MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tristain D. Riley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 15, 2023

Court of Appeals Case No. 23A-CR-462

Appeal from the Elkhart Circuit Court

The Honorable Michael A. Christofeno, Judge

Trial Court Cause No. 20C01-2108-F3-26

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Tristain Riley appeals his convictions for five counts of Level 3 felony robbery following a bench trial. Riley presents two issues for our review:

> 1. Whether the State presented sufficient evidence to support his convictions.
>
> 2. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm in part and reverse and remand in part.

Facts and Procedural History

[3] Between August 27 and October 21, 2020, a series of robberies occurred near Ashton Pines, an apartment complex in Goshen. Three of the robberies occurred at the same Meijer gas station, one at a Little Caesar's pizza restaurant, and one at a McDonald's restaurant. Each of the victims described the man who had committed the robberies as an African American male of average height, slight build, and in his early twenties. During each robbery, the man wielded a handgun. Based on the victims' descriptions of the robber, as well as other similarities observed on surveillance photos and videos, officers believed that the same man had committed all of the robberies.

[4] Witnesses told police officers that, after each robbery, the suspect had fled in the direction of Ashton Pines, and there was a path from the Meijer store to the apartment complex. Following a robbery of the Meijer gas station on October 11, officers set up a trail camera on that path. Immediately following a robbery of that same gas station during the early morning hours of October 21, a police

officer reviewed both video surveillance footage from the gas station and photographs from the trail camera, which showed that the man had ridden a bicycle from the robbery towards Ashton Pines. A photograph showed that the bicycle had a tag hanging on the handlebar. Officers also noticed that the bike had a black "gear cog in the back of the bike." Tr. Vol. 3 p. 84. Officers were able to trace bicycle tire tracks through wet grass and found a bicycle with a tag hanging from the handlebar and a black gear cog parked on the front porch of Riley's apartment.

[5] Goshen Police Department Detective Jason Bailey and Detective Howard Hubbard knocked on the door to Riley's apartment. Eventually, Riley opened the door and spoke to the officers. At that time, Riley was twenty years old, 5'9", and weighed approximately 140 pounds. Riley admitted that the bicycle parked on the front porch was his. The officers asked Riley whether he had any firearms. Riley responded that he had one firearm, and he showed it to the officers. The firearm did not match the one used in the robberies. Accordingly, the officers did not detain Riley and left his apartment.

[6] One week later, on October 27, officers returned to Riley's apartment and got consent to search it. During that search, officers found a different gun, which was a small black and silver handgun that matched the one used in the robberies. Riley admitted that the gun was his. After excluding another possible

suspect who lived in Ashton Pines, Lilmarkes Freeman, the State charged Riley with eight counts of robbery as Level 3 felonies.[1]

[7] Following a bench trial at which several eyewitnesses identified Riley as the perpetrator of the robberies, the trial court found Riley guilty of five counts and acquitted him of the other three. The court entered judgment accordingly and sentenced Riley to fifty-eight years, with three years in community corrections and five years suspended to probation. This appeal ensued.

Discussion and Decision

Issue One: Sufficiency of the Evidence

[8] Riley contends that the State presented insufficient evidence to support his convictions. Our standard of review is well established.

> When an appeal raises "a sufficiency of evidence challenge, we do not reweigh the evidence or judge the credibility of the witnesses . . . ." We consider only the probative evidence and the reasonable inferences that support the verdict. "We will affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'"

[1] Freeman had tattoos on his face, including a cross on his forehead and a teardrop near one eye. Two of the victims described the robber as having a cross tattoo on his forehead, and one of the victims described the robber as having a teardrop tattoo on his face. At trial, the State argued that Riley could have faked the tattoos in an attempt to implicate Freeman in the robberies.

Phipps v. State, 90 N.E.3d 1190, 1195 (Ind. 2018) (quoting *Joslyn v. State*, 942 N.E.2d 809, 811 (Ind. 2011)).

