MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Ronald W. Price,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 16, 2024

Court of Appeals Case No.
23A-CR-787

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No.
02D05-2109-MR-16

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] Ronald W. Price appeals his convictions, following a jury trial, for two counts of felony murder. The trial court sentenced him to an aggregate 130-year term. On appeal, he contends that the trial court abused its discretion in instructing the jury, that the State presented insufficient evidence to support his convictions, and that his sentence is inappropriate in light of the nature of the offenses and his character. We affirm.

Facts and Procedural History

[2] Appellant's counsel's opening statement in his brief sets the backdrop for this case:

> The death of drug dealer Walter Cash by fentanyl overdose during a [ménage à] trois with his girlfriend, Jennifer Dray, and an unidentified prostitute at the Hawthorn Inn triggered a battle for control of his regime. This included personal property, real estate, U.S. currency, and a sizable inventory of drugs.

Appellant's Br. at 11. On one side of the battle was Josh Dube, who sold drugs for Cash and was the fiancé of Cash's sister, and Marina Zrnic, who also sold drugs for Cash. On the other side was Dray. Price had purchased drugs from Cash and his associates and had done odd jobs for Cash, so he sided with Dube and Zrnic. Some individuals, including Dube and Price, essentially blamed Dray for Cash's death, believing that she supplied him with the drugs that killed him.

[3] Prior to his death, Cash was in the process of buying a house located at 815 Third Street in Fort Wayne (the 815 House) on contract from Ronald Nifong. Dray lived in that house with Cash, and she remained there following his death. In addition, Cash bought a red Chevrolet Trailblazer that he titled in Dube's name. After Cash's death, Dube and Zrnic took possession of some of Cash's drugs and $25,000 in cash. Dray began driving the Trailblazer.

[4] Dube believed that he should get the Trailblazer. Zrnic believed that the Trailblazer should belong to her. Dray also wanted the Trailblazer, and she and Dube argued about the vehicle. Similarly, Dube wanted to put the 815 House into Cash's mother's name. Dray thought the house should belong to her, and she argued with Dube about it. Dray also got into a "heated" argument with Price about his failure to keep up with the payments on a property that Cash had helped him rent from Nifong. Tr. Vol. 2 at 232. Threats were exchanged during that argument.

[5] Tensions came to a head on April 20, 2021. Text messages between Zrnic and Dube indicated that Dube was next door to the 815 House with Nifong when he told Zrnic that he heard that Dray "had people bout to roll up" because she was ready "to kill" him. State's Ex. 19-20. Dube stated that Dray "gotta go" from the 815 House and that he knew that she "would flip 180" when she got wind of his plans to take the Trailblazer and house from her. *Id*. Dray left the 815 House to drive Amanda Serrano to pick up a check. After she left the house, Dray received a call from Amanda Shroyer informing her that Dube was at the 815 House and that she needed to return. Dray returned to the house

with Serrano, finding Dube, Shroyer, and Joemale Wiggly inside. Dray yelled that she wanted Dube out of the house. Dube pulled out his Glock 19 pistol, waved it around, and told everyone that they needed to leave the house if they wanted to live. Serrano and Wiggly left. Dray and Shroyer remained. Dube tried to grab the keys to the Trailblazer from Dray but he was unsuccessful. Dray and Shroyer locked themselves in a bathroom. Dray yelled that Dube needed to leave, and she accused him of taking her property.

[6] During this interaction, Dube called Zrnic. He asked her if the father of her child, "Fifty," could come over, and he also requested Zrnic to come "pick [the Trailblazer] up." Tr. Vol. 2 at 244, Vol. 3. at 3. Price, Darryl Johnson, and another individual nicknamed "Red" happened to be with Zrnic because they were purchasing drugs from her. Tr. Vol. 3 at 3. She asked the three men to give her a ride to the 815 House. On the way to the house, Price ingested heroin that he had purchased from Zrnic. Zrnic loaned Price her phone and Price texted with Dube and mentioned being on the way to help take the Trailblazer and to shoot people. Price instructed Dube to leave the door open for their arrival. Dube thought that Zrnic, and not Price, was texting, so he did not understand the shooting reference.

[7] Dray called David Blum around 4:35 p.m. She sounded scared and told him that Dube was in the house, was waving a gun around, and was trying to take things from her. Zrnic arrived and went into the house with Johnson and Red. Dube gave Zrnic an extra set of keys for the Trailblazer. According to Dube and Zrnic, at that point, Price rushed into the home right as the bathroom door

opened and shot Dray and Shroyer with a handgun as he approached the bathroom. After shooting the two women, Price pointed the gun at Dube and Zrnic and pulled the trigger, but nothing happened. Price then fled the house. Shroyer died from multiple gunshot wounds to the head, and Dray died from gunshot wounds to the head and heart.

