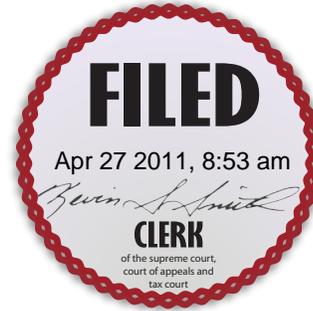


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**SUSAN D. RAYL**  
Smith Rayl Law Office, LLC  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**ZACHARY J. STOCK**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

ALTON MOSS, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 27A05-1005-CR-310  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

---

APPEAL FROM THE GRANT SUPERIOR COURT  
The Honorable Jeffrey D. Todd, Judge  
Cause No. 27D01-0608-MR-153

---

**April 27, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Alton Moss appeals his convictions for murder and burglary, as a Class B felony, following a jury trial. He presents the following issues for our review:

1. Whether the trial court abused its discretion when it permitted the State to introduce into evidence a statement Moss made to police.
2. Whether the trial court abused its discretion when it limited the scope of Moss's cross-examination of a witness.
3. Whether the trial court abused its discretion when it permitted the State to introduce certain evidence that Moss contends violated Evidence Rule 404(b).
4. Whether the State presented sufficient evidence to support his conviction for burglary.
5. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

Moss appealed an interlocutory order in 2009, and we issued an opinion stating the facts and procedural history of this case as follows:

On January 16, 2003, Jamie Smith (Smith) was shot dead in his home in Grant County, Indiana. Eyewitnesses said that two black males had entered Smith's house and that the shooting occurred while Smith was struggling with one of them. When a photo array was shown to different witnesses, Moss' name was "brought up" as a person who was inside Smith's house at the time of the crimes. (Transcript p. 118). Moss became a suspect, but he was not arrested or charged at that time. In August of 2003, a Grant County jail inmate told Marion, Indiana, police that Moss<sup>1</sup> had confessed to killing Smith while attempting to rob him of marijuana. Furthermore, in 2005, Howard Johnson (Johnson), the father of Moss' ex-girlfriend (the grandfather of one of Moss' children), told Marion police that Moss had made incriminating statements about the Smith killing and had said that he was trying to protect his brother, Logan Brown (Brown).

On the morning of August 11, 2006, Moss' fiancée, Kaitlyn McCracken (McCracken), was being interviewed by Howard County Sheriff's Department Detective Ernest Shirey (Detective Shirey) with regard to the alleged burning of one of her and Moss' vehicles. After five or ten minutes, Detective Shirey changed the subject to an investigation of Moss' involvement in the Smith murder. McCracken told Detective Shirey that Moss had told her that he and Brown had been involved in an attempt to steal drugs from a man, during which Brown struggled with the man and the man was shot and killed. Based on what Moss told her, McCracken had gotten the impression that Moss had done the shooting.

Other officers who were monitoring Detective Shirey's interview with McCracken determined that Moss had an outstanding body attachment from a civil case in Howard County, Indiana. At the end of her interview, McCracken called Moss in order to help police take him into custody. After giving her statement and assisting the officers, McCracken left the sheriff's department.

Moss was arrested at 11:45 a.m. on the basis of the Howard County body attachment, and he was booked into the Howard County jail at 2:10 p.m. He was told that the body attachment provided for a cash bond of \$500. What Moss was not told was that he also had an outstanding body attachment for a different civil matter in Grant County, which also called for a \$500 cash bond. The Grant County body attachment had been faxed to Howard County at 1:34 p.m., thereby placing a "hold" on Moss. (Tr. p. 102).

At some point while Moss was being processed, McCracken called the jail and was advised of the \$500 Howard County body attachment bond. She, like Moss, was not told about the Grant County body attachment and bond. Between 2:15 and 2:30 p.m., before detectives began interrogating Moss, McCracken arrived at the jail with \$500 to pay Moss' Howard County bond. Detective Shirey told McCracken that she "couldn't" post bond and that she "shouldn't waste her money." (Appellant's App. p. 168A). McCracken left the jail without posting Moss' bond.

