MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher K. Bell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 21, 2023

Court of Appeals Case No. 23A-CR-244

Appeal from the Vanderburgh Superior Court

The Honorable Robert J. Pigman, Judge

Trial Court Cause No. 82D02-1209-MR-1149

Memorandum Decision by Judge Brown
Judge Crone and Senior Judge Robb concur.

Brown, Judge.

[1] Christopher K. Bell appeals the finding that he is an habitual offender. We affirm.

Facts and Procedural History

[2] On September 21, 2012, the State charged Bell with Count I, murder, and Count II, conspiracy to commit robbery resulting in serious bodily injury as a class A felony under cause number 82D02-1209-MR-1149 ("Cause No. 1149").[1] The State also alleged that Bell was an habitual offender.[2] Specifically, the State alleged that Bell "was convicted and sentenced on April 8, 2009, in the Vanderburgh Circuit Court" under cause number 82C01-0812-FD-1288 ("Cause No. 1288") "in the County of Vanderburgh, State of Indiana, of a Felony, to-wit: Criminal Recklessness, which felony was committed on or about November 11, 2008" and that he "was convicted and sentenced on September 2, 2010, in the Vanderburgh Circuit Court" under cause number 82C01-1003-FC-349 ("Cause No. 349") "in the County of Vanderburgh, State of Indiana, of a Felony, to-wit: Possession of a Handgun without a License,

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[1] The charging information filed on September 21, 2012, named "Christopher Kenneth Bell" and included the following description:

> B/M
> DOB: 10/15/1989
> SSN: []
> DLN: 8973-01-4934
> FBI: 440550VC8
> 5'08" - 225

Appellant's Appendix Volume II at 25.

[2] The information alleging that Bell was an habitual offender did not include a physical description, driver's license number, or social security number.

which felony was committed on or about March 5, 2010." Appellant's Appendix Volume II at 27 (bold and italics omitted). On November 5, 2012, the State filed an amended information for Count I, murder, and Count II, conspiracy to commit robbery resulting in serious bodily injury as a class A felony.[3]

[3] A jury found Bell guilty as charged. *See Bell v. State*, No. 82A04-1309-CR-478, slip op. at 6 (Ind. Ct. App. May 23, 2014). Bell then stipulated to having two prior unrelated felonies and was adjudicated an habitual offender without the jury reconvening. *Id.* At Bell's sentencing hearing, the trial court reduced the conviction for conspiracy to commit robbery to a class C felony and sentenced Bell to sixty years for murder, enhanced by thirty years for being an habitual offender, and a concurrent term of six years for conspiracy to commit robbery as a class C felony for an aggregate sentence of ninety years. *Id.*

[4] On direct appeal, Bell argued that the trial court erred in instructing the jury on accomplice liability and that his convictions violated Indiana's constitutional prohibition against double jeopardy. *Id.* at 2. This Court affirmed. *Id.*

[5] Bell filed a petition for post-conviction relief arguing the trial court failed to properly advise him of his right to jury determination of his habitual offender status and to obtain his personal waiver, and appellate counsel rendered

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[3] The amended information filed in November 2012 contained information describing Bell which was identical to that included in the initial information except that his social security number was redacted.

ineffective assistance by failing to raise the jury waiver issue on appeal. *See Bell v. State*, 173 N.E.3d 709, 712 (Ind. Ct. App. 2021). The post-conviction court denied Bell's petition. *Id.* On appeal, we reversed and remanded with instructions to vacate the habitual offender adjudication and to conduct a new trial on the habitual offender information. *Id.* at 719.

