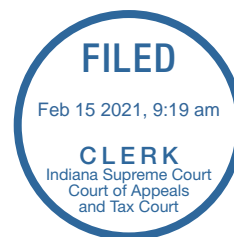


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Ellen M. O'Connor
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney Staton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Anthony Smith,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

February 15, 2021

Court of Appeals Case No.
20A-CR-269

Appeal from the Marion Superior
Court

The Honorable James B. Osborn,
Judge

Trial Court Cause No.
49G01-1804-MR-13528

Robb, Judge.

Case Summary and Issue

- [1] Following a jury trial, Anthony Smith was convicted of one count of murder, a felony, and two counts of attempted murder, Level 1 felonies. The trial court sentenced him to an aggregate sentence of ninety years in the Indiana Department of Correction (“DOC”). Smith now appeals and raises the sole issue of whether the evidence is sufficient to support his murder and attempted murder convictions. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

- [2] The facts most favorable to the verdicts are as follows. On April 19, 2018, Ralph Jones went to an ATM and withdrew money to purchase a firearm and a car. Ralph had recently received money from a personal injury settlement and intended to surprise his son, Bradley Jones, and his son’s girlfriend, Kylie Price, with a car. He subsequently purchased a revolver for himself from a friend. After the purchase, Ralph decided he did not like the firearm and intended to resell it to make a profit.
- [3] Later that night, around 9:00 or 10:00 p.m., Ralph, Bradley, and Price drove to Cloverleaf Apartments in Indianapolis to meet with Smith about potentially purchasing a car from him and Smith’s friend, Fransuah Mathews. Ralph and Smith used to work together and had known each other for several years. Ralph “[v]aguely” knew Mathews and had met him “a handful of times[.]” Transcript of Evidence, Volume III at 32.

[4] When they arrived, Ralph went inside Smith’s apartment while Bradley and Price stayed in the car. Shortly thereafter, Mathews came out of an apartment several doors down and went inside Smith’s apartment. When the three men came out of the apartment, Mathews got into his own car and Ralph and Smith got into the car with Bradley and Price. Ralph was in the driver’s seat; Smith was in the front passenger seat; and Bradley and Price were in the backseat. Ralph drove to a gas station and later drove to a house located at 1229 Manhattan Avenue to look at the car he was interested in purchasing. When he pulled up to the house, he parked on the street behind Mathews’ vehicle. Ralph and Smith got out of the car and went to the backyard of the house where the car was. Bradley and Price stayed in the backseat of the car “[p]laying on [their] phones.” *Id.*, Vol. II at 189.

[5] When Smith and Ralph got to the backyard, Mathews was already there and offered to sell the vehicle for \$1,000. After looking at the vehicle, Ralph did not find it “appealing to [him and] didn’t feel it was gonna be worth” \$1,000. *Id.*, Vol. III at 35. Ralph stated he was not interested in the car and turned around to walk away. As he turned, Smith stated, “[J]ust give us the money, Ralph.” *Id.* at 37. Smith and Mathews then “jumped” Ralph. *Id.* Smith had a revolver¹ in his hands and pointed it at Ralph. When Ralph tried to “bat” away the gun, it went off and shattered a bone in his arm. *Id.* Smith and Mathews then began

¹ Ralph testified that he had seen Smith with this particular firearm before.

beating and kicking him. While he was on the ground being beaten, he was shot four to five more times.

[6] Twenty to thirty minutes after Ralph and Smith went to the back of the house, Bradley heard gunshots. “[T]hen it sounded like gunshots were getting closer” to their vehicle. *Id.*, Vol. II at 189. Bradley looked up and saw Smith and Mathews standing outside of the car. Mathews was on the driver’s side and Smith was on passenger side and they began shooting into the car at Bradley and Price. After the shots, Smith and Mathews got into Mathews’ car and fled; Mathews drove, and Smith sat in the front passenger seat.

[7] Around the same time, a nearby neighbor, Dale Wood, heard the shots, went outside, and saw two vehicles parked across the street. He then observed a tall dark-skinned man “appear[] out of the shadows by [1]229” and get into the passenger side of one of the vehicles, which then sped off. *Id.* at 120. When Wood approached the other vehicle, he saw Price “on the ground kind of hunched over” and Bradley in the back seat moaning. *Id.* at 125. Price was not breathing, so Wood assisted Bradley and asked him what happened. Bradley stated that his father was in the house and “two black dudes” shot at them. *Id.* Shortly thereafter, officers and paramedics arrived.