No one told Moss that McCracken had been at the jail and was ready to pay the Howard County bond. At 3:05 p.m., Moss signed a waiver of his Miranda<sup>1</sup> rights. At 3:21 p.m., Detective Shirey and Sergeant Eric Randle of the Marion Police Department (Sergeant Randle) began their interrogation of Moss. Detective Shirey told Moss about his earlier interview with McCracken. Moss asked several times throughout the interview to speak with McCracken, but those requests were denied. Eventually, Moss admitted that he "was around" at the time of Smith's

killing. (Appellant's App. p. 443). After narrating his version of what happened at Smith's house (he claimed that he merely rode along with Brown when Brown went to Smith's house to take something and that Brown accidentally shot Smith), Moss asked, "Okay but if I make bond they still won't let me out, right?" (Appellant's App. p. 478). Sergeant Randle replied, "We haven't made that decision yet." (Appellant's App. p. 478). Other than that, Moss said nothing else about paying bond. On August 12 and 13, 2006, Moss gave two additional statements regarding his involvement in the crimes against Smith.

On August 14, 2006, the Grant County prosecutor filed an Information charging Moss with Count I, felony murder, I.C. § 35-42-1-1(2), and Count II, conspiracy to commit robbery while armed with a deadly weapon, a Class B felony, I.C. §§ 35-41-5-2, 35-42-5-1.<sup>5</sup> Moss was transported from the Howard County jail to the Grant County jail, and, on August 16, 2006, the Grant County body attachment was served on him.

On March 26, 2008, Moss filed a motion to suppress the statements he had given authorities on August 11-13, 2006, along with a statement by Brown from August 12, 2006. Moss argued: (1) that his statements were given during an illegal detention, making them "the fruit of the poisonous tree"; (2) that he gave his statements involuntarily; and (3) that Miranda violations made his statements inadmissible. On March 31, 2008, the trial court held a hearing and denied the motion. The next day, April 1, 2008, Moss filed a motion asking the trial court to certify its order for interlocutory appeal. During a brief hearing on the matter, the trial court granted Moss' motion, but only as to the first ground stated in Moss' motion to suppress: the legality of his detention.<sup>6</sup>

FN6. Because the trial court limited its certification for interlocutory appeal to this single issue, and because that is the only issue we reach in this opinion, Moss could still raise the other two issues—the voluntariness of his confession and alleged Miranda violations—in a subsequent appeal if he is convicted.

Though the trial court had already denied Moss' motion to suppress and certified its order for interlocutory appeal, the parties agreed to reconvene for the purpose of supplementing the record to "give the Court of Appeals possibly more information to help them make a decision." (Tr. p. 177). The next day, April 2, 2008, the parties did just that. McCracken and Detective Shirey provided additional testimony. On April 7, 2008, the trial court issued its Findings and Order Following Supplemental Proceedings Held on April 2, 2008. The court reaffirmed its denial of Moss' motion to

suppress. Specifically, the trial court concluded that Moss' continued detention beyond McCracken's attempt to post the Howard County bond was "still permissible as a 'hold' still existed from Grant County and no effort was made to post the Grant County bond prior to Moss' questioning." (Appellant's App. p. 169). The trial court also reaffirmed its order certifying an interlocutory appeal. On May 1, 2008, Moss filed a motion asking this court to accept jurisdiction over the interlocutory appeal. On May 20, 2008, we granted Moss' motion.

Moss v. State, 900 N.E.2d 780, 781-83 (Ind. Ct. App. 2009) ("Moss I"), trans. denied.

We held that police had legally detained Moss when they questioned him and that the trial court did not err when it denied his motion to suppress evidence.

Prior to trial, the State filed a third charging information for burglary resulting in serious bodily injury, as a Class A felony. Following trial, a jury found Moss guilty as charged. The trial court entered judgment of conviction for murder and burglary, as a Class B felony.<sup>1</sup> At sentencing, the trial court identified a single aggravator, namely, Moss's criminal history, and a single mitigator, namely, Moss's acceptance of responsibility for his actions. The trial court concluded that the aggravator outweighed the mitigator and imposed consecutive sentences of sixty years and fifteen years, for an aggregate term of seventy-five years. This appeal ensued.

