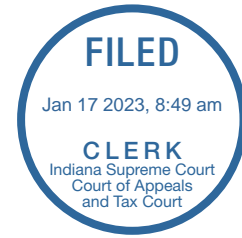


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Steven Brian Nail,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 17, 2023

Court of Appeals Case No.
22A-CR-1674

Appeal from the Vanderburgh
Circuit Court

The Honorable Celia M. Pauli,
Magistrate

Trial Court Cause No.
82C01-2008-MR-4676

Bradford, Judge.

Case Summary

- [1] Steven Nail brutally attacked and murdered Burk Jones, leaving Jones's body bound and battered in an alley. Afterwards, Nail took certain personal items from Jones's person. Nail was subsequently convicted of murder and Level 2 felony robbery resulting in serious bodily injury in relation to his attack on Jones. He was sentenced to an aggregate sixty-year sentence. On appeal, Nail contends that the evidence is insufficient to sustain his murder conviction and that his sixty-year sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On August 16, 2020, Nail encountered Burk Jones, whom he had observed for a number of months and did not like. At some point between 3:00 p.m. and 5:45 p.m., Nail struck Jones in the head repeatedly with a brick before binding Jones's ankles and hands and placing a sock in Jones's mouth as a gag. Nail then stabbed Jones through the arm and chest with gutter nails. After attacking Jones, Nail changed his clothes and discarded both his clothing and Jones's shoes in a nearby trashcan. Nail left Jones's lifeless body in an alley that ran between an apartment building and a vacant building.
- [3] At approximately 8:30 p.m. on the evening of August 16, 2020, Barbara Harrison, who lived in one of the nearby apartments, observed "a gentleman laying on the ground" in the alley. Tr. Vol. II p. 55. Although she observed "that his feet were tied" and he was not wearing shoes, she believed that the

man was sleeping because it was “nothing out of the ordinary to find someone sleeping somewhere on the ground” in the alley. Tr. Vol. II p. 55. The next day around noon, Harrison observed that “the gentleman was still laying there and in the very same position.” Tr. Vol. II p. 55. Believing that the man might be deceased, Harrison “called the police and reported that we may have a gentleman that’s deceased laying next door on the ground.” Tr. Vol. II p. 55.

[4] Evansville Police Officer Cory Offerman was dispatched to the alley to investigate. Upon arriving, Officer Offerman observed that Jones’s body was bound and covered and there was dry blood around the body. Officer Offerman requested additional police presence after deducing that Jones was “beyond help.” Tr. Vol. II p. 62. When the other officers arrived, they observed that Jones’s body was bound, was covered, and smelled of decomposition. Officers also located the bloody brick that Nail had used to strike Jones in the head. The cause of Jones’s death was later determined to be homicide.

[5] Using surveillance video of the area near where Jones was murdered, law enforcement identified Nail as the killer. When police attempted to execute a DNA warrant, Nail initially attempted to flee and was uncooperative. He was eventually taken into custody and interviewed by investigating officers. During the interview, Nail admitted that he had killed Jones. Specifically, Nail admitted that he had put a sock in Jones’s mouth, bound Jones’s limbs, stabbed Jones with gutter nails, and covered his body with a blanket. Nail “gave information and details that were not known to the public.” Tr. Vol. III p. 54.

Law enforcement also searched Nail's wallet and backpack. Officers found Jones's identification card, social security card, and debit card in Nail's wallet and medical records and credit cards belonging to Jones in his backpack.

[6] On August 27, 2020, the State charged Nail with murder, Level 2 felony robbery resulting in serious bodily injury, and Level 6 felony abuse of a corpse. Despite having previously admitted to having killed Jones, Nail testified at trial that he had merely struck Jones twice with a brick after Jones had threatened him. Nail claimed that Jones had been alive when he left him in the alley. Nail acknowledged that he had told police that he had killed Jones but claimed that "I told them that but that's not true." Tr. Vol. III p. 84. Nail explained that he had lied because he had "just started a job" and "was just trying to get things moving so [he] could get back to work." Tr. Vol. III p. 84. Nail suggested that "three mysterious people" could have been responsible for Jones's death. Tr. Vol. III p. 90.

[7] After the conclusion of presentation of evidence, the jury found Nail "guilty but mentally ill" of both murder and Level 2 felony robbery and not guilty of Level 6 felony abuse of corpse. Appellant's App. Vol. II pp. 166, 168. The trial court sentenced Nail to an aggregate term of sixty years of incarceration.

