

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andre Dana Hastings,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 29, 2022

Court of Appeals Case No.
21A-CR-1765

Appeal from the Tippecanoe
Superior Court

The Honorable Steven P. Meyer,
Judge

Trial Court Cause No.
79D02-1908-MR-2

Pyle, Judge.

Statement of the Case

[1] Andre Hastings (“Hastings”) appeals his conviction by jury of murder¹ as well as the sentence imposed thereon. He argues that the evidence is insufficient to support his conviction because the State failed to prove his identity beyond a reasonable doubt and that his seventy-year sentence is inappropriate. Concluding that the evidence is sufficient to support Hastings’ conviction and that his sentence is not inappropriate, we affirm the trial court’s judgment.

[2] We affirm.

Issues

1. Whether there is sufficient evidence to support Hastings’ murder conviction.
2. Whether Hastings’ sentence is inappropriate.

Facts

[3] The facts most favorable to the verdict reveal that at approximately 11:00 p.m. on August 1, 2019, Jonathan Simpson (“Simpson”), his girlfriend, and his son drove to Drequan Burglar’s (“Burglar”) apartment at Romney Meadows (“Romney Meadows”) in Lafayette. Twenty-year-old Burglar lived in the apartment with his girlfriend, their children, his sister, and his sister’s children.

¹ IND. CODE § 35-42-1-1.

[4] Shortly after Simpson and his family arrived at Burglar's apartment, Burglar asked Simpson to step outside to talk. The two men walked out the back door of the apartment and stood between two buildings while they talked. Both Burglar and Simpson were unarmed. While Burglar and Simpson were talking, twenty-year-old Hastings, who lived at Romney Meadows with his mother, and Hastings' pregnant girlfriend, who also lived at Romney Meadows, were arguing outside the girlfriend's apartment. When Hastings' girlfriend went back into her apartment, Hastings turned and walked away.

[5] After midnight, as Burglar and Simpson were walking back to Burglar's apartment, the two men noticed Hastings. Based on Hastings' facial expressions, Simpson thought that Hastings looked "mad" and "mean." (Tr. Vol. 2 at 24). As Burglar and Simpson passed Hastings, Burglar and Simpson were "a couple of feet apart" from Hastings, and their shoulders were almost touching. (Tr. Vol. 2 at 25). Simpson kept his eyes on Hastings' face "[b]ecause you looking like that, I'm not fitting to turn my back to you." (Tr. Vol. 2 at 26).

[6] Simpson and Burglar asked Hastings what he was looking at and if they knew him. Hastings responded by asking Simpson and Burglar what they had just said. As Simpson and Burglar repeated their questions, Simpson noticed that Hastings was reaching for his hip. Simpson then told Burglar to run. While Simpson was running, Simpson heard shots and screams. When Simpson returned to the scene, Simpson discovered that Burglar had been shot in the chest.

- [7] Lafayette Police Department officers were dispatched to the scene, and Burglar was taken by ambulance to the hospital where he died shortly thereafter. Following the shooting, Lafayette Police Department officers accessed surveillance videos from Romney Meadows. One video, taken from a distance, showed Hastings crossing paths with Burglar and Simpson. Another video showed Hastings raise his arm. Additional videos showed Hastings running through Romney Meadows after the shooting.
- [8] Later that afternoon, Simpson immediately identified Hastings in a photo array. Simpson was “[a] hundred percent” certain of his identification. (Tr. Vol. 2 at 47). Lafayette Police Department officers located two spent shell casings at the scene of the shooting. However, no firearm was ever located.
- [9] An autopsy revealed that one bullet had entered the right side of Burglar’s chest. The bullet had then passed through Burglar’s ribs, lung, diaphragm, inferior vena cava, abdominal aorta, and left kidney. The bullet had then exited Burglar’s body on the left side of his back. The forensic pathologist who conducted the autopsy explained that “once you hit those large vessels of the abdomen, the inferior vena cava and the aorta, those are very often fatal wounds, and in this case obviously was a fatal wound.” (Tr. Vol. 3 at 14). The manner of Burglar’s death was determined to be a homicide.
- [10] In August 2019, the State charged Hastings with murder. Lafayette Police Department officers located Hastings in Illinois six weeks later and arrested

him. The State subsequently charged Hastings with an enhancement for the use of a firearm during the murder.

[11] The jury heard the evidence as set forth above at Hastings' three-day jury trial in October 2020. In addition, during Simpson's testimony, Simpson positively identified Hastings as the shooter. The jury convicted Hastings of murder and, in a separate proceeding, determined that he had used a firearm during the commission of the murder.