## **DISCUSSION AND DECISION**

### **Issue One: Confession**

Moss first contends that the trial court abused its discretion when it admitted his confession to police into evidence. In particular, Moss maintains that his confession was

---

<sup>1</sup> The trial court explained that under our Supreme Court's holding in Johnson v. State, 749 N.E.2d 1103 (Ind. 2001), it was compelled to reduce the burglary conviction to a Class B felony. And the trial court "merged" the conspiracy conviction with the murder conviction.

involuntary and was obtained in violation of the Fifth and Fourteenth Amendments to the United States Constitution. We cannot agree.

In Luckhart v. State, 736 N.E.2d 227, 229-30 (Ind. 2000), our Supreme Court set out the applicable law and standard of review as follows:

When a defendant challenges the admissibility of her confession, the State must prove beyond a reasonable doubt that the confession was given voluntarily. Carter v. State, 730 N.E.2d 155, 157 (Ind. 2000); Schmitt v. State, 730 N.E.2d 147, 148 (Ind. 2000).<sup>1</sup> The voluntariness of a confession is determined from the “totality of the circumstances.” Berry v. State, 703 N.E.2d 154, 157 (Ind. 1998). The “totality of the circumstances” test focuses on the entire interrogation, not on any single act by police or condition of the suspect. Light v. State, 547 N.E.2d 1073, 1079 (Ind. 1989). We review the record for evidence of inducement by way of violence, threats, promises, or other improper influences. Berry, 703 N.E.2d at 157. Although deception on the part of police is not conclusive, Light, 547 N.E.2d at 1079 (citing Frazier v. Cupp, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969)), it does weigh heavily against the voluntariness of the defendant’s confession. Heavrin v. State, 675 N.E.2d 1075, 1080 (Ind. 1996). In the end, we must judge whether the police conduct in relation to the specific suspect was overbearing. Light, 547 N.E.2d at 1079. We do not reweigh the evidence, but rather determine whether there is substantial evidence to support the trial court’s findings. Berry, 703 N.E.2d at 157.

(Emphasis added).

Here, Moss was arrested at 11:45 a.m. on August 11, 2006, on a body attachment, and he was booked into the Howard County jail at 2:10 p.m. Moss was informed that the body attachment provided for a cash bond of \$500. But Moss was not informed about an outstanding body attachment on a civil matter in Grant County, which also called for a \$500 cash bond.

At 3:05 p.m., Moss signed a waiver of his Miranda rights and began talking to police officers about the Smith shooting. Moss contends that several factors combined to

render his confession involuntary. First, Moss asserts that the interrogation room was “extremely cold” and that “no effort was made to get [him] a jacket or cup of coffee to make him more comfortable in any way.” Brief of Appellant at 14. Our review of the transcript of the statement shows that Moss only mentioned twice that he was cold, and he did not request a jacket or coffee, nor did he ask that the air conditioning be set to a higher temperature. Moss’ references to being cold were made in passing. He did not ask to stop the interview or to leave the room because of the temperature.

Moss also asked whether there was a water fountain available. When the officer replied that he had to check with someone else about permitting him to get a drink of water, Moss let it go and did not bring it up again. Moss next points out that he asked to stop the interview several times so that he could talk to his fiancée. After each such request was denied, Moss continued talking to the officers. Moss was not told that his fiancée had arrived at the police station to post his bond and she was told that she “couldn’t” post bond. Moss I, 900 N.E.2d at 782. As we observed in Moss I, that statement to Moss’ fiancée was “misleading.” Id. at 784. And we stated that “Moss is likely correct that Detective Shirey’s conduct was born of a desire to keep Moss in custody for as long as possible.” Id. But those concerns do not render his confession involuntary.

Finally, Moss directs us to instances of the police officers lying to him during the interview. In particular, Moss asserts that the officers lied to him when they stated that they had physical evidence implicating him and that his fiancée had made a “full statement” implicating him in the murder. Brief of Appellant at 16. While our Supreme

Court noted that it “does not condone” deception by police during interviews, lies and deception do not, without more, render a confession involuntary. See Luckhart, 736 N.E.2d at 231. Rather, we look to the totality of the circumstances, including the use of deception, to determine voluntariness. See id.

