

Brendon R. Groves was convicted of Criminal Confinement Resulting In Bodily Injury,¹ a class C felony, and Battery,² a class A misdemeanor. Groves appeals the conviction for criminal confinement and the sentence imposed upon both convictions, presenting the following restated issues for review:

1. Was the evidence sufficient to support the conviction for criminal confinement?
2. Did the trial court abuse its discretion in failing to find certain proffered mitigating circumstances?
3. Was the sentence inappropriate in view of Groves's character and the nature of his offenses?

We affirm.

The facts favorable to the conviction are that fifteen-year-old M.C. and fourteen-year-old F.S. had a sexual encounter. F.S.'s sixteen-year-old step-sister, K.B., soon found out about it. K.B. decided she would confront M.C. about the matter, so she contacted M.C. and led him to believe the two would engage in sexual activity, telling him to "bring something just in case," which M.C. understood to mean a condom. *Transcript* at 34. K.B. did not divulge her knowledge of M.C.'s encounter a few days before with her step-sister. Meanwhile, K.B. arranged to have four others present when she confronted M.C., including nineteen-year-old Groves, his minor sister, H.G., Frank Perkins, and M.M., a minor male – all of whom were older than M.C.

K.B. and the other four, including Groves, met at the park. Groves brought a taser

¹ Ind. Code Ann. § 35-42-3-3 (b)(1)(c) (West, PREMISE through 2008 2nd Regular Sess.).

² I.C. § 35-42-2-1(a)(1)(A) (West, PREMISE through 2008 2nd Regular Sess.).

with him. After the group talked for a few minutes, K.B. left to pick up M.C. from a soccer game and then returned to the park. She led M.C. to a secluded spot near a barn and told M.C. to put on the condom. As he did so, K.B. asked him about his previous sexual experience and he told her about his encounter with F.S. While M.C. was sitting on the ground with his shorts pulled down around his knees, K.B. began punching him in the face with her fist. M.C. stood up, pulled up his shorts, and grabbed his cell phone and wallet, which he had placed on the ground. At that point, while K.B. gripped M.C. by the shirt or wrist, the other four, including Groves, walked around the corner of the barn. K.B. and her confederates blocked the only two paths by which M.C. could exit that location.

As the group walked up to K.B. and M.C., Groves's sister began recording the incident using a video recorder given to her by Perkins. K.B. had M.C. by the wrist and M.C. repeatedly apologized for his behavior with F.S., offering to give the group his money and cell phone if they would let him leave. Perkins took M.C.'s money. At this point, Groves approached M.C. and K.B. released her grip. Groves put his right arm around M.C.'s shoulder and neck, while at the same time holding the taser in his left hand, concealed behind his back. Groves spoke with M.C. about "some little girls and not to be messing with them," *id.* at 180, said "you shouldn't mess around with anymore [sic] girls", *id.* at 49, and threatened, "if you do something like this ever again you'll get worse than what you got." *Id.* at 134-35. Groves then grabbed the back of M.C.'s neck with his right hand, applied the taser to M.C.'s genitals, activated the device, and shoved M.C. backward. M.C. doubled over, cried out in pain, and tumbled down the hill. After a moment, Groves instructed M.C.

to come back up the hill and M.C. complied. When he arrived in front of the group, K.B. delivered a “sucker punch” to his left eye. *Id.* at 46. The group turned to leave and told M.C. he could leave as well, which he did.

M.C. walked back to the high school, where his mother picked him up. When she asked about his obvious facial injuries, M.C. told her someone had attacked him behind a nearby grocery store. When his father took him to the police station the next day, M.C. eventually told Officer Ethan Forrest of the Brownsburg Police Department what had happened. M.C. was able to name only K.B. and Perkins, as he did not know the others involved. Coincidentally, on the day after M.C. spoke with Officer Forrest, the officer received a report from Brownsburg High School that a video was circulating among the students showing Groves and the others attacking M.C. At that point, the officer determined that the video depicted the attack M.C. had reported.

