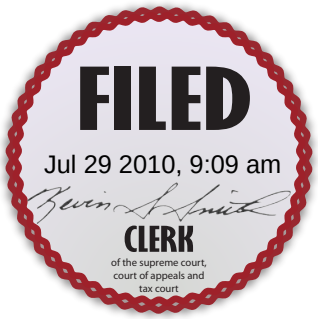

ATTORNEY FOR APPELLANT:

L. ROSS ROWLAND
Muncie, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ROBERT F. DOUGAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A02-0912-CR-1268
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Marianne L. Vorhees, Judge
Cause No. 18C01-0904-FD-53

July 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Robert Dougan appeals his convictions and sentence for Class D felony residential entry and three counts of Class D felony intimidation. We affirm.

Issues

Dougan raises two issues, which we restate as:

I. whether the trial court abused its discretion by admitting a knife found in Dougan's vehicle; and

II. whether Dougan's sentence is inappropriate in light of the nature of the offense and the character of the offender.

Facts

Dougan had a dispute with his father, seventy-six-year-old Donald Dougan, and his stepmother, Molly Dougan, because he wanted to trade vehicles with Molly, but she refused. Dougan's relationship with Donald and Molly deteriorated, and Dougan was not welcome in their home. On April 20, 2009, Dougan left several threatening messages on Donald and Molly's answering machine. In one message, Dougan threatened to use a hammer on Molly. In another message, Dougan threatened to "off" Molly. State's Exhibit 1. In yet another message, Dougan said that he was across the street and that he was going to cut Molly's throat.

A few minutes later, Dougan drove down the street in his vehicle, turned onto Donald and Molly's driveway, and "busted the [driveway] gates down." Tr. p. 41. Dougan "barged" into the house, and Molly put her gun "in his chest" and told him to "get out" or she would "shoot him." Id. at 42-43. Dougan "swatted" the gun away, but

Molly "stuck [the gun] up to his nose." Id. at 43. Donald ran into the room, pointed his gun at Dougan, and told Dougan to leave. Donald and Molly did not see any weapons in Dougan's possession. Dougan left the residence and was arrested a short time later. When Dougan was arrested, a large knife was found on the dashboard of his car.

The State ultimately charged Dougan with Class D felony residential entry, three counts of Class D felony intimidation, and Class B misdemeanor criminal mischief. At the jury trial, Dougan objected on relevancy grounds to the admission of the knife found in his vehicle. The trial court overruled Dougan's objection and admitted the knife. The jury found Dougan guilty of Class D felony residential entry and three counts of Class D felony intimidation, but not guilty of Class B misdemeanor criminal mischief. The trial court sentenced Dougan to two years for the residential entry conviction and two years with one year suspended to probation for each of the intimidation convictions. The trial court ordered that the intimidation sentences be served concurrently with one another but consecutive to the residential entry sentence, for an aggregate sentence of four years with one year suspended to probation.

Analysis

I. Admission of Knife

Dougan argues that the trial court abused its discretion by admitting the knife found in his vehicle because it was not relevant. We review a trial court's determination of admissibility for an abuse of discretion and will reverse only where the decision is clearly against the logic and effect of the facts and circumstances. Smith v. State, 754 N.E.2d 502, 504 (Ind. 2001). Moreover, even if a trial court errs by admitting evidence,

the error does not require reversal unless it affects the substantial rights of a party. Gonzalez v. State, No. 82S01-0909-CR-408, slip op. at 5 (Ind. May 19, 2010). The effect of an error on a party's substantial rights turns on the probable impact of the impermissible evidence upon the jury in light of all the other evidence at trial. Id. "Put differently, the error is harmless when the conviction is supported by such substantial independent evidence of guilt that there is no substantial likelihood that the impermissible evidence contributed to the conviction." Id.

The evidence here, including recordings of the answering machine messages left by Dougan, the testimony of Donald and Molly regarding Dougan's entry into the house, and the testimony of the police officer regarding damage to Donald and Molly's driveway gate was overwhelming. We conclude that, even if the trial court erred by admitting the knife, Dougan's substantial rights were not affected.

II. Sentence

Dougan argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. When considering whether a sentence is inappropriate, we need not be "extremely" deferential to a trial court's sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. Under this rule, the burden is on the

defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The principal role of Rule 7(B) review "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). We "should focus on the forest – the aggregate sentence – rather than the trees – consecutive or concurrent, number of counts, or length of the sentence on any individual count." Id.

Our review of the nature of the offense reveals that Dougan repeatedly threatened his stepmother, including threatening to cut her throat, use a hammer on her, and "off" her. State's Exhibit 1. Shortly after leaving a threatening message, Dougan drove his vehicle through his elderly father and stepmother's driveway gate and entered their house. Although Dougan asserts in his appellant's brief that he merely walked into his father's residence as he had in the past, Donald and Molly testified that Dougan had not been welcome in their residence for quite some time.

Our review of the character of the offender reveals that Dougan has a minor criminal history. He has prior misdemeanor convictions for Class B misdemeanor driving while suspended, Class A misdemeanor driving while suspended, Class A misdemeanor operating a vehicle while a habitual traffic offender, and Class B misdemeanor disorderly conduct. The last of his convictions was in 1994. Dougan had a traumatic childhood and was committed to a mental institution at some point. Two psychiatric evaluations were performed on him during these proceedings. Both

evaluators found Dougan competent to stand trial. One evaluator believed that Dougan was a chronic alcoholic and recommended alcohol counseling and anger management counseling. In sentencing Dougan, the trial court considered his mental health issues and need for treatment. However, the trial court noted that Dougan had never voluntarily sought treatment and that, based on Dougan's demeanor in court, it had "no confidence" that Dougan would comply with any court orders regarding treatment or medication. App. p. 143.

Although we recognize Dougan's mental health and addiction issues, we cannot say that Dougan's four-year sentence with one year suspended to probation is inappropriate in light of the nature of the offense and the character of the offender. Giving due regard to the trial court's decision, as we must, we affirm Dougan's sentence.

Conclusion

Any error in the admission of the knife during Dougan's trial was harmless, and Dougan's four-year sentence is not inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.