[8] Police later recovered Dube's Glock pistol and four other 9mm pistols from his home. Testing of the casings found at the scene of the murders revealed that all came from the same gun, but none matched any of Dube's guns. Price and Dube were incarcerated together, and Price told Dube that "he went in there and did it cause of Cash." *Id.* at 74-75. Price further told Dube that he fled to Kosciusko County after the murders and burned his clothes and dismantled his gun.

[9] During a police interview, Price denied being inside the 815 House on the day in question. However, he told another inmate in the jail that "they" went to the house to "take the truck" and remove Dray so that she could not sell any items that belonged to Cash. *Id.* at 120. He also told his off-and-on girlfriend that "they all went in" the 815 House and that he knew that Zrnic was going over there to take the Trailblazer, and he gave conflicting stories about seeing Dube shoot the victims and seeing Zrnic shoot the victims. Tr. Vol. 4 at 94.

[10] The State charged Price with two counts of murder, two counts of felony murder, and level 2 felony attempted robbery. The State also sought a sentence enhancement on the level 2 felony due to Price's use of a firearm. Zrnic and

Dube were also charged with various crimes. Zrnic eventually pled guilty to robbery, and Dube pled guilty to robbery and confinement. Both Zrnic and Dube agreed to testify against Price.

[11] A jury trial was held in February 2023. The jury acquitted Price on the murder charges and use of a firearm enhancement but found Price guilty of two counts of felony murder and of level 2 felony attempted robbery. During sentencing, the trial court vacated the attempted robbery conviction on double jeopardy grounds and sentenced Price to consecutive sixty-five-year sentences for the felony murder counts. This appeal ensued.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion in instructing the jury.

[12] We first address Price's claim that the trial court abused its discretion by instructing the jury on accomplice liability as requested by the State. Specifically, he contends that "the evidence did not support the giving of such an instruction" and "the instruction as written was confusing" which "denied him a fair trial." Appellant's Br. at 15. The instruction tendered by the State provided as follows:

> Under accomplice liability theory, the evidence need not show that the accomplice personally participated in the commission of each element of a particular offense; rather, an accomplice is criminally responsible for all acts committed by a confederate which are a probable natural consequence of their concerted action.

> Neither mere presence at the scene of the crime nor negative acquiescence, standing alone, is sufficient to permit an inference that one participated in a crime
>
> In determining whether a defendant aided another in the commission of a crime the jury may consider the following: (1) presence at the scene of the crime; (2) companionship with another engaged in the criminal activity; (3) failure to oppose the commission of the crime; and (4) the course of conduct before, during, and after the occurrence of the crime.

Appellant's App. Vol. 3 at 118. Price objected to the instruction, claiming that it was "confusing" and that the evidence, specifically the State's theory that Price was the shooter, did not "support the giving of the instruction." Tr. Vol. 4 at 157-58.

[13] "Instruction of the jury is left to the sound judgment of the trial court and will not be disturbed absent an abuse of discretion." *Schmidt v. State*, 816 N.E.2d 925, 930 (Ind. Ct. App. 2004), *trans. denied* (2015). To constitute an abuse of discretion, the instruction must be erroneous, and the instructions taken as a whole must misstate the law or otherwise mislead the jury. *Brooks v. State*, 895 N.E.2d 130, 132 (Ind. Ct. App. 2008). In reviewing a trial court's decision to give a tendered jury instruction, we consider: (1) whether the instruction correctly states the law; (2) whether there is evidence in the record to support the giving of the instruction; and (3) whether the substance of the tendered instruction is covered by other instructions that are given. *Id*.

[14] First, regarding whether the instruction correctly states the law, we observe that Price did not object to the instruction on this basis.[1] As a result, Price has waived appellate review of whether the jury instruction correctly states the law. *See Houser v. State*, 823 N.E.2d 693, 698 (Ind. 2005) ("A defendant may not object on one ground at trial and raise another on appeal; any such claim is waived.").