Groves was arrested, mirandized, and questioned by Officer Forrest in a holding cell. When the officer asked if Groves knew what the interview was about, Groves responded that he had tasered M.C. in the groin. Groves was ultimately charged with battery as a class A misdemeanor, criminal recklessness as a class B misdemeanor, and criminal confinement resulting in bodily injury, a class C felony. Following a bench trial, he was found guilty of these charges. At sentencing, the court merged the criminal recklessness charge with the criminal confinement charge and imposed a term of 365 days for the battery conviction, with 329 days suspended to probation, and 1460 days for the criminal confinement conviction, with 365 days executed and 1095 days suspended to probation. The court ordered the

sentences to be served concurrently, resulting in a total executed sentence of 365 days.

1.

Groves contends the evidence was not sufficient to support the criminal confinement conviction, arguing that the State did not prove he substantially interfered with M.C.'s liberty, which was an element of the offense, and that the State did not prove M.C. suffered an injury as a result of Groves's actions.

Our standard of review for challenges to the sufficiency of evidence is well settled.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must 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.'" *Id.* at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Gleaves v. State, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

In order to establish that Groves committed the offense of criminal confinement, the State proceeded at least in part under the theory of accomplice liability. Under this theory, one who aids, abets, or assists in a crime is equally as culpable as the one who commits the actual crime. *See Johnson v. State*, 687 N.E.2d 345 (Ind. 1997). There is no distinction between the criminal responsibility of a principal and that of an accomplice. *McQueen v. State*, 711 N.E.2d 503 (Ind. 1999). The Indiana statute governing accomplice liability establishes it not as a separate crime, but merely as a separate basis of liability for the crime charged. *See Ind. Code Ann. § 35-41-2-4* (West, PREMISE through 2008 2nd Regular

Sess.); *Hampton v. State*, 719 N.E.2d 803 (Ind. 1999). When determining whether the State has established accomplice liability, the fact-finder may consider the following factors: “(1) [P]resence at the scene of the crime; (2) companionship with another engaged in a crime; (3) failure to oppose the commission of the crime; and (4) the course of conduct before, during, and after the occurrence of the crime.” *Whedon v. State*, 765 N.E.2d 1276, 1277 (Ind. 2002).

As charged, in order to convict Groves of criminal confinement causing bodily injury, the State was required to prove that he (1) knowingly or intentionally (2) confined M.C. without M.C.’s consent, or removed M.C. by fraud, enticement, force, or threat of force, from one place to another, (3) resulting in bodily injury to M.C. I.C. § 35-42-3-3. The evidence showed that Groves was asked to accompany K.B. to a location where she would confront M.C. about his sexual activities with K.B.’s step-sister. Groves agreed to do so and armed himself with a taser that he did not customarily carry. He waited with the others whose aid K.B. had enlisted while K.B. picked up M.C., drove him to the park, and led him to a remote location in the park. When Groves and the others arrived at the scene, K.B. had punched M.C. several times. After they arrived, the victim was outnumbered five to one. Based upon the terrain and the relative locations of the parties involved, M.C.’s best avenue of escape was blocked by the group. In fact, M.C. testified that “they kind of surrounded [him] and trapped [him] in where [he] couldn’t really move.” *Transcript* at 15. M.C. testified that he did not attempt to flee after Groves and the others arrived because he believed the group would treat him more severely if he made the attempt and was unsuccessful. Moreover, Groves was not a passive observer after he arrived on the scene. At some point, he warned

M.C. that if M.C. did something “like this” again, he would receive even worse punishment. *Id.* at 134. Groves then tasered M.C. and pushed him down the hill.