In Luckhart, the circumstances of the police defendant alleged that she was high on crack cocaine during the interview; the interview lasted approximately five hours; she was granted rest breaks and did not ask to stop the interview; she was not physically threatened; she had been “involved in the criminal justice system on a prior occasion and was not untutored in the conduct of a police investigation”; and police officers lied to the defendant when they told her that they had fingerprint evidence and two witnesses implicating her in the crime. 736 N.E.2d at 230.

Here, there is no indication that Moss was under the influence of alcohol or drugs during the interview; the interview lasted approximately two to two and a half hours; he did not ask to use the restroom; he did not stop talking to the officers or insist that they stop the interview; he was not physically threatened; he has been involved in the criminal justice system before; and he demonstrated at least an average intelligence during the interview, asking appropriate questions and giving thoughtful responses. Moss signed a waiver of his Miranda rights before the interview began and did not subsequently request an attorney. We cannot say that under the totality of the circumstances Moss’ confession was involuntary. The trial court did not abuse its discretion when it admitted it into evidence at trial.

## Issue Two: Cross-examination

Moss next contends that the trial court abused its discretion when it limited the scope of his cross-examination of one of the State's witnesses. The right to cross-examine witnesses is guaranteed by the Sixth Amendment to the United States Constitution and is one of the fundamental rights of our criminal justice system. Washington v. State, 840 N.E.2d 873, 886 (Ind. Ct. App. 2006), trans. denied. However, this right is subject to reasonable limitations imposed at the discretion of the trial judge. Id. Trial judges retain wide latitude to impose reasonable limits on the right to cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. Id. We will find an abuse of discretion when the trial court controls the scope of cross-examination to the extent that a restriction substantially affects the defendant's rights. Id.

Here, Tanesha Tyson testified at Moss' trial that a few days prior to Smith's murder Tyson and Moss drove by Smith's house.<sup>2</sup> Tyson also testified that Moss had subsequently confessed to her that he had killed Smith. On cross examination of Tyson at trial, Moss sought to elicit testimony that Tyson had had criminal charges pending in an unrelated matter and that the State dismissed those charges two days before Moss' trial. Moss believed that the timing of the dismissal of the charges against Tyson indicated that it was an inducement for her testimony against Moss, and he wanted the jurors to be informed of that belief.

---

<sup>2</sup> Part of Moss' defense was that he did not know of Smith before the shooting and that it was his brother's idea to go to Smith's house the night of the shooting.

But Moss had no evidence that the dismissal of the charges against Tyson was in any way dependent on her testimony at Moss' trial. Indeed, after the trial court sustained the State's objection to the proposed line of questioning, Moss made an offer to prove wherein Tyson testified in relevant part that no one had ever even suggested to her that she would receive any benefit for her testimony against Moss. And during a sidebar, the Prosecutor stated that there was "no relationship" between the dismissal of charges and Tyson's testimony "whatsoever." Transcript at 208. Without evidence that the dismissal of Tyson's charges was in any way contingent on Tyson's testimony against Moss, Moss cannot show that the trial court's limitation on the scope of cross-examination substantially affected his rights. The trial court did not abuse its discretion when it prohibited Moss from questioning Tyson about the criminal charges against her.

And even if there were error, it would have been harmless. An alleged violation of the right to cross-examine a witness is subject to harmless error analysis. Bullock v. State, 903 N.E.2d 156, 160 (Ind. Ct. App. 2009). To determine whether an error is harmless, courts look to several factors, including the strength of the prosecution's case, the importance of the witness' testimony, whether the testimony was corroborated, the cross-examination that did occur, and whether the witness' testimony was repetitive. Id. An error will be found harmless if its probable impact on the jury, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties. Id. Here, the State's case against Moss was very strong, especially in light of his confession. Tyson's testimony was mostly cumulative of Moss' own statement to police. And, moreover, Moss was able to cross-examine Tyson regarding the fact that Moss left

her for another woman when Tyson was pregnant with Moss' child. Moss' counsel insinuated that Tyson testified against Moss because of those circumstances. Again, any error was harmless.

