



## **Case Summary**

Dorian L. Harris (“Harris”) appeals his convictions for Burglary and Robbery, as Class B felonies. We affirm.

### **Issues**

Harris presents two issues for review:

- I. Whether there is sufficient evidence to support the convictions; and
- II. Whether he was properly sentenced.

### **Facts and Procedural History**

On October 28, 2009, Paige Shields (“Shields”) contacted a casual acquaintance, Rowland Mwaungulu (“Mwaungulu”) and arranged to come over to his Mishawaka apartment to play video games. She brought with her Shelbie Taylor (“Taylor”). During the evening, Mwaungulu and Taylor were playing video games while Shields went in and out of the apartment, texting and making cell phone calls. At one point, Mwaungulu noticed that Shields had left open the security door. Shields claimed that she needed to get better cell phone reception.

Minutes later, three men broke into the apartment and ordered everyone to the ground. When Mwaungulu stood up, two of the men began firing guns. Mwaungulu ran to his bedroom to call the police. Shields and Taylor fled into the apartment complex. When police arrived, they interviewed Mwaungulu, Shields, and Taylor and determined that Mwaungulu’s and Shields’s car keys were missing.

Officers watched Shields’s vehicle for approximately one hour before Vanessa Leal

(“Leal”) came to retrieve it. When questioned, Leal indicated that Shields’s boyfriend, Martel Washington-Coleman, had sent Leal to get the vehicle. According to Leal, about twenty minutes earlier she had been at the apartment of Washington-Coleman’s sister when Washington-Coleman, Patrick Carr, and Harris had arrived. The trio had appeared “nervous” and “shook-up,” and had asked for a ride. (Tr. 310.) Leal had instead volunteered to retrieve Shields’s vehicle.

Leal directed officers to the apartment where she had been. Inside, officers found a .25 caliber handgun later identified as the same gun that had fired cartridges found in Mwaungulu’s apartment. Mwaungulu’s keys were found in the bushes outside the apartment. Harris was found hiding in a closet with one of his companions. Washington-Coleman, Carr, and Harris were all arrested.

On October 31, 2009, the State charged Harris with Burglary and Robbery. He was tried before a jury and, on February 24, 2010, was convicted as charged. Harris received concurrent sentences of twelve years, with four years suspended to probation. He now appeals.

## **Discussion and Decision**

### **I. Sufficiency of the Evidence**

In order to convict Harris of Burglary, as charged, the State was required to prove beyond a reasonable doubt that Harris, while armed with a deadly weapon,<sup>1</sup> broke and entered Mwaungulu’s dwelling with the intent to commit robbery. Ind. Code § 35-43-2-1; App. 4. In

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<sup>1</sup> Indiana Code Section 35-41-1-8 defines “deadly weapon” to include “a loaded or unloaded firearm.”

order to convict Harris of Robbery, as charged, the State was required to prove beyond a reasonable doubt that Harris, while armed with a deadly weapon, placed Mwaungulu in fear and took his keys. Ind. Code § 35-42-5-1(2); App. 4. An accomplice is criminally liable for all acts committed by a confederate which are a probable and natural consequence of their concerted action. Alvies v. State, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009). Harris concedes that the State established the commission of crimes against Mwaungulu, but claims the State failed to prove beyond a reasonable doubt that he was one of the three individuals who broke into Mwaungulu's apartment and robbed him.

The standard by which we review alleged insufficiency of the evidence to support a criminal conviction is well-settled:

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.” McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005) (emphasis added). 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. Wright v. State, 828 N.E.2d 904 (Ind. 2005). To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it “most favorably to the trial court's ruling.” Id. Appellate courts affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000) (emphasis added). It is therefore not necessary that the evidence “overcome every reasonable hypothesis of innocence.” Moore v. State, 652 N.E.2d 53, 55 (Ind. 1995). “[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” Pickens v. State, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001).

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007).

