MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kendall J. Hart,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 23, 2022

Court of Appeals Case No. 21A-CR-1230

Appeal from the Marion Superior Court

The Honorable Shatrese M. Flowers, Judge

Trial Court Cause No. 49D28-1809-MR-30361

Brown, Judge.

[1] Kendall J. Hart appeals his sentence for murder and asserts the trial court abused its discretion in sentencing him. We affirm.

Facts and Procedural History

[2] On September 6, 2018, Tony Currie and Paris Siler exchanged messages on Facebook Messenger. At 8:15 p.m., Siler and Miykel Anderson arrived at Currie's apartment. Anderson believed the plan was that Siler was going to have sex with Currie in exchange for money. At 8:26 p.m., Currie, Siler, and Anderson left the apartment and went to a club.

[3] At 10:16 p.m., Currie returned home with two friends that he had seen at the club. At 10:25 p.m., Siler and Anderson returned to Currie's apartment. "Common social interactions between everybody inside" occurred. Transcript Volume II at 197. At 11:16 p.m., Currie's two friends from the club left the apartment. Currie closed and locked the door.

[4] At some point, Siler, Justin Smith, who was Siler's boyfriend, and Hart, who worked with Smith, had a conversation about robbing Currie. Siler unlocked the door to Currie's apartment periodically throughout the night, and Currie repeatedly locked the door.

[5] At 12:25 a.m., Currie gave cash to Siler. At 12:40 a.m., Siler unlocked and opened the door. Hart and Smith entered the apartment, and Hart shot Currie in the head. Hart later told Anderson: "You better not say shit." Transcript Volume III at 7.

[6] During an investigation, Indianapolis Metropolitan Police Detective Dustin Keedy noticed a security camera inside the front room, located a DVR with the camera footage in a closet, and determined that the moment of Currie's death was captured on video. On September 10, 2018, Detective Keedy spoke with Anderson who eventually gave him the names of Hart, Siler, and Smith.

[7] On September 11, 2018, the State charged Hart with Count I, murder, and Count II, robbery resulting in serious bodily injury as a level 2 felony. In October 2018, Hart was arrested in Falkville, Alabama.

[8] In May 2021, the court held a jury trial. The court admitted the video from the security camera. The State presented the testimony of multiple witnesses including Anderson, Siler, Detective Keedy, and Kathryn Drumm, the human resource manager at a business where Hart worked as a temporary employee.

[9] Siler testified that she was charged with felony murder in relation to Currie's death and pled guilty to robbery causing serious bodily injury as a level 2 felony. She stated that Currie was going to pay her and Anderson $250 each for going to dinner with him. She indicated she created a group message through her phone that included Hart, Smith, and Anderson, and told them that they were "trying to get money" from Currie. *Id.* at 96. When asked what Hart and Smith's job was supposed to be, she answered: "We asked them to come down to be basically the muscle behind us, if we weren't, if [Currie] wasn't just willingly giving us the money that he promised us." *Id.* at 97. She testified that Currie gave her the money for the dinner at some point, he made a proposal for

sex in exchange for additional money, and she and Anderson led him to believe that the proposal involving sex might happen.

[10] The jury found Hart guilty of murder and attempted robbery resulting in serious bodily injury. At the sentencing hearing, the prosecutor argued: "[Currie] had no idea this was coming. And why would he? Because he was in his own apartment where he should've felt safe. So I think the nature and circumstances of the fact that this was in his own home should be considered, as well." Transcript Volume IV at 104. The prosecutor requested a sentence above the advisory. Hart's counsel requested that the attempted robbery conviction be vacated and asked for the minimum sentence.

[11] The court vacated the conviction for Count II on the basis of double jeopardy. The court found the following mitigators: Hart's status as a high school graduate; the fact that he had a child who was three months old when the offense occurred and the case had been pending for almost three years; and a prolonged period of incarceration would constitute an undue hardship on Hart's child. It found Hart's juvenile history, adult criminal history, and the fact that he was on probation when he was arrested for the current offense as aggravators. The court also stated:

> Last in aggravation, the Court finds the nature and circumstances of this offense. The Court did hear the evidence throughout the trial. The Court reviewed the video in the trial, and the Court understands the argument of the Defense and the Defendant's position that he was not guilty of this offense, but based on the evidence presented at trial, specifically the video, Mr. Hart was the person that had the handgun in the video. Ms. Siler did not

> have a handgun, nor did Mr. Smith have a handgun. The only person that had a handgun was Mr. Hart.
>
> As far as Mr. Hart, whether the argument – whether he absconded or did not abscond, the evidence at trial was that he never returned to work. So the HR representative from the company that he was working at stated that he clocked out the night of this offense, along with Mr. Smith, and he never returned to work.

Id. at 111. It found that the aggravators were "pretty much in balance" with the mitigators and sentenced Hart to the advisory sentence of fifty-five years. *Id.*

Discussion

[12] The issue is whether the trial court abused its discretion in sentencing Hart. Hart argues that the court failed to identify specific facts which would support the finding of the nature and circumstances of the offense as an aggravator. He also asserts that the court's reliance on this improper aggravator was not harmless error because the court found the aggravators and mitigators to balance and the aggravators were not so substantial that this Court can be confident the trial court would have imposed the same sentence if it had not considered the nature and circumstances as an aggravator.

[13] We review the sentence for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.* A trial court abuses its discretion if it:

(1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law." *Id.* at 490-491. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Id.* at 491. The relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. *Id.* Generally, a single aggravator is sufficient to support an enhanced sentence. *See Trusley v. State*, 829 N.E.2d 923, 927 (Ind. 2005).

[14] "It is well established that the trial court may consider the nature and circumstances of the crime as an aggravator." *Larkin v. State*, 173 N.E.3d 662, 671 (Ind. 2021) (citing *McCann v. State*, 749 N.E.2d 1116, 1120 (Ind. 2001)), *reh'g denied*. "To enhance a sentence in this manner, the trial court must detail why the defendant deserves an enhanced sentence under the particular circumstances." *Vasquez v. State*, 762 N.E.2d 92, 98 (Ind. 2001). *See also Caraway v. State,* 959 N.E.2d 847, 850 (Ind. Ct. App. 2011) (holding that, when a sentence is enhanced based upon the nature and circumstances of the crime, "the trial court must detail why the defendant deserves an enhanced sentence under the particular circumstances"), *trans. denied*.

[15] The trial court indicated that it had reviewed the video of the murder and specifically noted that Hart was the only individual armed with a handgun. We cannot say that the trial court abused its discretion in finding the nature and circumstances as an aggravating factor. Even assuming the trial court abused its discretion with respect to this aggravator, we can say with confidence that the trial court would have imposed the same advisory sentence given the remaining aggravators including Hart's juvenile and adult criminal history and the fact that he was on probation at the time of the offense.[1]

[16] For the foregoing reasons, we affirm Hart's sentence.

[17] Affirmed.

May, J., and Pyle, J., concur.

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[1] Hart argues the trial court improperly recited his juvenile and adult criminal history. Specifically, he asserts that the court "incorrectly found that [he] had one juvenile misdemeanor true finding and three adult misdemeanor convictions" while he actually had "two juvenile misdemeanor true findings and two adult misdemeanor convictions." Appellant's Brief at 20. At the sentencing hearing, the court found that Hart had "one misdemeanor true finding" as a juvenile and, as an adult, one prior felony conviction for a class D felony and three prior misdemeanor convictions. Transcript Volume IV at 110. The presentence investigation report reveals that, as a juvenile, Hart had adjudications for leaving home without permission and possession of marijuana in 2011 and failing to appear in 2012. As an adult, Hart was convicted of criminal recklessness while armed with a deadly weapon as a class D felony in 2013; disorderly conduct as a class B misdemeanor in 2016; and carrying a handgun without a license and operating a motor vehicle without ever receiving a license as class A misdemeanors in 2017. In light of the record, the trial court's comments do not impact our conclusion that reversal is not warranted.