MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Gerald Bell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 8, 2023

Court of Appeals Case No. 23A-CR-443

Appeal from the Tippecanoe Superior Court

The Honorable Randy J. Williams, Judge

Trial Court Cause No. 79D01-2003-F2-11

Memorandum Decision by Judge Tavitas
Judges Pyle and Foley concur.

Tavitas, Judge.

Case Summary

[1] The jury found Gerald Bell guilty of robbery resulting in serious bodily injury, a Level 2 felony; pointing a firearm, a Level 6 felony; and carrying a handgun without a license, a Class A misdemeanor. The trial court entered judgments of conviction and sentenced Bell on all three offenses. After sentencing Bell for the convictions, however, the trial court "merge[d]" the pointing a firearm conviction with the robbery conviction. Tr. Vol. IV p. 167. Bell appeals and argues: (1) insufficient evidence supports his conviction for robbery; (2) his convictions for pointing a firearm and robbery constitute double jeopardy; (3) discrepancies between the trial court's oral and written sentencing statements require that we remand for correction; and (4) his sentence is inappropriate.

[2] We resolve this case as follows: (1) sufficient evidence supports the robbery conviction; (2) Bell's convictions for pointing a firearm and robbery do not constitute double jeopardy and, because the trial court already entered judgment of conviction and sentenced Bell for pointing a firearm, we remand with instructions that the trial court determine whether that sentence should be served concurrently or consecutively with Bell's other sentences; (3) discrepancies between the trial court's oral and written sentencing statements require that we remand for correction; and (4) Bell's inappropriate-sentence argument is not ripe for our review. Accordingly, we affirm in part, reverse in part, and remand.

Issues

[3] Bell raises four issues on appeal, which we reorder and restate as:

I. Whether the State presented sufficient evidence to support Bell's conviction for robbery.

II. Whether Bell's convictions for pointing a firearm and robbery constitute double jeopardy.

III. Whether discrepancies between the trial court's oral and written sentencing statements require that we remand for correction.

IV. Whether Bell's sentence is inappropriate.

Facts

[4] On the evening of March 3, 2020, sixteen-year-old Jeremiah Hendricks arranged to meet fifteen-year-old Luis Miranda at an apartment complex in Lafayette. Hendricks wanted to purchase four ounces—a quarter pound—of marijuana from Miranda. Hendricks planned to split the marijuana with his friend, Bell, who was also age sixteen at the time.

[5] Miranda drove to the apartment complex with his friend, fifteen-year-old Joshua Mansia, in the passenger seat. Miranda brought the four ounces of marijuana plus several smaller bags of marijuana in a backpack. The meeting took place at approximately 7:00 p.m. Miranda was not informed that Bell would accompany Hendricks, and Miranda thought it was "shady" when Bell and Hendricks approached his vehicle together. Tr. Vol. III p. 41.

[6] As Hendricks and Bell approached, Hendricks asked to see the marijuana. According to Miranda, Hendricks approved of the marijuana, and then both he and Bell drew handguns and "placed them" against the driver's side window. *Id*. at 42. Hendricks's gun was a black Glock, and Bell's gun was a silver nine-millimeter. Hendricks and Bell said "run your s**t," meaning "[g]ive me pretty much everything you have." *Id*. Miranda refused, and Hendricks became "more aggressive by waving the gun" and putting it close to Miranda's head. *Id*.

[7] Miranda shifted his vehicle into reverse. He immediately heard gunshots and then several more. One of the shots struck him in the arm and chest. He saw Bell run away after the first shots were fired and saw that Hendricks was the one shooting. Miranda threw the backpack of marijuana out the window and drove to the hospital. As he drove away, he saw Hendricks take the backpack and run.

[8] Miranda was hospitalized for thirteen days for wounds to his arm, chest, ribs, and a collapsed lung. His injuries were "[p]otentially" life-threatening. *Id*. at 24. Law enforcement found no marijuana in Miranda's vehicle; however, they did find a pellet gun under the passenger seat.

