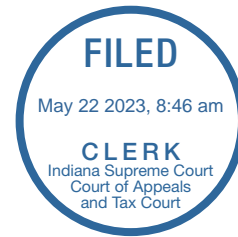


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Alleick-Zander Ryan Coleman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 22, 2023

Court of Appeals Case No.
22A-CR-2132

Appeal from the Hamilton
Superior Court

The Honorable Michael A. Casati,
Judge

Trial Court Cause No.
29D01-2101-F2-148

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

- [1] Alleick-Zander Coleman appeals his convictions and sentence for Level 2 felony pharmacy robbery resulting in bodily injury and Class A misdemeanor resisting law enforcement. Specifically, he challenges the constitutionality of the investigatory stop that led to his arrest, the admissibility of a PowerPoint presentation used by the State as a demonstrative exhibit, the sufficiency of the evidence to support his convictions, and the appropriateness of his 20-year sentence for pharmacy robbery. We affirm on all grounds.

Facts

- [2] On January 6, 2021, at approximately 1:15 a.m., three partially masked individuals entered a CVS pharmacy in Carmel, Indiana, and proceeded to rob it of prescription drugs and money. During the robbery, the perpetrators held two CVS employees at gunpoint and struck one of them twice in the head. Meanwhile, a third employee hid upstairs, called 911, and reported that one of the perpetrators was a Black male.
- [3] Officer Anna Flaming of the Carmel Police Department (CPD) was one of several police officers to respond to the 911 call. As she arrived at the CVS, a police dispatcher relayed that one of the suspects was a Black male and the robbery was in progress. Officer Flaming entered the pharmacy and began searching for the suspects. However, they soon fled through the building's back door and were observed running north. Upon learning the suspects' direction,

Officer Flaming returned to her police vehicle and drove north to the next cross street, hoping to intercept them.

[4] Almost immediately, Officer Flaming saw a red passenger car exiting the parking lot of several closed businesses directly north of the CVS. As the car turned onto the roadway, Officer Flaming shined her police vehicle's spotlight on the car and observed that the driver was a Black male. Officer Flaming decided to conduct an investigatory stop, but when she pulled behind the car and activated her police vehicle's emergency lights and siren, the car sped off.

[5] During the ensuing police chase, the red car collided with a fire hydrant, sustaining damage that eventually rendered the car inoperable. When the car finally came to a stop, five people exited and fled on foot. Four of them were apprehended and later identified as Coleman, Derrick Johnson, Leandrew Beasley, and Antoine Jones. The fifth person was not apprehended.

[6] Coleman, Johnson, Beasley, and Jones were photographed shortly after their arrest, thereby documenting the clothes each wore on the night of the robbery ("clothing photos"). From the red car, police recovered two handguns and a CVS bag filled with bottles of prescription drugs. Police also recovered a pair of dark work gloves from both Johnson and Beasley.

[7] As part of CPD's investigation into the robbery, Detective Chad Amos obtained surveillance video from a Circle K convenience store near the CVS ("Circle K video"). This video revealed that three partially masked, Black males entered the Circle K approximately 10 minutes before the CVS robbery and that one of

them purchased three pairs of brown work gloves. Detective Amos also obtained surveillance video from the CVS (“CVS video”), which, among other things, showed the three robbers wearing dark-colored gloves. Additionally, Detective Amos obtained video from the dashboard camera of Officer Flaming’s police vehicle (“dash cam video”), which showed the driver of the red car exit the car and flee on foot at the end of the police chase.

[8] Based on the readily identifiable clothing Coleman, Johnson, Beasley, and Jones wore on the night of the robbery, Detective Amos was able to identify them as individuals shown on the Circle K, CVS, and dash cam videos. According to Detective Amos, Coleman, Beasley, and Jones were the three individuals who visited the Circle K prior to the robbery; Coleman was the one who purchased the brown gloves; Johnson, Beasley, and an unidentified third person were the individuals who robbed the CVS; and Coleman was the one who drove the red car after the robbery.