[9] Riley does not challenge the evidence to support that each of the robberies occurred. Rather, he asserts that the State did not prove that he was the man who committed the robberies. Identity may be established entirely by circumstantial evidence and the logical inferences drawn therefrom. *Cherry v. State*, 57 N.E.3d 867, 877 (Ind. Ct. App. 2016), *trans. denied*. And identification testimony need not necessarily be unequivocal to sustain a conviction. *Id.*

[10] Riley argues that "[r]eviewing the evidence surrounding each Armed Robbery of which [he] was found guilty reveals significant issues of quality and lack of corroboration that diminishes the probative value of the evidence of identification." Appellant's Br. at 18. He maintains that

> the manner in which [the robberies] were committed varied significantly in a variety of ways. Thus, the way those crimes were committed, their modus operandi, cannot be considered probative in establishing identity. Further, the eyewitnesses['] testimony in each case does not contain the necessary credibility to be sufficiently probative as to identity.

Id. at 22.

[11] Riley's argument that the eyewitnesses' testimony was not sufficiently credible is nothing more than a request that we reweigh that testimony, which we will not do on appeal. All but one of Riley's victims each testified at trial that Riley

was the man who robbed them. That is sufficient evidence to prove Riley's identity as to those four robberies. *See Cherry*, 57 N.E.3d at 877.

[12] The only victim who could not identify Riley as the robber was Sarah Wise, who was working at the Meijer gas station on October 11, 2020. But the State presented sufficient circumstantial evidence of Riley's guilt to support his conviction for that robbery. In particular, Wise testified that the robber was an African American man, "pretty skinny," "[n]ot super tall, but not short," and in his early twenties. Tr. Vol. 3, p. 26. And Detective Hubbard testified that the gun seen in surveillance footage of that robbery was the same gun later found in Riley's apartment and which Riley identified as his gun. In addition, Riley had a distinctive way of walking—with his toes pointed out—which was observed both in surveillance footage of that robbery and in court. Given the eyewitness testimony and circumstantial evidence of Riley's guilt, we agree with the State that Riley's argument on the lack of a modus operandi to establish his identity is irrelevant to our analysis on appeal.

[13] For all these reasons, the State presented sufficient evidence to support Riley's five Level 3 robbery convictions.

Issue Two: Sentence

[14] Finally, Riley contends that his sentence is inappropriate in light of the nature of the offenses and his character. For each Level 3 felony, the trial court had discretion to impose a fixed term of between three and sixteen years, with the advisory sentence being nine years. Ind. Code § 35-50-2-5. The court imposed

three twelve-year sentences and two eleven-year sentences and ordered them to run consecutively for an aggregate term of fifty-eight years, with fifty years executed, three years in community corrections, and five years suspended to probation.

[15] Under Indiana Appellate Rule 7(B), we may modify a sentence that we find is "inappropriate in light of the nature of the offense and the character of the offender." Making this determination "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 v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under Rule 7(B), however, is reserved for "a rare and exceptional case." *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam).

[16] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to "leaven the outliers," not to achieve what may be perceived as the "correct" result. *Id.* Thus, deference to the trial court's sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[17] With regard to the nature of the offenses, Riley argues that he showed restraint in committing the armed robberies. He maintains that "despite the presence of a firearm, the situations never escalated to the point of damaging property or causing physical injury." *Id.* This argument is of little value. Riley chose to commit five robberies at gunpoint. In doing so, he put innocent lives in danger, just a fragile moment away from serious injury or death.

[18] However, with regard to his character, Riley points out that he has no criminal history, has a stable employment history, and he is "actively involved in his children's life." *Id.* at 28. This evidence is uncontested.

[19] After giving due consideration to the trial court's sentencing decision, the nature of Riley's offenses, and Riley's character, we conclude that Riley's aggregate fifty-eight-year sentence is inappropriate. Accordingly, we remand and direct the trial court to impose maximum sentences for Counts 1 (sixteen years) and 4 (twelve years) to run consecutively and the sentences for Counts 5, 6, and 8 to run concurrently with those for Counts 1 and 4 and with each other, for an aggregate sentence of twenty-eight years, with twenty years executed to the Department of Correction, five years in Community Corrections and three years suspended to probation.

[20] Affirmed in part and reversed and remanded in part.

Vaidik, J., and Pyle, J., concur.