *People v. Lopez*, 290 Cal.Rptr.3d 383, 384 (Cal. Ct. App. 2022) (citing federal cases reaching the same holding). As the Ohio Court of Appeals recently observed,

> [t]he Confrontation Clause cannot be reasonably construed to afford the right to see a witness'[s] lips move or nose wrinkle any more than it could be understood to guarantee that jurors must observe a witness'[s] bare arms to determine whether he or she had "goosebumps" as the result of a uniquely probative question. Just as proper clothing will cover sweating or other potentially inadvertent physical reactions to effective questioning, masks will invariably cover a witness'[s] nose and mouth. This does not, however, prevent a jury from constructively assessing the credibility of the testimony a witness offers.

State v. Hadlock, No. 2020-A-0054, 2021 WL 4190747, *6 (Ohio Ct. App. Sept. 13, 2021). That reasoning equally applies to the requirement that Mills wear a mask at times other than when testifying or lowering his mask for identification purposes. That is, Mills has failed to show that requirement prevented the jury from constructively assessing his credibility "throughout [the] trial." Appellant's Br. at 15.

[22] Mills has failed to show that the face mask requirement denied him a fair trial and, thus, was fundamental error. Rather, the face mask requirement was a reasonable limitation on the right to confront witnesses, designed to further the public policy of ensuring the safety of everyone in the courtroom during the global COVID pandemic.

Admission of Mills's Statement to Law Enforcement

[23] Mills also challenges the court order permitting the State to play for the jury the statement Mills made to law enforcement. We review an admission of evidence for an abuse of discretion. *See Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013). We will "reverse only when [the] admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Id*.

[24] The State did not present evidence of Mills's prior statement in its case-in-chief; rather, it played the statement for the jury on cross-examination of Mills in order to impeach his testimony. At trial, Mills objected and moved to suppress the statement on the grounds that Mills gave the statement after the court had appointed counsel for him but without his counsel present. Mills did not specify a legal authority for that claim. On appeal, Mills asserts for the first time that the admission of that statement violated his right to counsel under Article I, § 13 of the Indiana Constitution, although he admits there is no case law supporting that assertion.

[25] To preserve an objection for appeal, "it is necessary at trial to state the objection *together with the specific ground or grounds therefore* at the time the evidence is first offered." *Helms v. State*, 926 N.E.2d 511, 514 (Ind. Ct. App. 2010) (emphasis added); *see also Grace v. State*, 731 N.E.2d 442, 444 (Ind. 2000) ("Grounds for objection must be specific and any grounds not raised in the trial court are not available on appeal."); *Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017) ("Any grounds for objections not raised at trial are not available on appeal, and a party may not add to or change his grounds in the reviewing court. *Treadway v. State*, 924 N.E.2d 621, 631 (Ind. 2010)."), *trans. denied*. Because Mills did not state any basis for his objection to the use of his prior statement to law enforcement—much less the novel state constitutional claim he raises on appeal—he has waived any such claim.

[26] Waiver notwithstanding, Mills's statements were admissible. "[I]t is well-established that[, under the federal constitution,] statements by a defendant are admissible for the purpose of impeaching the defendant's trial testimony, even if the statements were obtained in violation of *Miranda*." *Page v. State*, 689 N.E.2d 707, 710 (Ind. 1997). Use of a defendant's statements for impeachment is restricted "only when such statements are obtained under coercion or duress." *Gauvin v. State*, 878 N.E.2d 515, 523, (Ind. Ct. App. 2007) (citing *Page*, 689 N.E.2d at 710), *trans. denied*. Here, it is undisputed that Mills knowingly and voluntarily initiated the interview with law enforcement, even though he was aware of his right to counsel and the prior appointment of counsel for him. Therefore, his statements were not coerced. *See, id*. (citing *Scalissi v. State*, 759

N.E.2d 618, 621 (Ind. 2001)) (noting the critical inquiry to determine coercion is "whether the defendant's statements were induced by violence, threats, promises, or other improper influence"). And Mills cites no constitutional language, history, purpose, or case law supporting an assertion that, unlike the federal constitution, our state constitution would prohibit the use of voluntary statements for impeachment purposes.

[27] Article I, Section 13 of the Indiana Constitution did not prohibit the use of Mills's statement to impeach his trial testimony where Mills initiated and knowingly, freely, and voluntarily gave the statement to law enforcement after he was appointed legal counsel.

Sufficiency of the Evidence

[28] Mills challenges the sufficiency of the evidence to support his convictions.

> When reviewing the sufficiency of the evidence to support a conviction, "appellate courts must consider only the probative evidence and reasonable inferences supporting the [judgment]." *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005). It is not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995). "[E]vidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (citations omitted.)

Sallee v. State, 51 N.E.3d 130, 133 (Ind. 2016).