Examining the elements set out in *Whedon*, it is clear that Groves’s involvement went significantly beyond mere presence and failure to oppose. He traveled to the park at the behest of K.B. for the express purpose of imposing what can best be described as vigilante justice upon M.C. Once there, Groves’s presence contributed to an atmosphere of intimidation – which clearly was the point of going in the first place – that, combined with the physical environs, prevented M.C. from leaving. Groves looked on as K.B. held onto M.C. and berated him after striking him repeatedly. This evidence was sufficient to establish that Groves substantially interfered with M.C.’s liberty through the theory of accomplice liability. *See Hopkins v. State*, 747 N.E.2d 598, 606 (Ind. Ct. App. 2001), *trans. denied* (“[c]onfinement exists when there is a substantial interference with liberty without consent”). Moreover, we note that after Groves tasered M.C. and pushed him down the hill, Groves ordered M.C. back up the hill, where K.B. promptly delivered the most damaging blow of the attack to the defenseless M.C.’s eye. This evidence alone was sufficient to prove that Groves substantially interfered with M.C.’s liberty without need to resort to the theory of accomplice liability. The evidence was sufficient to prove this element of the confinement offense.

Groves claims the evidence was insufficient to prove that M.C. suffered bodily injury as a result of the confinement. He claims that even if this court concludes the evidence established that Groves confined M.C., such would not be enough to sustain his conviction for a C felony. Groves contends, “[i]t requires an injury caused by the confinement that is

separate and apart from the injury caused by the battery.” *Appellant’s Brief* at 14.

The battery to which Groves refers was his use of the taser to M.C.’s genitals. There is ample evidence, however, that M.C. suffered bodily injury separate and apart from this battery during the incident. Criminal confinement under I.C. § 35-42-3-3 includes two distinct types of criminal confinement: (1) confinement by nonconsensual restraint in place and (2) confinement by removal. *Kelly v. State*, 535 N.E.2d 140 (Ind. 1989). I.C. § 35-41-1-4 (West, PREMISE through 2008 2nd Regular Sess.) defines “bodily injury” to include “any impairment of physical condition, including physical pain.” After Groves ordered M.C. up the hill following the tasing and shove down the hill, K.B. struck M.C. one more time in the face so hard “it actually kind of knocked [him] down a little bit”, *id.* at 16, causing pain. In ordering M.C. to re-ascend the hill, Groves committed the offense of confinement as defined above in subsection (2). In complying with Groves’s order, M.C. was struck hard in the face, suffering pain therefrom. Based upon its comments when announcing its decision on the charges against Groves, the injury upon which the confinement offense was enhanced was that which M.C. suffered after complying with Groves’s order to return to the top of the hill.³

The evidence was sufficient to support the convictions.

³ We note that Groves claims his conviction of confinement resulting in bodily injury as a class C felony violates double jeopardy principles because the injury supporting that charge is the same injury that elevated the battery conviction to a class A misdemeanor. In explaining its decision with respect to the confinement conviction, the trial court enumerated nine points upon which it based its determination of guilt, including: “Number six (6) defendant told the victim to come back up after the defendant pushed down in the woods [[sic]]. Number seven (7) the defendant told the victim to come out of the bushes and immediately upon that the victim immediately got hit in the face[.]” *Transcript* at 235. On the other hand, the charging information

2.

Groves contends the trial court failed to find and consider mitigating circumstances supported by the evidence. When imposing a sentence for a felony offense, trial courts are required to enter a sentencing statement. This statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. If the court finds aggravating or mitigating circumstances, it “must identify all *significant* mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating.” *Anglemyer v. State*, 868 N.E.2d at 490 (emphasis supplied). An abuse of discretion in identifying or failing to identify aggravators and mitigators occurs if it is “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.” *Id.* (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)). Also, an abuse of discretion occurs if the record does not support the reasons given for imposing sentence, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. *Anglemyer v. State*, 868 N.E.2d 482.

Groves contends the trial court abused its discretion in failing to find the following mitigators proffered by Groves: (1) Groves's age (19); (2) Groves's actions in this incident were out of character for him, (3) Groves would respond favorably to a short term of probation; (4) Groves had only one prior criminal conviction for misdemeanor theft; (5)

for the battery offense alleged “a rude, insolent, and angry touching committed with ... [a] hand held stun

Groves received a harsher penalty than the other four who were involved in the incident.