[9] Meanwhile, at 7:27 p.m. on the night of the shooting, a video that depicted two packages of marijuana in vacuum-sealed packaging was recorded on Bell's phone. Additionally, a video depicting a large amount of marijuana in a green bowl was recorded on Hendricks's phone.

[10] Later that night, Bell sent a text message to a contact named "Brat" that said, "I just hit a lick on a qp." Ex. Vol. V p. 107. The phrase "hit a lick" is commonly associated with robberies and other crimes, and "qp" means a quarter pound. Tr. Vol. III p. 123. Bell also sent Brat the video of the marijuana along with messages that said, "Some dope" and "Real za."[1] Ex. Vol. V p. 108. Bell then said he was "[a]bt to sell all this s**[t]." *Id*. at 109. Shortly after 10:00 p.m., Bell searched for Lafayette news and crime reports on his phone, and he continued searching the following morning. He clicked on a link to a news story titled "15-year-old shot on Lafayette's south side" several times. *Id.* at 119.

[11] On March 4, 2020, Bell texted a contact named "Cor" to "[g]o look at the news," and said, "Look I'm going [to] say I was with u." *Id*. at 99-100. Around the same time, Bell texted Brat that he was with the police and said, "[I]f I get out of this I'm done with that dumb s**[t] . . . ." *Id*. at 112. He also texted a contact named "Vonta" that law enforcement had asked to meet with him "[b]c of that s**[t] last night." *Id*. at 115. Bell said he would "act like I don't [k]no[w] s**[t]." *Id*. at 116. Bell was subsequently arrested.

[12] The State charged Bell as an adult with six counts: Count I: conspiracy to commit robbery, a Level 2 felony; Count II: robbery resulting in serious bodily injury, a Level 2 felony; Count III: battery by means of a deadly weapon, a

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[1] "Za" means "really good marijuana." Tr. Vol. III p. 126.

Level 5 felony; Count IV: battery resulting in serious bodily injury, a Level 5 felony; Count V: pointing a firearm at another person, a Level 6 felony; and Count VI: carrying a handgun without a license, a Class A misdemeanor. The State also sought a sentencing enhancement based upon Bell's use of a firearm.

[13] Bell and Hendricks were tried before the same jury in March 2022. The State played for the jury two videos from Bell's phone that were recorded the day before the shooting, one of which depicted Bell holding a silver handgun with wooden grips. Lafayette Police Department Detective Paul Anthony Huff testified that the handgun was a "real gun" based on the size of the barrel hole and the presence of bullets in the magazine. Tr. Vol. III p. 133.

[14] Miranda and Mansia testified regarding the shooting and denied ever drawing weapons. Miranda recognized the marijuana in the video from Bell's phone as the marijuana he brought to sell on the day of the shooting. Miranda and Mansia admitted that they initially told law enforcement that they were "just driving by the apartments" when Miranda was shot and that they later falsely stated that Hendricks and Bell were the ones selling the marijuana. *Id*. at 230.

[15] Hendricks testified in his own defense. According to Hendricks, Bell was with Hendricks when Hendricks approached Miranda's vehicle, and Hendricks saw a handgun in Mansia's lap. Miranda showed Hendricks the marijuana, which was "brown" and "didn't look like weed." *Id*. at 183. Hendricks confronted Miranda, and Miranda drove away and pointed a gun at Hendricks from the window. Hendricks fired at Miranda, and Bell ran away. Hendricks denied

that he planned to rob Miranda and denied ever taking possession of the marijuana. He claimed that the marijuana shown on the video recorded after the shooting was obtained from his mother's room.

[16] Bell did not testify. The jury found Bell guilty of Count II: robbery resulting in serious bodily injury; Count V: pointing a firearm; and Count VI: carrying a handgun without a license; and not guilty of the remaining counts. The trial court entered judgments of conviction on Counts II, V, and VI.[2] Bell waived his right to a jury on the firearm sentencing enhancement. The trial court found that the evidence supported the firearm enhancement and attached the enhancement to Count II.