[9] The State charged Coleman with Level 2 felony pharmacy robbery resulting in bodily injury, Class A misdemeanor resisting law enforcement, and five other robbery- and theft-related offenses. Prior to trial, Coleman filed an unsuccessful motion to suppress all evidence derived from Officer Flaming’s investigatory stop, which Coleman argued was unconstitutional. Coleman also lodged a continuing objection on the same basis at trial. Additionally, Coleman unsuccessfully objected to the State’s use of a PowerPoint presentation to aid the jury in understanding Detective Amos’s testimony as to how he identified

Coleman, Johnson, Beasley, and Jones on the Circle K, CVS, and dash cam videos.

[10] A jury found Coleman guilty as charged. The trial court merged the robbery and theft counts and entered judgments of conviction on one count each of Level 2 felony pharmacy robbery resulting in bodily injury and Class A misdemeanor resisting law enforcement. For the robbery conviction, the trial court sentenced Coleman to a term of 20 years in the Indiana Department of Correction (DOC), with 13 years imprisonment, 2 years direct commitment to community corrections, and 5 years suspended with 4 years probation. For the resisting law enforcement conviction, the trial court sentenced Coleman to 1 year imprisonment, to be served concurrently with his robbery sentence.

Discussion and Decision

[11] On appeal, Coleman challenges: (1) the constitutionality of Officer Flaming's investigatory stop; (2) the admissibility of the State's PowerPoint presentation; (3) the sufficiency of the evidence to support his convictions; and (4) the appropriateness of his 20-year robbery sentence.

I. Constitutionality of Stop

[12] Coleman first argues that the trial court erred in admitting all evidence derived from Officer Flaming's investigatory stop because, according to Coleman, the stop violated his rights under the Fourth Amendment of the United States Constitution and Article 1, Section 11, of the Indiana Constitution. The

constitutionality of a search or seizure is a question of law that we review de novo. *Hardin v. State*, 148 N.E.3d 932, 939 (Ind. 2020).

A. Fourth Amendment

[13] “The Fourth Amendment provides protection against unreasonable searches and seizures by generally prohibiting such acts without a warrant supported by probable cause.” *Robinson v. State*, 5 N.E.3d 362, 367 (Ind. 2014) (citing U.S. Const. amend IV). “As a deterrent mechanism, evidence obtained in violation of this rule is generally not admissible in a prosecution against the victim of the unlawful search or seizure absent evidence of a recognized exception.” *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013) (*Mapp v. Ohio*, 367 U.S. 643, 649-55 (1961)). A brief investigatory stop, often called a *Terry* stop, is one such exception. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968). A police officer may “stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” *Id.* (quoting *United States v. Sokolow*, 490 U.S. 1, 7, (1989)).

[14] In evaluating the validity of an investigatory stop, “the totality of the circumstances—the whole picture—must be taken into account.” *Clark*, 994 N.E.2d at 264 (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). “Reasonable suspicion requires more than mere hunches or unparticularized suspicions.” *Finger v. State*, 799 N.E.2d 528, 534 (Ind. 2003) (citing *Terry*, 392 U.S. at 27). The officer must have “a particularized and objective basis for

suspecting the particular person stopped of criminal activity.” *Clark*, 994 N.E.2d at 264 (quoting *Cortez*, 449 U.S. at 417-18 (1981)). “In assessing the whole picture, we examine the facts as known to the officer at the moment of the stop.” *Id.*

[15] At the time Officer Flaming initiated the investigatory stop of Coleman, she knew that a group of Black males had just robbed a nearby CVS and had fled on foot, running north. Tr. Vol. II, p. 223. Officer Flaming had driven to an area directly north of the CVS, where she reasonably thought she might intercept the robbers. And at that location, less than two minutes after the robbers fled the CVS, Officer Flaming observed a Black male driving a vehicle that was exiting a parking lot of several closed businesses. It was around 1:30 a.m., and there were no other vehicles or pedestrians on the street. From these articulable facts, Officer Flaming could reasonably suspect that the driver of the vehicle was involved in the CVS robbery. Accordingly, the investigatory stop did not violate Coleman’s Fourth Amendment rights.