Discussion and Decision

[8] Nail contends that the evidence is insufficient to sustain his conviction for murder and that his sentence is inappropriate.

I. Sufficiency of the Evidence

[9] When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, in reviewing the sufficiency of the evidence, “we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility” and “affirm the judgment unless no reasonable factfinder could find the defendant guilty.”

Mardis v. State, 72 N.E.3d 936, 938 (Ind. Ct. App. 2017) (quoting *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016)).

[10] In order to prove that Nail committed murder, the State was required to prove that Nail knowingly or intentionally killed Jones. Ind. Code § 35-42-1-1. “A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” Ind. Code § 35-41-2-2(b). “A

person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” Ind. Code § 35-41-2-2(a).

[11] In challenging his murder conviction, Nail argues that the State failed to prove that he knowingly or intentionally killed Jones. We disagree. “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.” *Bethel v. State*, 730 N.E.2d 1242, 1245 (Ind. 2000). “In deciding whether a defendant was aware of the high probability that his actions would result in the death of a victim, the jury may consider the duration and brutality of a defendant’s actions.” *Williams v. State*, 749 N.E.2d 1139, 1141 (Ind. 2001). Further, intent to kill may be inferred from “a single blow.” *Id.*

[12] During his interview with police, Nail admitted that he had killed Jones, stating that he had repeatedly struck Jones in the head with a brick, had tied and gagged Jones, and had punctured his skin with gutter nails. The Indiana Supreme Court has previously concluded that a brick qualifies as a deadly weapon when used to strike another individual. *See Treadway v. State*, 924 N.E.2d 621, 640–41 (Ind. 2010). The evidence indicates that Nail deliberately used a deadly weapon in a manner likely to cause death or serious bodily injury. As such, the jury could have inferred from the evidence that Nail had intended to kill Jones. Nail’s claim to the contrary amounts to nothing more than a request for us to reweigh the evidence, which we will not do. *See Mardis*, 72 N.E.3d at 938. Furthermore, although Nail testified at trial that Jones had been the initial aggressor and that he had not intended to kill Jones when he

struck him in the head with the brick, the jury was not obligated to credit Nail's self-serving testimony and did not. *See McCullough v. State*, 985 N.E.2d 1135, 1139 (Ind. 2013) (providing that a jury, acting as a trier-of-fact, was under no obligation to credit a defendant's evidence).

II. Appropriateness of Sentence

[13] Indiana Appellate Rule 7(B) provides that “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.” In analyzing such claims, we “concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant’s character.” *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted), *trans. denied*. The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[14] Again, Nail brutally killed Jones by repeatedly striking him in the head with a brick, binding his legs and hands, placing a gag in his mouth, and stabbing him with gutter nails. Jones was unarmed at the time of the attack. After attacking Jones, Nail took certain identifying, financial, and medical documents from Jones’s person. Nail was still in possession of these documents when he was subsequently apprehended and questioned.

[15] As for his character, Nail argues that his sentence is inappropriately harsh because he “had been homeless since 2018 [and] was suffering from mental health issues throughout the course of the proceedings.” Appellant’s Br. p. 11. The jury took Nail’s mental health into consideration, finding him “guilty but mentally ill” of both murder and Level 2 felony robbery. Appellant’s App. Vol. II pp. 166, 168. The trial court noted that it had reviewed the reports submitted regarding Nail’s mental health and that the jury had found Nail “guilty but mentally ill” at sentencing but, in the end, did not find that Nail’s mental capacity warranted mitigating weight. Tr. Vol. III p. 144. Nail has not proven that his aggregate sixty-year sentence is inappropriate in light of his mental health as he did not establish that there was a nexus between his mental health and his commission of the crimes in question or prove that his mental health was responsible for his decision-making process on the day in question. *See Corrales v. State*, 815 N.E.2d 1023, 1026 (Ind. Ct. App. 2004) (“[I]n order for a mental history to provide a basis for establishing a mitigating factor, there must be a nexus between the defendant’s mental health and the crime in question.”).

[16] Furthermore, the trial court noted that, while Nail did not have a significant criminal history and had no prior felony convictions, “there’s really been no evidence put before the Court that this wouldn’t occur again.” Tr. Vol. III p. 144. The trial court also noted that Nail had been found to be “a high risk to reoffend.” Tr. Vol. III p. 144. The evidence established that Nail brutally murdered Jones merely because he claimed to have not liked Jones. Nail has failed to prove that his aggregate sixty-year sentence is inappropriate.

[17] The judgment of the trial court is affirmed.

Crone, J., and Pyle, J., concur.