[17] Bell's sentencing hearing was held on January 30, 2023. In its oral sentencing statement, the trial court sentenced Bell to fifteen years for robbery resulting in serious bodily injury; two years for pointing a firearm; and 365 days for carrying a handgun without a license. The trial court then "merge[d]" the pointing a firearm conviction with the robbery conviction and attached the five-year firearm enhancement to the robbery conviction. Tr. Vol. IV p. 167. The trial court also ordered that the carrying a handgun without a license conviction be served "consecutive[ly]" to the robbery sentence; however, the trial court stated that Bell's total sentence was twenty years, rather than twenty-one years, with four years suspended to probation. *Id*. The trial court's written sentencing

[2] The trial court denied Bell's motion for judgment on the evidence and motion to correct error.

order and abstract of judgment differ from the trial court's oral sentencing statement in several respects, which we discuss further below. Bell now appeals.

Discussion and Decision

I. Sufficiency of Evidence

[18] Bell first argues that the State presented insufficient evidence to support his conviction for robbery. We are not persuaded.

[19] Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). "When there are conflicts in the evidence, the jury must resolve them." *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Powell*, 151 N.E.3d at 262 (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn

from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[20] The offense of robbery is governed by Indiana Code Section 35-42-5-1, which provides, in relevant part:

> (a) Except as provided in subsection (b), a person who knowingly or intentionally takes property from another person or from the presence of another person:
>
> (1) by using or threatening the use of force on any person; or
>
> (2) by putting any person in fear;
>
> commits robbery, a Level 5 felony. However, the offense is . . . a Level 2 felony if it results in serious bodily injury to any person other than a defendant.

[21] Under the accomplice theory of liability, Bell need not have personally committed every element of the robbery statute to be guilty of the offense. *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021); *see* Ind. Code § 35-41-2-4 ("A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense . . . ."). "'An accomplice can be held criminally liable for everything done by his confederates which was a probable and natural consequence of their common plan.'" *Mills v. State*, 198 N.E.3d 720, 729 (Ind. Ct. App. 2022) (quoting *Vasquez v. State*, 762 N.E.2d 92, 95 (Ind. 2001)), *trans. denied*.

[22] "In determining accomplice liability, our supreme court has observed that '[t]here is no bright line rule.'" *Parrish v. State*, 166 N.E.3d 953, 959 (Ind. Ct. App. 2021) (quoting *Vitek v. State*, 750 N.E.2d 346, 353 (Ind. 2001)), *trans. denied*. "Instead, the determination is made based on 'the particular facts and circumstances of each case.'" *Id.* (quoting *Vitek*, 750 N.E.2d at 353). Our chief inquiry is whether there is evidence of the defendant's "affirmative conduct, either by acts or words, from which the jury could draw a reasonable inference of a common design or purpose to effect the robbery." *Id*. (citing *Griffin v. State*, 16 N.E.3d 997, 1003 (Ind. Ct. App. 2014)). We consider the following factors: "(1) presence at the crime scene; (2) companionship with another at the crime scene; (3) failure to oppose the crime; and (4) course of conduct before, during, and after the offense." *Id.* (citing *Griffin*, 16 N.E.3d at 1004).

[23] Here, the evidence most favorable to the judgment shows that Hendricks and Bell were friends and were going to split the marijuana obtained from Miranda. Hendricks did not inform Miranda that Hendricks was bringing Bell to the drug deal, during which both Hendricks and Bell displayed their firearms and demanded that Miranda hand over the marijuana. *Cf. id*. (holding defendant and robbery principal's familiarity with one another, contact before and on the night of the robbery, and defendant's presence near the scene of the robbery supported accomplice liability finding). After Miranda threw the marijuana out of the vehicle, Hendricks and Bell divided the marijuana and recorded it on their phones. Bell searched for news about the incident and discussed telling law enforcement that he was somewhere else at the time of the offense.