B. Article 1, Section 11

[16] Article 1, Section 11 of the Indiana Constitution also provides protection against unreasonable searches and seizures. Although it contains language nearly identical to the Fourth Amendment, Indiana courts interpret Article 1, Section 11 independently. *Hardin*, 148 N.E.3d at 942. “When police conduct is challenged as violating this section, the burden is on the State to show that the search was reasonable under the totality of the circumstances.” *State v.*

Washington, 898 N.E.2d 1200, 1206 (Ind. 2008). “The totality of the circumstances requires consideration of both the degree of intrusion into the subject’s ordinary activities and the basis upon which the officer selected the subject of the search or seizure.” *Litchfield v. State*, 824 N.E.2d 356, 360 (Ind. 2005).

[17] In *Litchfield*, our Supreme Court summarized the totality of the circumstances analysis as follows:

[A]lthough we recognize there may well be other relevant considerations under the circumstances, we have explained reasonableness of a search or seizure as turning on a balance of 1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizens’ ordinary activities, and 3) the extent of law enforcement needs.

Id. at 361.

[18] Based on the facts highlighted in our Fourth Amendment analysis above, the degree of Officer Flaming’s suspicion was moderate to high in this case. *See supra* ¶ 15. The extent of law enforcement needs was also high. Officer Flaming was pursuing suspects who, less than two minutes earlier, had fled a pharmacy after robbing it and holding two of its employees at gunpoint. *See Masterson v. State*, 843 N.E.2d 1001, 1007-08 (Ind. Ct. App. 2006) (finding law enforcement needs favored reasonableness of vehicle search where police were pursuing potentially armed and dangerous suspect who had just fled after robbing two women at knifepoint). The degree of intrusion—an attempted investigatory

stop—was also minimal. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014) (describing intrusion of a vehicle stop for investigative purposes as “relatively minor”).

[19] Balancing these factors, we find Officer Flaming’s investigatory stop was reasonable under Article 1, Section 11. The trial court therefore did not err in admitting evidence derived from the stop.

II. Admissibility of PowerPoint Presentation

[20] Coleman next argues that the trial court erred in allowing the State to use the PowerPoint presentation during Detective Amos’s testimony. We review a trial court’s evidentiary rulings for an abuse of discretion. *McHenry v. State*, 820 N.E.2d 124, 128 (Ind. 2005). An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court or when the court misinterprets the law. *Carpenter v. State*, 786 N.E.2d 696, 703 (Ind. 2003).

[21] The state offered the PowerPoint presentation as a demonstrative exhibit to aid the jury in understanding Detective Amos’s testimony as to how he identified Coleman, Johnson, Beasley, and Jones on the Circle K, CVS, and dash cam videos based on the readily identifiable clothing each suspect wore on the night of the robbery. Notably, Coleman was wearing a black mask, gray hoodie, light colored jeans with a rhinestone stripe down the side, and multi-colored shoes. Tr. Vol. III, p. 77; Exhs. pp. 64-85.

[22] Each slide in the PowerPoint presentation consisted of one of the clothing photos or a still image from the Circle K, CVS, or dash cam videos. The individuals depicted in the slides were labeled to reflect Detective Amos’s conclusions as to their respective identities and the articles of clothing on which his conclusions were based. For example:



Exh. 67, Slide 2 (clothing photo)



Exh. 67, Slide 11 (Circle K video)

[23] Coleman does not contest the admissibility of Detective Amos’s testimony identifying Coleman, Johnson, Beasley, and Jones among the three videos. *See generally Gibson v. State*, 709 N.E.2d 11, 15 (Ind. Ct. App. 1999) (holding police officer’s testimony identifying defendant in surveillance video was admissible under Ind. Evidence Rule 701). Coleman also does not contest the admissibility of the PowerPoint presentation as a demonstrative exhibit. *See generally Wise v. State*, 719 N.E.2d 1192, 1196 (Ind. 1999) (“To be admissible, [demonstrative] evidence need only be sufficiently explanatory or illustrative of relevant testimony to be of potential help to the trier of fact.”).