[6] On July 15, 2022, the court held a hearing at which Bell appeared via Webex and indicated he wanted a trial on the habitual offender allegation. In discussing the scheduling for the trial, Bell requested that the hearing be scheduled after his birthday. Upon questioning by the court, Bell stated that his birthday was October 15th. On January 3, 2023, the court held a hearing at which Bell waived his right to a jury trial and indicated he wished to proceed by a bench trial.[4]

[7] On January 5, 2023, the court held a bench trial at which Bell appeared in person. The prosecutor introduced State's Exhibits A and B as "all of the documentation for the two prior convictions alleged in the habitual offender document that includes the certified CCS, the Plea Agreements, everything that would show that Christopher Kenneth Bell was convicted and sentenced on each case on the dates alleged in the habitual offender document." Transcript Volume II at 25. The court admitted State's Exhibits A and B.

[4] The record does not contain a transcript of the January 3, 2023 hearing.

[8] The State also presented the testimony of Evansville Police Detective Joseph Dickinson who testified that he became involved in a case with an individual named Christopher Kenneth Bell, identified the defendant in the courtroom as the same Christopher Kenneth Bell, and stated that he sat through the murder trial for Bell at which Bell was found guilty. He also testified that he completed a case file and submitted it to the prosecutor.

[9] The prosecutor then stated: "I'll move to admit State's C. It's just the filing of the habitual and the cause number just to show he's the same. It's a part of the Court records." *Id.* at 28-29. He also stated: "Your Honor this is part of the Court record. I just wanted to file it as well. It is the original filed Habitual Offender. It's with the same cause number as this." *Id.* at 29. The prosecutor also stated: "I just wanted to file it in this proceeding as well as an exhibit?" *Id.* The court admitted State's Exhibit C without objection. The court found the State had proven that Bell had two prior unrelated felony convictions and enhanced the sentence in Count I by thirty years.

Discussion

[10] Bell argues the evidence was insufficient to prove that he was the same person who accumulated the two predicate felonies underlying the habitual offender enhancement. He asserts that "there was no evidence presented about the identifying information of the Christopher Bell in this case." Appellant's Brief at 16. He contends that "the only documentary evidence offered by the Prosecution and admitted by the trial court was the charging information for the habitual offender enhancement which *contains none of Bell's identifying*

information." *Id.* He contends that the Sixth Amendment precludes the State from using a court document that was never admitted into evidence. He argues the trial court was never asked to take judicial notice of the charging information for the underlying felony pursuant to Ind. Evidence Rule 201.[5] He asserts the State was "hoping [the trial court] would use the identifying information within the charging information *to prove that* [*he*] *was guilty of being an habitual offender* – an entirely improper use of the document under the Sixth Amendment." *Id.* at 20. He also contends, that "if a court can consider information in documents within a case without taking judicial notice of it under *Evidence Rule 201*, then this evidence rule is superfluous." *Id.* at 25.

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[5] Ind. Evidence Rule 201 provides in part:

> (a) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice:
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> (1) a fact that:
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> (A) is not subject to reasonable dispute because it is generally known within the trial court's territorial jurisdiction, or
>
> (B) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
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> (2) the existence of:
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> (A) published regulations of governmental agencies;
>
> (B) ordinances of municipalities; or
>
> (C) records of a court of this state.
>
> (c) Taking Notice. The court:
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> (1) may take judicial notice on its own; or
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> (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
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> (d) Timing. The court may take judicial notice at any stage of the proceeding.
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> (e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

[11] The State argues that it "should not be required to admit its own charging information in the same case simply because a re-trial on one issue was required ten years later," Bell's constitutional rights were not violated, and it provided sufficient evidence. Appellee's Brief at 10. In reply, Bell argues that he "should not be ambushed with such evidence for the first time on appeal." Appellant's Reply Brief at 8.

[12] In reviewing a claim of insufficient evidence, we will affirm the conviction unless, considering only the evidence and reasonable inferences favorable to the judgment, and neither reweighing the evidence nor judging the credibility of the witnesses, we conclude that no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Tyson v. State*, 766 N.E.2d 715, 717-718 (Ind. 2002).

[13] Ind. Code § 35-50-2-8 provides:

> (a) Except as otherwise provided in this section, the state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.
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> * * * * *
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> (c) A person has accumulated two (2) prior unrelated felony convictions for purposes of this section only if:
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> > (1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and

> (2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated felony conviction.
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> * * * * *
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> (g) A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony convictions.