[24] Bell argues that he was not present at the scene of a "crime" because the robbery was not complete until Hendricks took the marijuana, at which point Bell had already run away. Appellant's Br. p. 20. Bell, however, had already drawn his weapon and demanded that Miranda hand over the drugs before he ran away. Bell was not required to remain on the scene and wait for Hendricks to take the marijuana for the jury to find that Bell was an accomplice to the robbery. *Cf. Griffin*, 16 N.E.3d at 1004-05 (holding that evidence supported robbery conviction under accomplice liability theory notwithstanding defendant's argument that he was in a different area of the house than where robbery occurred).

[25] Bell also contends that he opposed the crime by running away and not returning, and that none of his actions caused Miranda's injuries. Running away after already threatening Miranda with a firearm hardly suggests opposition to the offense. Moreover, Bell need not have directly caused Miranda's injuries to be responsible therefor. *See Parks v. State*, 455 N.E.2d 904, 904-905 (Ind. 1983) (rejecting argument that defendant could not be held liable as an accomplice to robbery resulting in bodily injury despite lack of evidence that defendant personally "inflicted bodily injury" because "'[t]he responsibility for any bodily injury which occurs during the commission or attempted commission of a robbery rests on the perpetrators of the crime, regardless of who inflicts the injury'" (quoting *Moon v. State,* 419 N.E.2d 740, 741 (Ind. 1981)). Bell essentially requests that we reweigh the evidence, which we cannot

do. Accordingly, we find the evidence sufficient to support Bell's conviction for robbery as an accomplice.

II. Double Jeopardy

[26] Bell next argues that his convictions for pointing a firearm and robbery constitute double jeopardy. We are not persuaded.

[27] "'[S]ubstantive double jeopardy claims come in two principal varieties: (1) when a single criminal act or transaction violates a single statute but harms multiple victims, and (2) when a single criminal act or transaction violates multiple statutes with common elements and harms one or more victims.'" *Demby v. State*, 203 N.E.3d 1035, 1041-42 (Ind. Ct. App. 2021) (quoting *Wadle v. State*, 151 N.E.3d 227, 247 (Ind. 2020)), *trans. denied*. Our Supreme Court's decision in *Powell v. State*, 151 N.E.3d 256 (Ind. 2020), addresses the first variety, and its decision in *Wadle*, 151 N.E.3d 227, addresses the second. Because the two challenged convictions here implicate two statutes, the *Wadle* test applies. We review double jeopardy violation claims de novo. *Gaunt v. State*, 209 N.E.3d 463, 465 (Ind. Ct. App. 2023) (citing *Wadle,* 151 N.E.3d at 237; *Powell*, 151 N.E.3d 256), *trans. denied*.

[28] Here, Bell was convicted of robbery resulting in serious bodily injury, a Level 2 felony, and the relevant statute is set forth above. Bell was also convicted of pointing a firearm, a Level 6 felony, which is governed by Indiana Code Section 35-47-4-3(b). That statute provides, in relevant part, that "[a] person

who knowingly or intentionally points a firearm at another person commits a Level 6 felony."

[29] "The first step in the *Wadle* test is to determine whether 'either statute clearly permits multiple punishment, whether expressly or by unmistakable implication.'" *Demby*, 203 N.E.3d at 1042 (quoting *Wadle*, 151 N.E.3d at 253). If the language of either statute clearly permits multiple punishment, "the court's inquiry comes to an end and there is no violation of substantive double jeopardy." *Wadle*, 151 N.E.3d at 248. Here, the parties do not dispute that neither of the relevant statutes clearly permit multiple punishment. Accordingly, we turn to *Wadle*'s second step.

[30] *Wadle*'s second step asks whether the offenses are included "either inherently or as charged . . . ." *Id.* An offense is inherently included if it meets the definition of "included offense" in Indiana Code Section 35-31.5-2-168, which provides:

> "Included offense" means an offense that:
>
> > (1) is established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged;
> >
> > (2) consists of an attempt to commit the offense charged or an offense otherwise included therein; or
> >
> > (3) differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property, or public interest, or a lesser kind of culpability, is required to establish its commission.