We begin with the claim that the trial court abused its discretion in failing to find Groves's age as a mitigating factor. "Age is neither a statutory nor a per se mitigating factor." *Monegan v. State*, 756 N.E.2d 499, 504 (Ind. 2001). Nineteen is past the age that our courts have afforded special consideration. *See, e.g., Corcoran v. State*, 774 N.E.2d 495, 500 (Ind. 2002) (holding that age of defendant, twenty-two, was "well past the age of sixteen where the law requires special treatment"); *Monegan v. State*, 756 N.E.2d 499 (holding that trial court did not err in failing to give significant weight to the age of an almost eighteen-year-old defendant); *Ketcham v. State*, 780 N.E.2d 1171 (Ind. Ct. App. 2003) (holding that failure to give mitigating weight to defendant's age, twenty at the time of the crime, was not error), *trans. denied*. Moreover, although Groves was only nineteen years old at the time of the assault upon M.C., he was the oldest person involved. With the exception of Perkins, who was younger than Groves, everyone else involved was a minor. Under these circumstances, the trial court did not abuse its discretion in refusing to consider Groves's age as a significant mitigator.

We next consider the closely-related claims that the court abused its discretion in failing to find as significant mitigators that Groves's actions were out of character and his criminal history was minimal. A trial court is not obligated to agree with the defendant on the weight or value given to each proffered mitigator. *Bostick v. State*, 804 N.E.2d 218 (Ind. Ct. App. 2004). The trial court correctly noted that Groves's criminal history was "minimal",

gun[.]” *Appellant’s Appendix* at 2. Clearly, the two convictions are based on different injuries.

Sentencing Transcript at 117, but also noted that it was not entirely clean. Considering Groves's age, even his one adult criminal conviction – in Effingham County, Illinois in 2007 – renders the trial court's rejection of this proffered mitigator sustainable on appeal.

With respect to Groves's claim that the court should have found as a mitigator that he would benefit from short-term probation, his argument on this point consists of little more than a simple allegation, i.e., "Finally, there was evidence introduced at sentencing that indicated Appellant would respond affirmatively to a short term of probation." *Appellant's Brief* at 15. This falls short of what is required to gain reversal on this point, which is to establish that the mitigating evidence is both significant and clearly supported by the record. *See Matshazi v. State*, 804 N.E.2d 1232 (Ind. Ct. App. 2004), *trans. denied*.

Lastly in this respect, Groves contends the relatively more lenient sentences doled out to the other perpetrators of the attack upon M.C. should be considered in mitigation of his sentence. In considering this argument, we reiterate that Groves was the oldest of those involved. We note also that he is the only one who premeditatedly armed himself before traveling to the planned confrontation, and the only one, other than K.B., a minor, who physically accosted M.C. Moreover, the record indicates that Perkins, M.M., and K.B. pleaded guilty to the charges against them, which may well have been taken into account in their sentencing. Under these circumstances, the trial court was not obligated to impose a sentence on Groves that was roughly the same as those received by the others.

3.

Groves contends his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after considering the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Groves bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

We begin with the nature of the offense. Groves willingly participated in a premeditated episode of vigilante justice that was conceived, orchestrated, and executed by a minor and involved only one other adult, who was younger than Groves. Groves intentionally armed himself with a taser before traveling to the encounter and employed the taser upon the victim after the victim had already been beaten by K.B., was apologizing profusely for the conduct that precipitated the incident, and clearly was offering no resistance. Thus, the taser attack under these circumstances was essentially gratuitous. Groves received the advisory four-year sentence for a class C felony conviction, most of which was suspended to probation. We perceive nothing in the foregoing facts that renders Groves's conduct in this matter deserving of a sentence deviating in either direction from the starting point that the advisory sentence represents. *See, e.g., Childress v. State*, 848 N.E.2d

at 1081 (“the advisory sentence ... is the starting point the Legislature has selected as an appropriate sentence for the crime committed”).

Turning now to the “character of the offender” component, Groves was nineteen years old at the time of this offense and had already been convicted of a criminal offense. He willingly participated in a scheme conceived by a minor to exact revenge upon the minor victim for the victim’s sexual activity with her younger step-sister. He voluntarily armed himself with a taser and used it on the victim gratuitously. In view of Groves’s character and the nature of his offenses, the advisory four-year sentence, with three years suspended to probation, was not inappropriate.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.