### **Issue Three: Evidence Rule 404(b)**

Moss contends that the trial court abused its discretion when it permitted the State to present evidence he claims was inadmissible under Evidence Rule 404(b). In particular, Moss maintains that the trial court should not have admitted evidence that he had previously committed burglary and had previously witnessed his brother shoot someone. We address each contention in turn.

#### **Burglary**

At trial, Officer Robin Young testified that Moss told him that when he was fifteen years old, he had "help[ed]" his brother Brown commit a burglary. Transcript at 321. The trial court permitted that testimony over Moss' objection. On appeal, Moss contends that that evidence was inadmissible under Evidence Rules 403<sup>3</sup> and 404(b).<sup>4</sup> The State concedes that this is "admittedly a close question," but argues that the trial court did not abuse its discretion.

After Moss objected to the proffered evidence, the State argued that it was admissible to show the absence of mistake by Moss in committing the burglary. But on appeal, Moss points out that he did not assert a defense of mistake. Rather, both in

---

<sup>3</sup> Evidence Rule 403 provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

<sup>4</sup> Evidence Rule 404(b) provides in relevant part that evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

opening and closing arguments, Moss' defense was that he did not shoot Smith, that he did not intend for his brother to shoot Smith, and that because they fell through Smith's front door, there was no burglary, which requires evidence of breaking and entering a dwelling.

Moss directs us to this court's opinion in Payne v. State, 854 N.E.2d 7, 20 (Ind. Ct. App. 2006), where we held that evidence was not admissible under the mistake of fact exception to Evidence Rule 404(b) given that the defendant did not assert a mistake of fact defense. Here, on appeal, the State's only argument in support of the admissibility of the challenged evidence is that during his statement to police, Moss had "den[ie]d knowledge of his brother's intentions." Brief of Appellee at 14. Because Moss did not assert that defense theory at trial, we cannot say that the evidence of the prior burglary was admissible under the mistake of fact exception to Rule 404(b).

However, the erroneous admission of evidence is subject to a harmless error analysis. We will "disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Scalissi v. State, 759 N.E.2d 618, 625 (Ind. 2001) (quoting Indiana Trial Rule 61). If, in light of all the evidence in the case, the error has had an insubstantial impact on the jury, the error did not affect the substantial rights of the parties. Id. Here, Moss admitted that he went to Smith's house with his brother and that Smith was shot after a scuffle. That evidence, without more, supports a reasonable inference that Moss was at least an accomplice to Smith's murder. Further, Tyson testified that Moss admitted to having been the shooter. The additional testimony by Young that Moss accompanied his brother during a burglary several years ago likely had

an insubstantial impact on the jury. Any error in the admission of that evidence was harmless.

### **Prior Shooting**

Moss also contends that the trial court abused its discretion when it permitted the State to introduce evidence that in an incident unrelated to the current case, Moss had witnessed his brother shoot a man four times. But the State points out that Moss did not object to that evidence at trial. A party's failure to make a contemporaneous objection to the admission of evidence at trial results in waiver. See Delarosa v. State, 938 N.E.2d 690, 694 (Ind. 2010). Moss does not dispute the State's assertion of waiver, nor does he argue that the admission of the challenged evidence was fundamental error. The issue is waived.

### **Issue Four: Sufficiency of the Evidence**

Moss next contends that the State presented insufficient evidence to support his conviction for burglary. When the sufficiency of the evidence to support a conviction is challenged, we neither reweigh the evidence nor judge the credibility of the witnesses, and we affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Wright v. State, 828 N.E.2d 904, 905-06 (Ind. 2005). It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court's ruling. Id. at 906.

To prove burglary, the State was required to show that Moss broke and entered Smith's house with intent to commit a felony therein. See Ind. Code § 35-43-2-1. Moss' sole contention on appeal is that the State did not present any evidence that he broke into Smith's house. We cannot agree.

Here, the undisputed evidence shows that in addition to a solid wood door, Smith's house was equipped with a storm door. In order to gain entry to the house, one had to open both the storm door and the wood door and walk through. Smith's wife testified that she kept the storm door closed during winter months, and the shooting occurred in January. Immediately prior to the shooting, Jason Thompson, Smith's nephew, was inside Smith's house and saw Moss and his brother approaching the front door. Thompson and Smith walked to the door from the inside of the house, and Thompson started to open the door when one of the intruders "fell" into the foyer. Transcript at 175. A reasonable inference from that evidence is that Moss or his brother had opened the storm door to gain entrance to the house before Thompson opened the wood door.