Mwaungulu testified at Harris's trial that he recognized Harris as one of the men who

broke into his apartment. Harris's contention that Mwaungulu's in-court identification should be discarded because he was unable to identify Harris in a pretrial photographic lineup is merely an invitation to reweigh the evidence and assess the credibility of a witness. This we cannot do. See id. at 146. There is sufficient evidence to support Harris's convictions of Burglary and Robbery.

## II. Sentencing

Upon conviction of each Class B felony, Harris faced a sentencing range of six years to twenty years, with the advisory sentence being ten years. See Ind. Code § 35-50-2-5. He received an aggregate sentence of twelve years, two years above the advisory sentence, with four years suspended. His sentencing challenge is two-fold. He claims that the trial court abused its sentencing discretion and that his sentence is inappropriate.

### Aggravating Circumstance.

Harris argues that the trial court improperly took into consideration at sentencing the evidence that he (either as an accomplice or principal) was armed with a deadly weapon. He argues that this is the same evidence elevating his crimes from Class C felonies to Class B felonies, and that the trial may not use an element of the crimes as a sentencing consideration.

“So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion.” Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007) (Anglemyer II). This includes the finding of an aggravating circumstance and the omission to find a proffered mitigating circumstance. Id. at 490-91. When imposing a sentence for a felony, the trial court must enter “a sentencing

statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence.” Id. at 491.

The trial court’s reasons must be supported by the record and must not be improper as a matter of law. Id. However, a trial court’s sentencing order may no longer be challenged as reflecting an improper weighing of sentencing factors. Id. A trial court abuses its discretion if its reasons and circumstances for imposing a particular sentence are clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. Hollin v. State, 877 N.E.2d 462, 464 (Ind. 2007).

“[T]he court may consider an element of an offense such as the possession of a deadly weapon as an aggravating factor if the court specifies why the use of the weapon or the threats with it constituted an aggravating factor.” Tidmore v. State, 637 N.E.2d 1290, 1292 (Ind. 1994). See also Garland v. State, 855 N.E.2d 703, 709 (Ind. Ct. App. 2006), trans. denied.

At Harris’s sentencing hearing, the trial court’s comments focused upon the fact that there were “bullets fired.” (Sent. Tr. 4.) The sentencing order provided in relevant part:

And the Court, having considered I.C. 35-38-1-7.1, and having reviewed and considered the Pre-Sentence Investigation Report prepared in this matter, and having considered the comments of Defendant and both counsel, now finds notwithstanding the Defendant’s relatively young age and a minimal juvenile record, that the circumstances of the offense, involving multiple gunshots being fired at the victim, justify an elevated sentence.

(App. 8.) (emphasis added.) Although the possession of a deadly weapon was an element of the charged offenses, it was the extent and manner of use that was considered by the trial court in aggravation of Harris's sentence. We do not find that the trial court abused its discretion by considering the firing of multiple gunshots as an aggravating circumstance.

Appropriateness of Sentence.

Under Indiana Appellate Rule 7(B), this “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 performing our review, we assess “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). A defendant ““must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.”” Anglemyer, 868 N.E.2d at 494 (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offenses, Harris and his accomplices burst into Mwaungulu’s apartment and fired multiple shots as Mwaungulu ran into the bedroom. His car keys were taken. Mwaungulu was so traumatized that he immediately discontinued living in the apartment.

As to the character of the offender, Harris has a long history of juvenile adjudications, beginning at age ten. He has previously violated probation and had very recently been

released from incarceration when he committed the instant offenses. He also has a history of substance abuse, having used marijuana since age eleven.

In sum, the nature of the offenses and the character of the offender do not persuade us that a sentence of two years above the advisory, with four years suspended, is inappropriate.

### **Conclusion**

There is sufficient evidence to establish Harris's identity as one of the burglars. Also, he has not shown that the trial court abused its sentencing discretion or that his sentence is inappropriate.

Affirmed.

NAJAM, J., and DARDEN, J., concur.