[8] All three victims were transported to the hospital. Ralph had been shot in the arm, shoulder, chest, and spine. At the hospital, he was placed in a medically induced coma for eleven to thirteen weeks. He survived but is now paralyzed from the waist down and confined to a wheelchair. Bradley also suffered

multiple gunshot wounds and survived. He was shot in his shoulder and forearm. The bullet that entered through his shoulder is still lodged in his neck and the bullet to his forearm shattered his bone, requiring a metal plate and nine screws to repair. Shortly after being taken to the hospital, Price died from her injuries.

[9] Detectives visited Ralph and Bradley in the hospital. Separately, the detectives showed them each a photo array which included a photo of Smith. Both Bradley and Ralph identified Smith as the shooter. Several days after the shooting, officers obtained and executed a search warrant on Mathews' apartment during which they located a .45 caliber Smith & Wesson firearm. Forensic testing later confirmed that the bullets recovered from Price had been fired from the firearm discovered in Mathews' apartment. Officers also located a cigarillo in the backyard of 1229 Manhattan Avenue. Swabs from the plastic tip of the item were collected for testing, which later revealed Smith's DNA on the item, placing him at the scene of the crime. *See* Tr., Vol. III at 177-78; Exhibit Index, Volume I at 141 (State's Exhibit 112).

[10] On April 26, the State charged Smith with one count of murder and one count of felony murder for Price's death; two counts of attempted murder, Level 1 felonies; two counts of aggravated battery, Level 3 felonies; and two counts of robbery resulting in serious bodily injury, Level 2 felonies.² Later, upon the

² The State also charged Mathews. Smith later filed a Motion to Sever Defendants, which the trial court granted. As a result, Smith and Mathews were tried separately.

State's motion, one of the robbery charges was dismissed. A jury trial was held from December 9 to 11, 2019. The jury found Smith guilty as charged and the trial court entered judgment of conviction only for murder and the two counts of attempted murder and sentenced him to ninety years in the DOC. Smith now appeals. Additional facts will be supplied as necessary.

Discussion and Decision

I. Standard of Review

[11] When reviewing the sufficiency of the evidence required to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Instead, we consider only the evidence supporting the verdict and any reasonable inferences that can be drawn therefrom. *Morris v. State*, 114 N.E.3d 531, 535 (Ind. Ct. App. 2018), *trans. denied*. We consider conflicting evidence most favorably to the verdict. *Silvers v. State*, 114 N.E.3d 931, 936 (Ind. Ct. App. 2018). “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.” *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). The evidence need not overcome every reasonable hypothesis of innocence; it is sufficient if an inference may reasonably be drawn from the evidence to support the verdict. *Silvers*, 114 N.E.3d at 936.

II. Sufficiency of the Evidence

- [12] Smith contends the evidence is insufficient to support his convictions for murder and attempted murder. We disagree.
- [13] The State bears the burden of proving all elements of the charged crime beyond a reasonable doubt. *Taylor v. State*, 587 N.E.2d 1293, 1301 (Ind. 1992); Ind. Code § 35-41-4-1(a) (“A person may be convicted of an offense only if his guilt is proved beyond a reasonable doubt.”). A person who “knowingly or intentionally kills another human being” commits murder, a felony. Ind. Code § 35-42-1-1(1). Indiana’s attempt statute states:

A person attempts to commit a crime when, acting with the culpability required for commission of the crime, the person engages in conduct that constitutes a substantial step toward commission of the crime. An attempt to commit a crime is a felony or misdemeanor of the same level or class as the crime attempted. However, an attempt to commit murder is a Level 1 felony.

Ind. Code § 35-41-5-1(a).

- [14] A conviction for murder requires proof that the defendant had the specific intent to kill. *Perez v. State*, 872 N.E.2d 208, 213 (Ind. Ct. App. 2007), *trans. denied*. The same is true for attempted murder. *Spradlin v. State*, 569 N.E.2d 948, 949 (Ind. 1991). “The intent to kill may be inferred from the deliberate use of a deadly weapon in a manner likely to cause death or serious injury. We have found sufficient evidence for conviction when the evidence indicates that a

weapon was fired in the direction of the victim.” *Bethel v. State*, 730 N.E.2d 1242, 1245 (Ind. 2000) (citation omitted).

[15] In this case, the State prosecuted Smith for the murder of Price and attempted murders of Ralph and Bradley under an accomplice liability theory. Under Indiana’s accomplice liability statute, 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. It is not necessary that the evidence show the accomplice personally participated in the commission of each element of the offense. *Pugh v. State*, 52 N.E.3d 955, 966 (Ind. Ct. App. 2016), *trans. denied*. A person who aids another in committing a crime is just as guilty as the actual perpetrator. *Id.*

[16] In determining whether a defendant aided another in the commission of the crime, the fact-finder considers: (1) presence at the crime scene; (2) companionship with another engaged in a crime; (3) failure to oppose the commission of the crime; and (4) the course of conduct before, during, and after the occurrence of the crime. *Wright v. State*, 950 N.E.2d 365, 368 (Ind. Ct. App. 2011). As a general rule, mere presence at the scene of the crime is not itself sufficient to allow an inference of participation in the crime. *Griffin v. State*, 413 N.E.2d 293, 295 (Ind. Ct. App. 1980). Such presence may, however, be considered with other evidence as a factor in determining a defendant’s guilt. *Id.* Accomplice liability applies to the contemplated offense, as well as all acts that are a probable and natural consequence of the concerted action. *Wieland v. State*, 736 N.E.2d 1198, 1202 (Ind. 2000).