[12] At Hastings' subsequent sentencing hearing, the trial court reviewed Hastings' presentence investigation report. That report revealed that Hastings has twice been adjudicated to be a delinquent child, once for committing what would have been the offense of theft if committed by an adult and once for committing what would have been the offense of aggravated battery if committed by an adult. In both cases, Hastings had been placed on and then unsatisfactorily discharged from probation. Hastings' adult criminal history includes misdemeanor convictions for operating a vehicle without ever having received a license, possession of marijuana, and residential entry. Hastings was on probation for the residential entry conviction when he murdered Burglar. During the sentencing hearing, Hastings stated that he was "sorry for what [Burglar's] family [had] had to go through[.]" (Tr. Vol. 3 at 248).

[13] Also during the sentencing hearing, the trial court noted that "[t]his [crime] was absolutely senseless. Mr. Hastings was running around this apartment complex with a gun, shooting at individuals, and unfortunately resulted in the death of

Mr. Burglar[.]” (Tr. Vol. 3 at 244). Thereafter, the trial court found the following aggravating factors: (1) Hastings’ criminal history, which included the two juvenile delinquency adjudications and three misdemeanor convictions; (2) Hastings was on probation at the time he murdered Burglar; and (3) the offense occurred in a residential apartment complex where individuals were living with their children. In addition, the trial court found the following mitigating factors: (1) Hastings’ young age; and (2) his apology to Burglar’s family at the sentencing hearing. The trial court sentenced Hastings to seventy (70) years, which included sixty (60) years for the murder conviction enhanced by ten (10) years because Hastings had used a firearm during the commission of the murder.

[14] Hastings now appeals his conviction and sentence.

Decision

[15] Hastings argues that there is insufficient evidence to support his conviction and that his sentence is inappropriate. We address each of his contentions in turn.

1. Sufficiency of the Evidence

[16] Hastings first argues that there is insufficient evidence to support his conviction because the State failed to prove his identity beyond a reasonable doubt. He specifically contends that the evidence “merely established that [he] was in the area and later ran from the area.” (Hastings’ Br. 8).

[17] Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[18] Here, our review of the evidence reveals that Simpson clearly saw Hastings' face before Hastings shot Burglar, immediately identified Hastings in a photo array, and positively identified Hastings at trial. This evidence is sufficient to establish Hastings' identity beyond a reasonable doubt. *See Goolsby v. State*, 517 N.E.2d 54, 58 (Ind. 1987) (evidence of identity was sufficient where victim clearly saw defendant during the attack, quickly identified defendant in a photo array, and positively identified defendant at trial). In addition, Romney Meadows surveillance videos show Hastings crossing paths with Burglar and Simpson, raising his arm, and then running from the scene. There is sufficient evidence to support Hastings' murder conviction.

2. Sentence

[19] Hastings also argues that his seventy-year sentence, which includes a sixty-year sentence for murder, enhanced by ten years for the use of a firearm during the commission of the offense, is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due

consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The defendant bears the burden of persuading this Court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as inappropriate turns on the "culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

[20] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. Here, Hastings was convicted of murder and was found to have knowingly or intentionally used a firearm during the commission of the offense. The sentencing range for murder is from forty-five (45) to sixty-five (65) years, with an advisory sentence of fifty-five (55) years. I.C. § 35-50-2-3. In addition, if a person knowingly or intentionally uses a firearm during the commission of certain offenses, including murder, the trial court may impose an additional fixed term of imprisonment between five (5) and twenty (20) years. I.C. § 35-50-2-11. Here, the trial court imposed a sixty (60) year sentence for Hastings' murder conviction, enhanced by ten (10) years for his use of a firearm, resulting in an aggregate sentence of seventy (70) years. This sentence is fifteen years less than the potential maximum sentence of eighty-five years.

- [21] With regard to the nature of the offense, we agree with the trial court that Burglar's murder was absolutely senseless. In an unprovoked attack, Hastings shot Burglar, who was unarmed and simply returning to his apartment and family after spending some time outside talking with a friend.
- [22] With regard to Hastings' character, we note that Hastings, who was twenty years old at the time of the murder, has a criminal history that includes two juvenile delinquency adjudications, three adult misdemeanor convictions, and two instances of being unsatisfactorily discharged from probation. In addition, Hastings was on probation for a residential entry conviction when he murdered Burglar. Hastings' criminal history reflects poorly on his character for the purposes of sentencing. *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007).
- [23] Based on the nature of the offense and his character, Hastings has failed to persuade this Court that his aggregate seventy (70) year sentence is inappropriate.
- [24] Affirmed.

May, J., and Brown, J., concur.