- [24] Rather, Coleman claims the labels on the PowerPoint presentation constitute inadmissible opinion testimony under Indiana Evidence Rule 704. That rule generally provides that “[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable just because it embraces an ultimate issue.” Ind. Evidence Rule 704(a). However, “[w]itnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions.” Ind. Evidence Rule 704(b).
- [25] To the extent labels on a demonstrative exhibit can be considered testimony, Coleman does not specify the Rule 704(b) opinion testimony category to which the PowerPoint presentation labels allegedly belong. We therefore find his argument waived. *See Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) (“Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument).
- [26] We note, however, that Detective Davis created the PowerPoint presentation and testified consistently with its labels identifying Coleman, Johnson, Beasley, and Jones in the Circle K, CVS, and dash cam videos. Moreover, our Supreme Court has indicated a police officer’s testimony identifying a defendant on surveillance video “does not embrace the ultimate question of guilt” under Rule 704(b). *Williams v. State*, 43 N.E.3d 578, 582 (Ind. 2015).

III. Sufficiency of the Evidence

[27] Coleman also argues that the State presented insufficient evidence to convict him of pharmacy robbery resulting in bodily injury and resisting law enforcement. When reviewing the sufficiency of the evidence to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence. *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

A. Pharmacy Robbery

[28] Indiana's pharmacy robbery statute provides: "A person who knowingly or intentionally takes a controlled substance from a pharmacist acting in an official capacity or from a pharmacy by: (1) using or threatening the use of force on any person; or (2) putting any person in fear; commits robbery, a Level 4 felony." Ind. Code § 35-42-5-1(b). "However, the offense is a Level 2 felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than the defendant." *Id.*

[29] Coleman does not dispute that Beasley, Johnson, and an unidentified third person robbed the CVS pharmacy or that a CVS employee was struck twice in the head during the robbery. The question is whether Coleman is liable as an accomplice. Indiana's accomplice-liability statute provides: "A person who

knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense” Ind. Code § 35-41-2-4. Under this statute, “there is no distinction between the criminal responsibility of a principal and that of an accomplice.” *McQueen v. State*, 711 N.E.2d 503, 506 (Ind. 1999).

[30] Coleman claims the State failed to prove he aided, induced, or caused Beasley, Johnson, and the unidentified third person to commit pharmacy robbery resulting in bodily injury. “There is no bright line rule in determining accomplice liability; the particular facts and circumstances of each case determine whether a person was an accomplice.” *Vitek v. State*, 750 N.E.2d 346, 353 (Ind. 2001). Common considerations include a defendant’s: “(1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose commission of crime; and (4) course of conduct before, during, and after occurrence of crime.” *Bruno v. State*, 774 N.E.2d 880, 882 (Ind. 2002).

[31] Looking only at the evidence supporting Coleman’s conviction, the Circle K video shows that, 10 minutes before the CVS robbery, Coleman purchased three pairs of brown work gloves from a nearby convenience store. The CVS video shows that Johnson, Beasley, and an unidentified third person all wore similar dark gloves during the robbery. And police recovered a pair of dark work gloves from both Johnson and Beasley at the time of their arrest. From this evidence, a jury could reasonably infer that Coleman aided Beasley, Johnson, and the unidentified third person in robbing the CVS by purchasing

gloves for them to wear during the robbery, presumably to avoid leaving fingerprints.