[15] With regard to Price's claim that the evidence in the record does not support the giving of the instruction, we disagree. The State presented evidence that, for the purposes of the felony murder charges, at an absolute minimum, Price was an active participant in the attempted robbery that resulted in the deaths of Dray and Shroyer. The State presented evidence that he knowingly accompanied Zrnic to the scene of the attempted robbery. Price knew that the plan was for Dube and Zrnic to take the Trailblazer from Dray by force, and that Dube was keeping Dray confined until help arrived to accomplish that goal. The State presented text messages drafted by Price on Zrnic's phone that instructed Dube that he and Zrnic were on their way and to leave the door open for his arrival so that he could aid them in their endeavor. Both Shroyer and Dray were killed

[1] Specifically, defense counsel stated, "I don't disagree that it's a correct statement of law…in viewing sufficiency of the evidence…[s]o, I guess I'm just gonna object because I think it's confusing." Tr. Vol. 4 at 157. We note that the latter part of this instruction is a correct statement of the appellate standard of review regarding the sufficiency of the evidence of accomplice liability. *See Garland v. State*, 788 N.E.2d 425, 431 (Ind. 2003) (observing that we consider four factors to determine whether a defendant acted as an accomplice: (1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) a defendant's conduct before, during, and after the occurrence of the crime).

during the attempted robbery of the Trailblazer. Price fled the county and burned and/or disposed of any evidence linking him to the crimes. Accordingly, the State presented evidence of Price's presence at the scene of the crime, his companionship with others engaged in the criminal activity, his failure to oppose the commission of the crime, and his course of conduct before, during, and after the occurrence of the crime. Sufficient evidence supported the giving of the instruction.

[16] Finally, Price asserts that the instruction was confusing due to the use of the term "negative acquiescence," which was "less than ideal." Reply Br. at 7. Still, being less than ideal is not the same as being overly confusing or resulting in reversible error. We agree with the State that neither the term "negative" nor "acquiescence" are technical or legal terms that must be defined for a jury. A "trial court has a duty to give further instructions defining words used in other instructions only if the words are of a technical or legal meaning normally not understood by jurors unversed in the law." *Martin v. State*, 314 N.E.2d 60, 70 (Ind. 1974), *cert. denied* (1975). This instruction was not so confusing such that we think the jury was misled as to what evidence may or may not support a finding of accomplice liability. In sum, we find no abuse of discretion.[2]

[2] We see the bigger problem as being that this was the only accomplice liability instruction given, so the jury was never instructed that a conviction on this theory required a finding that "[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. Again, defense counsel did not object on this basis or raise this issue below, and therefore it is waived for purposes of our review. *Houser*, 823 N.E.2d at 698.

Section 2 – The State presented sufficient evidence to support the felony murder convictions.

[17] Price challenges the sufficiency of the evidence to support his felony murder convictions. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Anderson v. State*, 37 N.E.3d 972, 973 (Ind. Ct. App. 2015), *trans. denied*. We respect the jury's exclusive province to weigh conflicting evidence, and we consider only the evidence most favorable to its verdict. *Id*. On appeal, it is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). We must affirm if the evidence and the reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Anderson*, 37 N.E.3d at 974.

[18] To obtain the felony murder convictions, the State was required to prove that Price killed Dray and Shroyer while committing or attempting to commit robbery. Ind Code § 35-42-1-1(2). "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 the commission of the crime." Ind. Code § 35-41-5-1(a). A person commits robbery if he knowingly or intentionally takes property from another person or from the presence of another person by using or threatening the use of force on any person or by putting any person in fear. Ind Code § 35-42-5-1(a). The offense is a level 3 felony if it is committed while armed with a deadly weapon. *Id*. "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.

[19] The State presented sufficient evidence from which a reasonable jury could find that Price actively participated as an accomplice in the attempted robbery that resulted in the deaths of Dray and Shroyer. As already noted, we consider four factors to determine whether a defendant acted as an accomplice: (1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) a defendant's conduct before, during, and after the occurrence of the crime. *Garland v. State*, 788 N.E.2d 425, 431 (Ind. 2003). The evidence most favorable to the verdicts indicates that Price, who by all accounts was Dray's enemy, knowingly accompanied Zrnic to the scene of an attempted robbery. He knew that the plan was for Dube and Zrnic to take the Trailblazer from Dray by force and that Dube was keeping Dray confined until help arrived, and he instructed Dube that he and Zrnic were on their way and to leave the door open so that he could aid in that endeavor. Price entered the house during the attempted robbery and shot and killed Dray and Shroyer. He then fled the county, burned his clothes, and dismantled and disposed of the weapon he used. Price's presence at the scene of the crime, his companionship with others engaged in criminal activity, his failure to oppose the crime, and his conduct before, during, and after the occurrence of the crime all support a finding of accomplice liability. Sufficient evidence supports his felony murder convictions.

