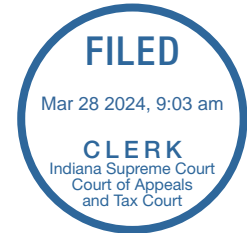


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Tyrik Rayford,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 28, 2024

Court of Appeals Case No.
23A-CR-1386

Appeal from the St. Joseph Superior Court
The Honorable John M. Marnocha, Judge

Trial Court Cause No.
71D02-2110-MR-12

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

[1] Tyrik Rayford (“Rayford”) was convicted after a bench trial of murder,¹ a felony, and conspiracy to commit murder² as a Level 1 felony and found guilty of a firearm sentencing enhancement.³ The trial court imposed an aggregate seventy-five year-sentence executed in the Indiana Department of Correction (“DOC”). Rayford appeals and raises the following restated issues for our review:

- I. Whether sufficient evidence was presented to support Rayford’s convictions for murder and conspiracy to commit murder; and
- II. Whether his sentence is inappropriate in light of the nature of the offenses and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] On October 17, 2020, sixteen-year-old Fredrick Williams (“Williams”) was killed in a drive-by shooting on Brookfield Street in South Bend, Indiana. He was from the west side of South Bend, and it was believed that he was killed by

¹ Ind. Code § 35-42-1-1(1).

² I.C. §§ 35-42-1-1(1), 35-41-5-2.

³ I.C. § 35-50-2-11.

people from the east side of South Bend (“Eastsiders”). Shortly after Williams’s death, a memorial site for him was set up on Brookfield Street.

[4] On October 22, 2020, a group of people, including Rayford, most of which were from the west side of South Bend (“Westiders”), gathered at the memorial.⁴ Around 10:30 p.m., an Eastsider posted a video on social media that showed a group of Eastsiders making a hand gesture that was disrespectful to the Westiders. The Eastsiders in the video were Malik Balderos (“Balderos”), Ricky Kinds (“Kinds”), Will Holloway (“Holloway”), and Brandon McGee (“McGee”). One of the people present at the Brookfield memorial viewed the social media video, and as a result, a group of Westiders at the memorial, including Rayford, decided to leave the memorial and “slide” on the Eastsiders in the video. Tr. Vol. II pp. 216–18; Tr. Vol. III pp. 10–11, 46–47. To “slide” on someone meant to shoot them. Tr. Vol. II pp. 215–16; Tr. Vol. III pp. 11, 47. The group left the memorial in three vehicles and drove to the Waterford Glen apartments, where one of the Eastsiders lived. At that time, Holloway, Balderos, Kinds, and McGee were at an apartment in the Waterford Glen complex to celebrate Balderos’s birthday.

[5] The three vehicles arrived at the Waterford Glen apartments, and a group of people with weapons, including Rayford, exited the vehicles. Rayford carried

⁴ Rayford is also referred to by his nickname, Reck, throughout the record. Other individuals involved in this case are also referred to by their nicknames throughout the record, but, for purposes of this opinion, we will refer to all individuals by their last names after their initial identifications.

an assault rifle, and everyone else carried handguns. Three people approached the apartment door and knocked. No one answered, and the three people walked back to the vehicles. A short time later, another group that included Rayford returned to the apartment. They knocked on the door again, and at that time, the door opened.

[6] Balderos and Kinds exited the apartment, and Rayford and the others began shooting. At least forty shots were fired, and the shooting lasted about thirty seconds to one minute. During this shootout, Balderos was struck in the femoral arteries in both legs, and Kinds was struck in the chest, hitting one of his lungs. The wounds to both were consistent with a high velocity rifle, which was the type of weapon that Rayford was shooting. As a result of the shooting, bullets went through the walls of another apartment, becoming lodged in the drywall above the neighbor's bed while he was sleeping. Spent casings from both a rifle and handguns were littered on the ground, and three different vehicles in the parking lot were hit by bullets. The brick facade and siding of the apartment building were hit and so were doors, windows, a light fixture, furniture, and stairwell walls. After shooting at the occupants of the apartment, Rayford and the others ran back to their vehicles and drove away.

[7] After he was shot, Kinds was pulled back into the apartment, bleeding excessively from the large wound in his chest. Balderos was lying on the floor of the apartment, bleeding from both legs. Someone called 911, and the police arrived. Although emergency personnel arrived, both Balderos and Kinds died as a result of the gunshot wounds they sustained. After the shooting, Rayford

and the others drove to one of the participant's residence to celebrate because everybody was "happy that [they] got 'em." Tr. Vol. III p. 20. Rayford pulled up the social media video on his phone and pointed at Balderos and Kinds, saying that he shot them.

[8] On October 27, 2021, the State charged Rayford with murder, Level 1 felony conspiracy to commit murder, and a firearm enhancement. Rayford waived his right to a jury trial, and on February 27, 2023, a bench trial began. The State also charged Jeremiah Thompson ("Thompson"), Daeshawn Smith ("Smith"), and Lance Dawson ("Dawson") with murder and conspiracy to commit murder based on their involvement in the crime.⁵ All three testified at Rayford's bench trial in exchange for a plea deal.

[9] At the trial, Thompson, Smith, and Dawson all testified that they were at the Brookfield memorial on October 22, 2020, with Rayford and others. Thompson stated that, after viewing the social media video, he was part of a group that left the memorial to "go slide" on Eastsiders who they believed killed Williams. Tr. Vol. II p. 215. Both Smith and Dawson also testified that they left with the group as well. They testified that the group, including Darius Vaughn ("Vaughn"), Treshawn Ford, Dawson, Dijon Davis, Perry Watson,

⁵ Thompson was also known by the nickname Rambo, Smith was known as Montana, and Dawson was known as BD or Two Four.

Taeshawn Overstreet, Smith, Rayford, Michael Williams (“Michael”),⁶ and others, left in three different vehicles to go to the Waterford Glen Apartments. When they arrived at the apartments, people exited the vehicles, and almost everyone had a weapon. Rayford carried a black assault rifle that belonged to Michael. Rayford carried the only rifle, and the others carried handguns. Once they arrived at Waterford Glen, Vaughn communicated with one of the occupants of the apartment on social media, trying to get him to come outside. The testimony was consistent that a group initially went to the apartment, knocked, and received no answer, so they returned to the vehicles. They then testified that another group, including Rayford, went to the apartment and knocked again, which was when the shooting began. Dawson testified that he saw Rayford shoot the rifle. