

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shonta E. Henderson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 19, 2023

Court of Appeals Case No.
22A-CR-2259

Appeal from the St. Joseph
Superior Court

The Honorable Elizabeth C.
Hurley, Judge

Trial Court Cause No.
71D02-2109-F3-35

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

- [1] Shonta Henderson was convicted, as an accomplice, of Level 3 felony armed robbery. Henderson admitted to police that she gave one of the principal actors the handgun used in the robbery, opened the door of the victim's apartment so the principal actors could enter, and left the apartment with the principal actors after the robbery. At trial, however, Henderson sought to introduce two notarized letters in which another alleged accomplice, Kamryn Griffin, took full responsibility for the robbery and stated Henderson had nothing to do with it. The trial court excluded the letters as inadmissible hearsay, finding Griffin was not unavailable as a witness under Indiana Evidence Rule 804.
- [2] Henderson appeals her conviction, arguing that the trial court abused its discretion by excluding Griffin's letters and that the State otherwise presented insufficient evidence to prove Henderson was an accomplice to the robbery. We affirm.

Facts

- [3] Henderson and Griffin were at the apartment of Henderson's friend Garnaud "Patrick" Ntaganda when two individuals, nicknamed "Cuddie" and "Zoe," entered the apartment and robbed Patrick at gunpoint of his wallet and cell phone. Afterward, Henderson, Griffin, Cuddie, and Zoe left the apartment together. The group drove away in Henderson's car but crashed before exiting the apartment complex. Police apprehended Henderson at the crash site and Griffin at a nearby gas station. Cuddie and Zoe escaped on foot.

[4] From a cell phone Henderson possessed at the time of her arrest, police obtained a series of text messages sent to and received from Cuddie and Zoe while Henderson and Griffin were inside Patrick's apartment. Among them were messages indicating that Cuddie and Zoe planned to rob Patrick once he and Griffin were in a room together. The evidence also included two videos that were recorded by Henderson and sent via text message to Zoe prior to the robbery. One of these videos showed Patrick closing the door to his bedroom with him and Griffin inside. This video was followed by text messages to Zoe stating, "Come to door," "Come on," and "They in the room." Exhs. Vol. III, pp. 66-67. The other video sent to Zoe showed Henderson whispering to the camera, "They in the room." Exh. 33f.

[5] When interviewed by Mishawaka Police Officer Donald Siders, Henderson admitted that she owned the cell phone she possessed at the time of her arrest and that she sent Zoe videos from inside Patrick's apartment. Henderson also admitted that she gave Cuddie the handgun used in the robbery and let Cuddie and Zoe into Patrick's apartment. According to Henderson, Cuddie and Zoe went to the "wrong apartment" at first, so she opened Patrick's apartment door to let them know which apartment was the "correct one." Tr. Vol. II, pp. 141. Additionally, Henderson admitted that she, Griffin, Cuddie, and Zoe left Patrick's apartment together after the robbery and drove away in Henderson's car.

[6] The State separately charged Henderson and Griffin with Level 3 felony armed robbery. Pursuant to a plea agreement with the State, Griffin pleaded guilty to

Level 6 felony assisting a criminal and was sentenced to time served.

Henderson, however, proceeded to a jury trial on the armed robbery charge.

[7] On the first day of trial, the State presented the text messages and videos obtained from Henderson's cell phone as well as Patrick's testimony about the robbery. Patrick testified that he and Griffin were in his apartment bedroom together when the robbery began. They had left Henderson alone in the living room with the apartment door locked, but Patrick heard the door open twice just before the robbery occurred. When Patrick opened his bedroom door to see if Henderson had left his apartment, he found Cuddie and Zoe in his living room with a handgun.

[8] Also on the first day of trial, Henderson informed her counsel of the existence of two notarized letters from Griffin, both of which were written nine months earlier. In the letters, Griffin took "full responsibility" for the robbery and stated Henderson "had nothing to do with it." Exhs. Vol III, pp. 72, 74. Specifically, Griffin admitted that she set up the robbery by texting Cuddie and Zoe from Henderson's phone without Henderson's knowledge. Griffin also admitted that she unlocked Patrick's apartment door before going into the bedroom with Patrick.

[9] Henderson's counsel obtained copies of Griffin's letters and, before trial proceedings adjourned for the day, advised the trial court of Henderson's intent to offer the letters into evidence. The State objected on hearsay grounds. Henderson's counsel, however, argued that the letters were admissible as

statements against interest by a declarant who is unavailable as a witness under Evidence Rule 804(b)(3).

[10] When proceedings resumed the following day, Henderson’s counsel advised the trial court that he visited Griffin’s last known address the night before and learned that Griffin no longer resided there. Henderson’s counsel also advised that he left a voicemail message at Griffin’s last known telephone number and had not heard back. According to Henderson’s counsel, he believed Griffin had moved to Texas. The trial court sustained the State’s hearsay objection, finding Griffin was not unavailable as a witness as required by Evidence Rule 804(b). The court therefore ordered the exclusion of Griffin’s letters at trial.

[11] The State went on to present Officer Siders’s testimony as to Henderson’s admissions during her police interview. Ultimately, the jury found Henderson guilty of Level 3 felony armed robbery, and the trial court sentenced her to 15 years in the Indiana Department of Correction.

Discussion and Decision

[12] On appeal, Henderson challenges both the trial court’s exclusion of Griffin’s letters at trial and the sufficiency of the evidence to support her conviction.

I. Admissibility of the Letters

[13] Henderson first argues that the trial court erred in excluding Griffin’s letters as inadmissible hearsay. A trial court has the discretion to admit or exclude evidence, and its decisions are reviewed only for abuse of that discretion. *Hall v.*

State, 177 N.E.3d 1183, 1193 (Ind. 2021). We will reverse only if the trial court’s ruling was clearly against the logic and effect of the facts and circumstances before it and the error affects the objecting party’s substantial rights. *Id.*

[14] As Henderson recognized at trial, the statements in Griffin’s letters were hearsay and, thus, generally inadmissible under our rules of evidence.¹ Henderson therefore sought to admit Griffin’s letters under Evidence Rule 804(b)(3), which provides an exception to the hearsay rule for statements made against the declarant’s interest. The exception, however, only applies “if the declarant is unavailable as a witness.” Ind. Evidence Rule 804(b).

[15] Henderson disputes the trial court’s finding that Griffin was not unavailable to testify. Evidence Rule 804(a)(5)(B) provides, in pertinent part: “A declarant is considered to be unavailable as a witness if the declarant . . . is absent from the trial or hearing and the statement’s proponent has not been able, by process or other reasonable means, to procure . . . the declarant’s attendance or testimony[.]” According to Henderson, her counsel exercised reasonable means to procure Griffin’s testimony at trial by visiting Griffin’s last known address and by leaving a voicemail message at Griffin’s last known telephone number.

¹ “Hearsay is an out-of-court statement offered for ‘the truth of the matter asserted,’ Ind. Evidence Rule 801(c)(2), and it is generally not admissible as evidence. Ind. Evidence Rule 802.” *Blount v. State*, 22 N.E.3d 559, 565 (Ind. 2014).

[16] In *Berkman v. State*, 976 N.E.2d 68 (Ind. Ct. App. 2012), this Court found that the State exercised reasonable means to procure a declarant’s testimony at trial by attempting to subpoena the declarant at his last known address approximately one month before trial and by attempting to contact the declarant at his last known telephone number. *Id.* at 76. Henderson likens her efforts to procure Griffin’s testimony to the State’s efforts in *Berkman*. But Henderson did not attempt to procure Griffin’s testimony a month before trial—she waited until after trial proceedings had begun.

[17] The trial court found the timing of Henderson’s efforts unreasonable and, therefore, concluded that Griffin was not unavailable as a witness under Evidence Rule 804(a). As this determination was not clearly against the logic and effect of the facts and circumstances before the court, Henderson has not demonstrated that the court abused its discretion in excluding Griffin’s letters as inadmissible hearsay.

II. Sufficiency of the Evidence

[18] Henderson next argues that the State presented insufficient evidence to support her conviction for Level 3 felony armed robbery. 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.

[19] A person commits robbery, a Level 5 felony, when that person “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.” Ind. Code § 35-42-5-1(a). “However, the offense is a Level 3 felony if it is committed while armed with a deadly weapon[.]” *Id.*

[20] Henderson does not dispute that Cuddie and Zoe took property from Patrick while armed with a deadly weapon. The question is whether Henderson 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, even if the other person: (1) has not been prosecuted for the offense; (2) has not been convicted of the offense; or (3) has been acquitted of the 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).

[21] Thus, to convict Henderson of Level 3 felony armed robbery, under an accomplice liability theory, the State was required to prove beyond a reasonable doubt that Henderson knowingly or intentionally aided, induced, or caused Cuddie and Zoe to commit the offense.

[22] “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).

[23] Looking only at the evidence supporting Henderson’s conviction, the record shows that Henderson:

- gave Cuddie the gun used in the robbery;
- received text messages from Cuddie and Zoe indicating their intent to rob Patrick once he and Griffin were in a room together;
- sent text messages and videos to Zoe notifying him when Patrick and Griffin had gone into Patrick’s bedroom and telling Zoe to come to Patrick’s door;
- opened the door to Patrick’s apartment so Cuddie and Zoe would know which apartment to enter; and
- left Patrick’s apartment with Cuddie and Zoe after the robbery.

Among other factors, Henderson’s course of conduct before and after Patrick’s robbery supports the jury’s finding that she was an accomplice to the crime.

[24] Henderson’s only claim to the contrary is that the State failed to prove she was the one who sent Zoe incriminating text messages and videos prior to the robbery. But Henderson owned the phone from which the messages and videos

were sent, and police recovered the phone from Henderson at the time of her arrest. Henderson also admitted that she sent Zoe videos from inside Patrick's apartment. From this evidence, the jury could reasonably infer that Henderson sent Zoe the text messages and videos obtained from Henderson's phone. Henderson's claim is merely a request to reweigh the evidence, which we cannot do. *Bailey*, 907 N.E.2d at 1005.

[25] We affirm the trial court's judgment.

Riley, J., and Bradford, J., concur.