Meanwhile, an offense is included as charged (or "factually included") if "'the charging instrument alleges that the means used to commit the crime charged include all of the elements of the alleged lesser included offense.'" *Waddle*, 151 N.E.3d at 251 n.30 (quoting *Young v. State*, 30 N.E.3d 719, 724 (Ind. 2015)).

[31] We conclude that the pointing a firearm offense was not an included offense of robbery. Pointing a firearm is not inherently included in robbery because both offenses contain different elements, neither offense consists of an attempt to commit the other, and the offenses do not differ solely based on the level of harm or culpability.

[32] Additionally, pointing a firearm is not included as charged under the circumstances here. The robbery charge alleged:

> On or about March 3, 2020, in Tippecanoe County, State of Indiana, Gerald Bell and/or Jeremiah Allen Hendricks Jr., did knowingly or intentionally take property from Victim 1 or the presence of Victim 1, by using force or by threatening the use of force while armed with a deadly weapon, to wit: A handgun, and said act resulted in serious bodily injury to Victim 1[.]

Appellant's App. Vol. II p. 28. The charge does not allege that Bell pointed a firearm at another person. Because the pointing a firearm offense is not an

included offense of robbery, our analysis ends here, and we find no double jeopardy violation.[3]

[33] During sentencing, the trial court was under the impression that the pointing a firearm and robbery offenses constituted double jeopardy and "merge[d]" the pointing a firearm conviction with the robbery conviction. Tr. Vol. IV p. 167. Merger "generally refers to a trial court's finding that a lesser-included offense is subsumed by or under the greater offense such that a judgment of conviction on only the greater offense is appropriate." *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005). The trial court here, however, entered judgment of conviction and sentenced Bell for the pointing a firearm offense before merging that offense with the robbery conviction. Because a conviction and sentence for pointing a firearm have been entered, we remand with instructions for the trial court to determine whether Bell should serve this sentence concurrently or consecutively with his other sentences. *Cf. Wilcoxson v. State*, 132 N.E.3d 27, 33 (Ind. Ct. App. 2019) (finding merged convictions did not implicate double jeopardy and remanding with instructions for trial court to enter judgment of conviction and sentence defendant on merged count), *trans. denied*.

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[3] We note that, during sentencing, the State stated that "pointing the firearm was part of the robbery." Tr. Vol. IV p. 164. Essentially, the State conceded step three of the *Wadle* analysis, which asks whether the offenses are "so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." *See Wadle*, 151 N.E.3d at 249. Because we find that pointing a firearm was not an included offense of robbery under step two, however, we do not reach step three, and there is no double jeopardy violation.

III. Sentencing Statements

[34] Bell next argues that discrepancies between the trial court's oral sentencing statement, written sentencing order, and abstract of judgment require that we remand for correction of the latter two documents. We conclude that several, though not all, of the alleged errors require that we remand for correction of those documents. Additionally, our finding in the previous section that Bell's convictions do not constitute double jeopardy also requires corrections to those documents.

[35] Discussing the resolution of discrepancies between a trial court's oral and written sentencing statements, our Supreme Court has explained:

> The approach employed by Indiana appellate courts in reviewing sentences in non-capital cases is to examine both the written and oral sentencing statements to discern the findings of the trial court. Rather than presuming the superior accuracy of the oral statement, we examine it alongside the written sentencing statement to assess the conclusions of the trial court. This Court has the option of crediting the statement that accurately pronounces the sentence or remanding for resentencing. This is different from pronouncing a bright line rule that an oral sentencing statement trumps a written one.

McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007) (internal citations omitted). When we examine the trial court's oral and written statements and find that the trial court's intent is "unambiguous," we may remand the case with instructions to correct the written statements to reflect the trial court's intent. *See Vaughn v. State*, 13 N.E.3d 873, 890 (Ind. Ct. App. 2014) (citing *Walker v. State*, 932

N.E.2d 733, 738 (Ind. Ct. App. 2010)), *trans. denied*; *accord Willey v. State*, 712 N.E.2d 434, 445 n.8 (Ind. 1999).

[36] Here, we reject several of Bell's challenges to the trial court's written sentencing statements. Bell argues that the written sentencing order erroneously reflects a separate sentence for the firearm enhancement, rather than a mere enhancement to his sentence for robbery resulting in serious bodily injury. The written sentencing order, however, states that the firearm enhancement "attaches to Count II," the robbery conviction, which indicates that the trial court did not separately sentence Bell for the enhancement. Appellant's App. Vol. III p. 109. Bell also argues that the abstract of judgment erroneously suggests that Bell's sentence is twenty-five years, not twenty years. The abstract, however, states that Bell's twenty-year sentence "included" the five-year firearm enhancement. *Id*. at 114.

[37] We also note that, during its oral sentencing statement, the trial court ordered Bell's 365-day sentence on Count VI, carrying a handgun without a license, to be served "consecutive[ly]" to Bell's twenty-year sentence for Count II and the firearm sentencing enhancement. Tr. Vol. IV p. 167. The trial court, however, was clear that Bell's total sentence was twenty, not twenty-one years. The written sentencing order and abstract of judgment both state that Bell's sentence on Count VI shall be served "[c]oncurrent[ly]" with Bell's sentence on Count II, which would constitute a twenty-year sentence. Appellant's App. Vol. III pp. 109, 114. Because the trial court was clear that Bell's total sentence was twenty years, we conclude that the trial court intended to sentence Bell to a concurrent

sentence on Count VI. Further, because the written sentencing order and abstract of judgment both correctly state the status of Count VI, no corrections are required.

[38] We agree with Bell, however, that the written sentencing order mistakenly states that Bell was "sentenced for a period of fifteen (15) years for the crime of **Burglary**, as charged in Count II . . . ." *Id*. at 109 (emphasis added). Count II alleged that Bell committed robbery resulting in serious bodily injury, and Bell was neither charged with nor convicted of burglary. The written sentencing order also references Bell's "sentence [on] Count I," *id*., but Bell was found not guilty of that count. Accordingly, we remand with instructions that the trial court's written sentencing order reflect Bell's conviction and sentence for Count II, robbery resulting in serious bodily injury. Additionally, in light of our finding that Bell's convictions do not constitute double jeopardy, we also instruct the trial court to remove the merger language regarding Count V, pointing a firearm, and to determine whether Bell's sentence on that count should be served concurrently or consecutively with his other sentences.

IV. Inappropriate Sentence

[39] Lastly, Bell argues that his sentence is inappropriate. Because we remand with instructions for the trial court to determine whether Bell's sentence on Count V, pointing a firearm, should be served concurrently or consecutively, Bell's argument is not ripe for our review, and we will not issue an advisory opinion. *See, e.g.*, *E.F. v. St. Vincent Hosp. and Health Care Ctr., Inc.*, 188 N.E.3d 464, 467 (Ind. 2022) (holding that appellate courts should avoid issuing advisory

opinions); *Reed v. State*, 796 N.E.2d 771, 775 (Ind. Ct. App. 2003) (citation omitted)).

Conclusion

[40] Sufficient evidence supports Bell's conviction for robbery, which we affirm. Additionally, Bell's convictions for pointing a firearm and robbery do not constitute double jeopardy, and we remand with instructions that the trial court determine whether the sentence it already imposed for pointing a firearm should be served concurrently or consecutively to Bell's other sentences. We also remand with instructions that the trial court correct several errors in the written sentencing statements. Lastly, we cannot decide at this time whether Bell's sentence is inappropriate. Accordingly, we affirm in part, reverse in part, and remand.

[41] Affirmed in part, reversed in part, and remanded.

Pyle, J., and Foley, J., concur.