MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Gerardo Ruiz-Aviles,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 21, 2022

Court of Appeals Cause No. 22A-CR-855

Appeal from the Wabash Circuit Court

The Honorable Robert R. McCallen, Judge

Trial Court Cause No.

85C01-1903-MR-333

Bradford, Chief Judge.

Case Summary

[1] In March of 2019, after linking the shooting death of Alexis Serrano to Gerardo Ruiz-Aviles and Jose Guadalupe Maya-Sandoval, the State charged Ruiz-Aviles with murder. In February of 2021, a jury found Ruiz-Aviles guilty as charged. The trial court sentenced Ruiz-Aviles to sixty years of incarceration. Ruiz-Aviles appeals, raising two issues. First, Ruiz-Aviles contends that the State presented insufficient evidence to support his conviction. Second, he alleges that his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] In June of 2018, Ruiz-Aviles and Serrano were friends and co-workers. Ruiz-Aviles was also friends with Maya-Sandoval, who was involved in the drug business. Maya-Sandoval, in turn, was friends with Alberto Ortega. Ortega owned a home with property in rural Wabash County near the Mississinewa Reservoir.

[3] On June 2, 2018, around noon, Maya-Sandoval visited Ortega's property with a friend. Maya-Sandoval explained that two friends from Indianapolis, one of whom owed him money, would be joining them that afternoon. Maya-Sandoval and his friend shot targets with firearms while they waited. A few hours later, Ruiz-Aviles picked up Serrano from Serrano's home to take him to Ortega's property. Sometime during that drive, Maya-Sandoval called Ruiz-

Aviles to check his location and asked if he had a gun. One hour after that phone call, Ruiz-Aviles arrived at Ortega's property with Serrano.

[4] When Ruiz-Aviles and Serrano arrived at Ortega's property, Serrano gave Maya-Sandoval money. Then Maya-Sandoval, Ruiz-Aviles, and Serrano walked together towards the woods. Shortly thereafter, Ortega heard two gunshots. Twenty minutes later, Maya-Sandoval returned and told his friend it was time to leave. At that point, Ortega noticed that Ruiz-Aviles was already driving away from Ortega's property. Serrano did not return home.

[5] The following day, Maya-Sandoval called Ortega to ask if the police had been to his property. Maya-Sandoval told Ortega that "nothing happened. You don't know nothing, [and] don't say nothing." Tr. Vol. III p. 72. The next day, Maya-Sandoval returned to Ortega's property, walked in the same direction in which he and Ruiz-Aviles had taken Serrano, and returned carrying a bag with a pistol and two mobile telephones. In the meantime, Ruiz-Aviles told Serrano's family that he had left Serrano at the intersection of Post Road and Pendleton Pike in Indianapolis. Ruiz-Aviles told the authorities the same after Serrano's family filed a missing person's report. Nearly four weeks later, a group of fishermen were hiking a trail bordering Ortega's property when they discovered Serrano's body. Serrano had been shot twice in the head.

[6] Eventually, the Indiana State Police connected Serrano's death to Ruiz-Aviles and Maya-Sandoval. During their investigation, authorities discovered that the telephones Ruiz-Aviles and Maya-Sandoval had been using both stopped

working on June 2, 2018—the day they took Serrano into the woods. Ruiz-Aviles informed the investigators that his telephone had stopped working that day. However, he consented to a search of his new telephone, which had retained some of his prior telephone's data, including location information, through his Google account. The location data revealed that Ruiz-Aviles had never dropped off Serrano as he claimed; instead, the data confirmed that he had taken Serrano to Ortega's property on June 2, 2018.

[7] Subsequently, the State charged Ruiz-Aviles with murder, a felony under Indiana Code section 35-42-1-1(1) and a firearm enhancement under Indiana Code section 35-50-2-11. A jury found Ruiz-Aviles guilty of murder, and the State dismissed the firearm enhancement. The trial court sentenced Ruiz-Aviles to term of sixty years of incarceration.

Discussion and Decision

I. Insufficient Evidence

[8] In challenging the sufficiency of the evidence, Ruiz-Aviles argues that the State failed to show that he knowingly and intentionally killed, or aided in killing, Serrano. Our standard of review for insufficient-evidence claims is well-established:

> When reviewing a claim that the evidence introduced at trial was insufficient to support a conviction, we consider only the probative evidence and reasonable inferences that support the trial court's finding of guilt. *Drane v. State,* 867 N.E.2d 144 (Ind.

> 2007). We likewise consider conflicting evidence in the light most favorable to the trial court's finding. *Wright v. State,* 828 N.E.2d 904 (Ind. 2005). It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. *Drane,* 867 N.E.2d at 147. Instead, we will affirm the conviction unless no reasonable trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jenkins v. State,* 726 N.E.2d 268, 270 (Ind. 2000).

Gray v. State, 957 N.E.2d 171, 174 (Ind. 2011). Put simply, we will find that the evidence sufficiently supports a conviction "if an inference may reasonably be drawn from it to support the verdict." *Drane*, 867 N.E.2d at 147 (citing *Pickens v. State*, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001)). In doing so, we will neither reweigh the evidence nor judge the witnesses' credibility. *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018).

[9] To convict Ruiz-Aviles of murder, the State needed to prove that he knowingly or intentionally killed Serrano, or that he knowingly or intentionally aided in killing Serrano. Ind. Code § 35-42-1-1. An accomplice does not need to participate in each element of the crime to be convicted of it. *Alvies v. State*, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009). When determining whether there was sufficient evidence to support accomplice liability, we consider: (1) presence at the crime scene; (2) companionship with another at the scene; (3) failure to oppose commission of the crime; and (4) conduct before, during, and after the crime. *Green v. State*, 937 N.E.2d 923, 929 (Ind. Ct. App. 2010), *trans. denied*.