Indeed, Moss does not deny that he and his brother opened the storm door. But Moss asserts that "[o]pening the storm door is not a breach of the house. The door to the house was still closed. Neither Mr. Moss nor his brother could enter without opening the door to the house." Reply Brief at 6.

It is well settled that using even the slightest force to gain unauthorized entry satisfies the breaking element of the crime. See Davis v. State, 770 N.E.2d 319, 322 (Ind. 2002). For example, opening an unlocked door or pushing a door that is slightly ajar

constitutes a breaking. Id. Here, the evidence supports a reasonable inference that Thompson did not open the wood door all the way before Moss and his brother gained entry to the house. Thompson testified in relevant part as follows:

Q: And what happened when you got downstairs?

A: Uh, we come downstairs, [Smith] grabbed a hammer out of the bucket, went towards the door and the guy come through the front door.

Q: Did you take any measure to open the front door at the same time?

A: Yeah, I grabbed the door knob.

\* \* \*

A: I don't know if he was trying to kick it the same time I opened it or what.

\* \* \*

Q: Perhaps you opened the door to get an advantage on these assailants?

A: I wouldn't really say I opened the door, I mean I grabbed the door knob.

Q: And someone fell in.

A: Yeah, a guy fell in with a gun in his hand.

Transcript at 174-75.

Thus, the evidence shows that Moss or his brother opened the storm door to gain entry to Smith's house, and the evidence supports a reasonable inference that Thompson turned the door knob when Moss or his brother pushed or kicked the door the rest of the way open to gain entry. Again, pushing a door that is slightly ajar constitutes breaking. Davis, 770 N.E.2d at 322. We hold that the evidence is sufficient to support Moss' burglary conviction.

#### **Issue Five: Sentence**

Finally, Moss contends that his sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize [ ] independent appellate review and revision of a sentence

imposed by the trial court.” Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See App. R. 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration original).

The Indiana Supreme Court more recently stated that “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. The principal role of appellate review is to attempt to “leaven the outliers.” Id. at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on “our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case.” Id. at 1224.

Moss first contends that his sentence is inappropriate in light of the nature of the offenses. Moss argues that Smith’s murder was unintentional and occurred only after Smith attacked Brown with a hammer. And Moss maintains that he was not involved in

the scuffle between Smith and Brown before the shooting. However, in imposing consecutive sentences, the trial court stated that the offenses were “planned and not done on a whim.” Appellant’s App. at 219. Further, the State points out that Smith’s murder was “atypical” in that his children were home at the time of the shooting and saw the aftermath. The presence of children at the scene is a circumstance that may support greater than the advisory sentence for murder. We cannot say that Moss’ sentence is inappropriate in light of the nature of the offenses.

Next, Moss contends that his sentence is inappropriate in light of his character. Moss emphasizes his youth and relatively minor criminal history, which includes four misdemeanor convictions. Moss maintains that he “was not arrested for anything” between the time of the shooting and the time of his arrest more than three and a half years later. Brief of Appellant at 40. Also during that time, Moss became engaged, bought a house, and worked to support his family.

The State, on the other hand, characterizes Moss’ criminal history as “consistent and escalating.” Brief of Appellee at 19. Indeed, the presentence investigation report belies Moss’ description of himself as a law-abiding citizen between 2003 and 2006. Specifically, the PSI report shows the following: on February 13, 2003 (one month after the murder) Moss was arrested and subsequently convicted of conversion, an A misdemeanor; on November 7, 2003, Moss was arrested for “failure to comply (community service)”; and Moss was arrested six times between April 21, 2005 and December 19, 2005 for either operating a motor vehicle without a license or “failure to appear.” Presentence Investigation Report at 5-6. We cannot say that Moss’ sentence is

inappropriate in light of his character. Moss has not persuaded us that his sentence should be revised.

Affirmed.

ROBB, C.J., and CRONE, J., concur.