[32] Additionally, the record shows that Beasley and Johnson fled to Coleman's car after the robbery and that Coleman drove them, along with Jones and an unidentified fifth person, away from the scene. Moreover, when Officer Flaming attempted to conduct an investigatory stop of Coleman's car, Coleman led police on a brief car chase before stopping his car and fleeing on foot. Among other factors, Coleman's course of conduct before and after the pharmacy robbery supports the jury's finding that he was an accomplice to the crime. We therefore find sufficient evidence to support Coleman's conviction.

B. Resisting Law Enforcement

[33] In pertinent part, Indiana's resisting law enforcement statute provides: "A person who knowingly or intentionally . . . flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop; commits resisting law enforcement, a Class A misdemeanor . . ." Ind. Code § 35-44.1-3-1(a)(3). "To avoid conflict with the Fourth Amendment," our Supreme Court has construed this statute "to require that a law enforcement officer's order to stop be based on reasonable suspicion or probable cause." *Gaddie v. State*, 10 N.E.3d 1249, 1256 (Ind. 2014).

[34] Coleman does not dispute that he knowingly and intentionally fled from Officer Flaming after she ordered him to stop his car by activating her police vehicle's

emergency lights and siren. Rather, Coleman claims that Officer Flaming lacked reasonable suspicion to order him to stop. As we have already determined that Officer Flaming had reasonable suspicion to stop Coleman for investigative purposes, we find sufficient evidence to support Coleman’s conviction for resisting law enforcement. *See supra* ¶ 15.

IV. Appropriateness of Sentence

[35] Finally, Coleman challenges his robbery sentence under Indiana Appellate Rule 7(B). That rule provides: “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). In reviewing the appropriateness of a sentence, our “principal role . . . is to attempt to leaven the outliers . . . not to achieve a perceived ‘correct’ sentence.” *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014) (internal citations and quotations omitted). Accordingly, we give “substantial deference” and “due consideration” to the trial court’s sentencing decision. *Id.*

[36] “[T]he advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218. Coleman was convicted of pharmacy robbery causing bodily injury, a Level 2 felony. The sentencing range for a Level 2 felony is 10 to 30 years imprisonment, with an advisory sentence of 17½ years. Ind. Code § 35-50-2-4.5. The trial court sentenced Coleman to an enhanced sentence of 20 years in the DOC, with 13 years

imprisonment, 2 years direct commitment to community corrections, and 5 years suspended with 4 years probation.

[37] As to the nature of the offense, Coleman contends his involvement in the pharmacy robbery—purchasing the gloves worn by the robbers and driving the getaway car—does not warrant an enhanced sentence. But in sentencing Coleman to 20 years in the DOC, the trial court only enhanced the 17½-year advisory sentence by 2½ years. The court also ordered Coleman to serve 2 years of his sentence in community corrections and suspended 5 years. Additionally, the court ordered that Coleman’s 1-year sentence for resisting law enforcement be served concurrent to his robbery sentence. Thus, the trial court awarded Coleman some grace by ordering him to serve only 13 years in prison for aiding others in the violent, armed robbery of a pharmacy and for leading police on a reckless car chase afterward.

[38] As to his character, Coleman highlights his young age as warranting a reduced sentence. Coleman was only 18 years old on the date of the robbery. But two years earlier, at age 16, Coleman was adjudicated a delinquent for acts that would have constituted Class A misdemeanor dangerous possession of a firearm if committed by an adult. At age 17, Coleman was waived to adult court and convicted of Level 5 felony dangerous possession of a firearm and Level 6 felony criminal recklessness committed with a deadly weapon. For these convictions, Coleman was sentenced to four years home detention, which he violated on the night of the CVS robbery. Also while in jail on this case, the jail’s disciplinary hearing board found Coleman guilty of battery, aggressiveness

toward staff, threatening another with bodily harm, intimidation, and lying—among other rule violations.

[39] Coleman has failed to show that his sentence is inappropriate in light of the nature of the offense and his character.

[40] Affirmed.

Bailey, J., and Brown, J., concur.