(Subsequently amended by Pub. L. No. 158-2013, § 661 (eff. July 1, 2014); Pub. L. No. 168-2014, § 118 (eff. July 1, 2014); Pub. L. No. 238-2015, § 17 (eff. July 1, 2015); Pub. L. No. 12-2017, § 1 (eff. July 1, 2017)).[6]

[14] In regard to the use of documents to establish the existence of prior convictions, the Indiana Supreme Court has stated:

> Certified copies of judgments or commitments containing a defendant's name or a similar name may be introduced to prove the commission of prior felonies. While there must be supporting evidence to identify the defendant as the person named in the documents, the evidence may be circumstantial. If the evidence yields logical and reasonable inferences from which the finder of fact may determine beyond a reasonable doubt that it was a defendant who was convicted of the prior felony, then a sufficient connection has been shown.

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[6] Bell acknowledges that, prior to a 2013 amendment to the habitual offender statute, the applicable minimum enhancement to a murder conviction was the advisory sentence for that offense or thirty years, that this Court has previously held that the doctrine of amelioration does not apply to the 2013 amendment to the habitual offender enhancement, and that "the thirty (30) year minimum habitual offender enhancement applies to" him. Appellant's Brief at 13 n.4.

Tyson, 766 N.E.2d at 718 (quoting *Hernandez v. State*, 716 N.E.2d 948, 953 (Ind. 1999) (citations omitted), *reh'g denied*).

[15] While Bell's argument appears to imply that the trial court improperly relied upon the identifying information listed in the charging information for Counts I and II under Cause No. 1149, he does not point to the record to demonstrate that the trial court did so. Even assuming that the charging information for Counts I and II are not considered, we conclude that the evidence is sufficient.

[16] The record reveals that State's Exhibit A includes the chronological case summary ("CCS") for Cause No. 1288 which reveals that "Christopher K. Bell," who is described as a "Black Male Height 5'8" Weight 225 DOB: 10/15/1989 Age: 19," was convicted of criminal recklessness as a class D felony in 2009. Exhibits Volume IV at 5. It includes the charging information which lists Bell's date of birth, "DLN" of 8973-01-4934, and address. *Id.* at 10. It also includes a plea agreement with Bell's signature.

[17] State's Exhibit B includes a CCS for Cause No. 349 which reveals that "Christopher K Bell," who is described as "Black Male Height 5'8" Weight 225 DOB: 10/15/1989," was convicted of carrying a handgun without a license as a class C felony in 2010. *Id.* at 19. It includes the charging information which lists a "DLN" of 8973-01-4934 and the abstract of judgment indicating that the sentence is to be served consecutive to the sentence in Cause No. 1288. It also includes the plea agreement which was signed by Bell.

[18] State's Exhibit C includes the information for the habitual offender enhancement under Cause No. 1149, which alleged that "Christopher Kenneth Bell" is an habitual offender and listed the convictions under Cause Nos. 1288 and 349. Exhibits Volume IV at 32. The trial court was able to observe Bell as he appeared in the courtroom and compare him to the physical description listed in State's Exhibits A and B. It also heard Bell state that his birthday was October 15th, which matched the date listed in State's Exhibits A and B. We conclude there was sufficient evidence from which the court could have found beyond a reasonable doubt that Bell was an habitual offender. *See Lewis v. State*, 554 N.E.2d 1133, 1136-1137 (Ind. 1990) (noting that evidence of the defendant's name, date and place of birth, and physical description was sufficient to establish identification), *reh'g denied*; *Andrews v. State*, 536 N.E.2d 507, 509 (Ind. 1989) (affirming the jury's determination that the defendant was an habitual offender and observing that the jury was able to compare the descriptions contained in exhibits with "the defendant himself, present in the courtroom during the trial").

[19] For the foregoing reasons, we affirm the trial court.

[20] Affirmed.

Crone, J., and Robb, Sr.J., concur.