[10] In contesting his conviction, Ruiz-Aviles argues that there is no physical evidence linking him to Serrano's death. However, a "conviction for murder

may be sustained on circumstantial evidence alone if that circumstantial evidence supports a reasonable inference of guilt." *Fry v. State*, 25 N.E.3d 237, 248 (Ind. Ct. App. 2015) (citing *Lacey v. State*, 755 N.E.2d 576, 578 (Ind. 2001)), *trans. denied*. The record includes circumstantial evidence sufficient to support Ruiz-Aviles's conviction.

[11] Here, the evidence shows that Ruiz-Aviles and Maya-Sandoval, while armed, walked Serrano into the woods. Shortly thereafter, Ortega "heard gunshots [and] … didn't think they were [target shooting]." Tr. Vol. III p. 68. About twenty minutes later, only Ruiz-Aviles and Maya-Sandoval returned to Ortega's house. Not only was Ruiz-Aviles present at the crime scene, but he also brought Serrano to where the crime would occur. Thus, the jury could reasonably infer that Ruiz-Aviles acted in concert with Maya-Sandoval to bring about Serrano's death. *See Echols v. State*, 722 N.E.2d 805, 808 (Ind. 2000) (holding that evidence that the defendant drove the shooter to the crime scene for the purpose of firing fatal shots was sufficient to support a murder conviction).

[12] Furthermore, Ruiz-Aviles and Maya-Sandoval communicated frequently leading up to Serrano's death, including that day when Maya-Sandoval asked Ruiz-Aviles if he had a gun. In fact, the two shared fifty-one telephone calls between May 17 and June 2, 2018. Curiously, calls between these two particular telephone numbers ceased on June 2, 2018, and Ruiz-Aviles and Maya-Sandoval each activated new telephones the next day. Such "[a]ttempts

to conceal evidence may be considered by the jury as revealing consciousness of guilt." *Stone v. State*, 555 N.E.2d 475, 477 (Ind. 1990).

[13] The evidence also shows that Ruiz-Aviles lied about his involvement with Serrano that day. We have previously concluded that when a defendant is the last person to see a victim, and subsequently lies about the victim's whereabouts, that supports a finding of guilt. *Townsend v. State*, 934 N.E.2d 118, 127 (Ind. Ct. App. 2010), *trans. denied*. Ruiz-Aviles told Serrano's family and Indiana State Police investigators that he left Serrano at Pendleton Pike and Post Road after picking him up and then remained in Indianapolis. However, Ruiz-Aviles's telephone's GPS information from June 2, 2018, conflicts with that statement. The GPS information shows that Ruiz-Aviles picked up Serrano from his house, traveled to Ortega's property, and spent one hour there. He "never got off of I465 at Pendleton Pike and Post Road." Appellant's App. Vol. II p. 75.

[14] In a final attempt to undermine the State's evidence, Ruiz-Aviles's argues that the State's dismissal of the firearm enhancement suggests "the State couldn't prove that Ruiz-Aviles killed [Serrano] using a firearm because their evidence failed to demonstrate that Ruiz-Aviles either killed, or aided in the killing of, [Serrano]." Appellant's Br. p. 18. However, the State's dismissal of the firearm enhancement because it "just didn't feel that the statute necessarily applied to the facts" does not mean that the evidence supporting Ruiz-Aviles's conviction is insufficient. Tr. Vol. IV p. 170. In short, the jury had sufficient evidence from which it could conclude that Ruiz-Aviles shot Serrano or, at minimum,

aided Maya-Sandoval in shooting Serrano. We cannot say that "no reasonable trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jenkins,* 726 N.E.2d at 270.

II. Inappropriate Sentence

[15] Ruiz-Aviles alleges that his sentence is inappropriate under Indiana Rule of Appellate Procedure 7(B). To revise a sentence under Rule 7(B), an appellant must "demonstrate that his sentence is inappropriate in light of *both* the nature of the offenses and his character." *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (emphasis in original). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008).

[16] Here, Ruiz-Aviles argues that the nature of his crime is not the "worst of the worst." Appellant's Br. p. 21. Ruiz-Aviles asserts that "his role in the crime is much less egregious than Maya-Sandoval['s] who is believed to have taken [Serrano]'s life." Appellant's Br. p. 21. The evidence, however, is unclear as to who fired the fatal shots. In *Jack v. State*, we held that "[a]lthough Flynn pulled the trigger, the murder would not have occurred without Jack's planning … [and] set-up of the victim[.]" 870 N.E.2d 444, 449 (Ind. Ct. App. 2007), *trans. denied*. Thus, even if the evidence clearly showed that Maya-Sandoval pulled the trigger, Ruiz-Aviles's role is significant. At minimum, "he facilitated the murder by delivering [Serrano] to Maya-Sandoval and walking him into the woods where he was fatally shot." Appellee's Br. p. 15.

[17] Further, we are not persuaded by Ruiz-Aviles's argument that his character warrants a reduction in his sentence. Ruiz-Aviles contends that "his character, albeit potentially perceived as bad, still does not make him 'the worst of the worst' and does not support" a sixty-year sentence. Appellant's Br. p. 23. Specifically, he argues that the trial court should have considered his employment at the time and the fact that the evidence points to Maya-Sandoval being the shooter as mitigating factors. However, Ruiz-Aviles is an illegal immigrant with a violent criminal history, including prior convictions for Class B felony criminal confinement while armed with a deadly weapon and Class C felony sexual battery. Given his criminal history, we cannot say that Ruiz-Aviles's character renders his sentence inappropriate.

[18] The judgment of the trial court is affirmed.

Bailey, J., and Pyle, J., concur.