[29] To support Mills's convictions of Burglary, as a Level 2 felony, the State was required to prove that (1) Mills, as an accomplice or principal, (2) broke and entered (3) a building or structure (4) that was a dwelling of another person, (5) with intent to commit a felony or theft in it (6) while armed with a deadly weapon. I.C. § 35-43-2-1(3)(A); I.C. § 35-41-2-4. To support Mills's convictions of Burglary, as a Level 3 felony, the State was required to prove that (1) Mills, as an accomplice or principal, (2) broke and entered (3) a building or structure (4) that was a dwelling of another person, (5) with intent to commit a felony or theft in it (6) results in bodily injury to any person other than himself. I.C. § 35-43-2-1(2); I.C. § 35-41-2-4. To support Mills's conviction of armed robbery, as a Level 3 felony, the State was required to prove that (1) Mills, as an accomplice or principal, (2) knowingly or intentionally (3) took property from another person (4) by using or threatening the use of force on any person, (5) while armed with a deadly weapon or resulting in bodily injury to any person other than himself. I.C. § 35-42-5-1(a)(1); I.C. § 35-41-2-4. And, to support Mills's conviction of battery by means of a deadly weapon, as a Level 5 felony, the State was required to prove that (1) Mills, as an accomplice or principal, (2) knowingly or intentionally (3) touched another person (4) in a rude, insolent, or angry manner (5) with use of a deadly weapon, or (6) that resulted in serious bodily injury to another person. I.C. § 35-42-2-1(c), (g); I.C. § 35-41-2-4.

[30] Regarding accomplice Indiana Code Section 35-41-2-4 provides:

> A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person:

(1) has not been prosecuted for the offense;

(2) has not been convicted of the offense; or

(3) has been acquitted of the offense.

This statute does not establish liability as a separate crime, but merely as a separate basis of liability for the crime charged. *E.g.*, *Taylor v. State*, 840 N.E.2d 324, 333 (Ind. 2006).

[31] In determining whether there is sufficient evidence to support an accomplice relationship, we consider: (1) presence at the scene of the crime;[8] (2) companionship with another at the scene of the crime; (3) failure to oppose commission of the crime; and (4) course of conduct before, during, and after occurrence of the crime. *E.g.*, *Bethel v. State*, 110 N.E.3d 444, 450 (Ind. Ct. App. 2018), *trans. denied*. It is not necessary that the evidence show the alleged accomplice personally participated in the commission of each element of the offense. *Castillo v. State*, 974 N.E.2d 458, 466 (Ind. 2012). Rather, "[a] jury may infer complicity and participation in a crime 'from defendant's failure to oppose the crime, companionship with the one engaged therein, and a course of conduct before, during, and after the offense which tends to show complicity.'" *Hauk v. State*, 729 N.E.2d 994, 998 (Ind. 2000) (quoting *Shane v. State*, 716

[8] "Mere presence at the scene of a crime is insufficient to make one an accomplice," but we consider presence at the scene in conjunction with the other factors. *Griffin v. State*, 16 N.E.3d 997, 1004 (Ind. Ct. App. 2014).

N.E.2d 391, 396 (Ind. 1999)); *see also Vasquez v. State*, 762 N.E.2d 92, 95 (Ind. 2001) ("An accomplice can be held criminally liable for everything done by his confederates which was a probable and natural consequence of their common plan." (quotation and citation omitted)). Thus, in *Wood v. State*, for example, there was sufficient evidence to support the defendant's conviction for robbery, as an accomplice, where the defendant: admitted she knew the principal intended to rob someone; drove the principal to the scene of the crime; parked the vehicle and waited for the principal while the principal committed the crime; and then drove away with the principal until stopped by police. 963 N.E.2d 632, 636 (Ind. Ct. App. 2012).

[32] Here, through witness testimony and DNA evidence, the State presented sufficient evidence that: Mills drove Junior to Johnson's house in Mills's vehicle; Mills and Junior entered Johnson's house while Johnson was sleeping; Mills and Junior beat Johnson; Mills was aware that Junior had a hammer and was beating Johnson with it; Mills watched over Johnson while Junior put Johnson's property into a pillowcase; Mills saw Junior leave Johnson's house with the pillowcase; Mills drove Junior away from the scene of the attack; and Johnson suffered severe injuries as a result of the attack.

[33] The State presented sufficient evidence to support Mills's convictions as an accomplice.

Conclusion

[34] Mills failed to show that the face mask requirement imposed by the trial court denied him his right to confront witnesses and was fundamental error. Mills waived his Article I, Section 13 right to counsel claim by failing to raise it in the trial court. Waiver notwithstanding, Mills failed to show any reason why, unlike the federal constitution, the state constitution should be interpreted to disallow admission of a statement that a defendant knowingly and voluntarily gave to law enforcement after appointment of counsel. And there is sufficient evidence to support Mills's convictions as an accomplice.

[35] Affirmed.

Riley, J., and Vaidik, J., concur.