[17] To convict a defendant for attempted murder under accomplice liability also requires the State to prove the defendant, “with the specific intent that the killing occur, knowingly or intentionally aided, induced, or caused his accomplice to commit the crime of attempted murder.” *Bethel*, 730 N.E.2d at 1246. Thus, when the State seeks to convict a defendant of attempted murder on an accomplice liability theory, it must prove: “(1) that the accomplice, acting with the specific intent to kill, took a substantial step toward the commission of murder, and (2) that the defendant, acting with the specific intent that the killing occur, knowingly or intentionally aided, induced, or caused the accomplice to commit the crime of attempted murder.” *Id.* And it is well-established that flight may be considered as circumstantial evidence of guilt. *Potter v. State*, 451 N.E.2d 1080, 1081 (Ind. 1983).

[18] Here, all four factors establish that Smith was intimately involved in the entire incident, not just a bystander. He was present at the scene of the crimes, which was confirmed by DNA evidence; he and Mathews were companions and worked in concert to rob, beat, and shoot Ralph and then shoot into the car at Bradley and Price; there is no evidence that he ever opposed the crimes; and his conduct before, during, and after the commission crimes, including his flight from the scene, show he and Mathews are guilty. In fact, the evidence most favorable to the verdicts identifies Smith as the shooter. Ralph testified he observed Smith with a revolver, a firearm he had seen him with before. Ralph had known Smith for years and Bradley had been in the car with Smith earlier that night and positively identified him as the individual who shot at him and

Price. To the extent Smith argues this is unreliable evidence because they were in the hospital and medicated at the time they identified Smith, Bradley testified at trial that, in the hospital, he was “of a clear enough mind” to be able to identify who was involved. Tr., Vol. II at 199. Similarly, when Ralph was asked whether he was able to “think clearly enough to say who shot [him]” and what transpired, he answered “[a]t that time, yes” and also testified that he “definitely knew who it was.” *Id.*, Vol. III at 45.

[19] The evidence shows that when Ralph told Smith and Mathews he was no longer interested in the car, Smith demanded that Ralph give them the money. Smith and Mathews then physically attacked Ralph. At one point, Smith had his revolver pointed directly at Ralph and when Ralph tried to bat the gun away, it went off. Smith and Mathews continued to beat Ralph and shot him four or five more times. Shortly thereafter, Smith and Mathews left the backyard and both came up to the car where Bradley and Price were seated in the back. Mathews was on the driver’s side and Smith was on passenger side and they began shooting directly into the car at Bradley and Price. *See Bethel* 730 N.E.2d at 1245 (stating that evidence of the specific intent to kill is sufficient when a defendant fires a weapon in the direction of the victim). Then, they fled the scene in Mathews’ car, which constitutes circumstantial evidence of guilt. *See Potter*, 451 N.E.2d at 1081. The evidence shows that Smith actively participated in the murder and attempted murders.

[20] Smith argues the evidence is insufficient to show that *he* was the shooter. Although we have already concluded there is ample evidence that Smith was, in

fact, the shooter, assuming *arguendo* he was not, a defendant is criminally liable for the use of a weapon by an accomplice even in the complete absence of evidence that the defendant was personally armed. *Wright*, 950 N.E.2d at 368. Therefore, Smith’s argument fails whether he was the shooter or not because the evidence clearly shows he was, at the very least, Mathews’ accomplice in the murder and attempted murders – making him guilty of the same. *Pugh*, 52 N.E.3d at 966.

- [21] Smith’s argument is merely a request for this court to reweigh the evidence. We must decline such request. *Drane*, 867 N.E.2d at 146. It is the province of the jury to decide who and what it believes. To the extent that Smith alleges he was not intimately involved in or opposed the shooting, it is the jury who assesses the credibility of the witnesses and decides whether there is sufficient evidence to support the charged crimes. We conclude the evidence of the incident is sufficient to show the requisite intent and facts supporting the jury’s decision that Smith was guilty of murder and attempted murder.

Conclusion

- [22] There is sufficient evidence to support Smith’s murder and attempted murder convictions. Accordingly, we affirm.

- [23] Affirmed.

Bailey, J., and Tavitas, J., concur.