[20] Despite Price's urging, we will not presume that the jury, by its acquittals on the intentional murder counts and use of a firearm enhancement, rejected wholesale all evidence that Price was an active participant in the attempted robbery and/or that he was the shooter. Price urges us to draw certain factual inferences from what he claims are inconsistent jury verdicts finding him not guilty of intentional murder and use of a firearm on the one hand but guilty of felony murder on the other, arguing that "the only theory upon which to convict Price" is "on the basis of accomplice liability" and "there was no evidence or inference presented that he acted as anyone's accomplice." Appellant's Reply Br. at 9.

[21] It is well established that a jury's finding of not guilty on some charges cannot be used to impugn the veracity of the jury's finding of guilt on another charge. *See Beattie v. State*, 924 N.E.2d 643, 649 (Ind. 2010) ("Jury verdicts in criminal cases are not subject to appellate review on grounds they are inconsistent, contradictory, or irreconcilable."). Accordingly, we decline Price's request to examine the jury's reasons for its verdicts or to draw any factual inferences, other than those most favorable to the verdicts. The evidence and reasonable inferences to be drawn therefrom could have allowed a reasonable trier of fact to find Price guilty of felony murder beyond a reasonable doubt, and therefore we affirm those convictions.

Section 3 – Price has not met his burden to demonstrate that his sentence is inappropriate.

[22] Finally, Price asks us to reduce his sentence pursuant to Indiana Appellate Rule 7(B), which states, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Price bears the burden to show that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218.

[23] "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). As we assess the nature of the offense and character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013).

Ultimately, whether a sentence should be deemed inappropriate "turns on our sense of 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*, 895 N.E.2d at 1224.

[24] Although Appellate Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the appellant is not required to prove that each of those prongs independently renders his sentence inappropriate. *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016); *see also Moon v. State*, 110 N.E.3d 1156, 1163-64 (Ind. Ct. App. 2018) (Crone, J., concurring in part and concurring in result in part) (quotation marks omitted) (disagreeing with majority's statement that Rule 7(B) "plainly requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of the offenses and his character."). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor*, 58 N.E.3d at 218.

[25] Regarding the nature of the offense, we observe that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for murder is between forty-five and sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3(a). For Price's two counts of felony murder involving separate victims, the trial court here imposed consecutive sixty-five-year sentences, resulting in the maximum allowable executed sentence of 130 years.

[26] Price concedes that the murders of Dray and Shroyer were "senseless and reprehensible." Appellant's Br. at 28. Nevertheless, he points to the executed sentences that Dube (thirty years) and Zrnic (fifteen years) received as an indication that his sentence is excessive. However, their sentences are not relevant to our inquiry, not least because Dube and Zrnic took plea deals, which obviously had an impact on what crimes they were convicted of and what charges were dismissed, as well as the resulting sentences. Price went to trial, leaving his fate in the hands of a jury and trial judge. These murders were brutal. While aiding in the attempted commission of a robbery, Price fired multiple shots at two women who were trapped in a bathroom. When we look to the nature of Price's offenses, he has not presented us with evidence indicating that his crimes were accompanied by any type of restraint, regard, and lack of brutality. Accordingly, he has not persuaded us that a sentence reduction is warranted based upon the nature of the offenses.

[27] We reach a similar conclusion regarding Price's character. We assess a defendant's character by engaging in a broad consideration of his qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). An offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). A typical factor we consider when examining a defendant's character is criminal history. *McFarland v. State*, 153 N.E.3d 369, 374 (Ind. Ct. App. 2020), *trans. denied* (2021). Forty-nine-year-old Price has a lengthy criminal history beginning as a juvenile and spanning four decades. As an adult, he has at least twelve prior felony convictions and sixteen

misdemeanor convictions. He has violated his probation at least six times and was out on bond for operating a vehicle while intoxicated at the time of the murders. Price has a lengthy substance abuse history that he believes entitles him to a lesser sentence, but he has squandered prior opportunities at treatment for his addictions while incarcerated. In short, Price has not presented us with compelling evidence of substantial virtuous traits or persistent examples of his good character. Accordingly, we defer to the trial court's discretion and affirm the sentence imposed.

[28] Affirmed.

Riley, J., and Mathias, J., concur.

ATTORNEY FOR APPELLANT

Gregory L. Fumarolo
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana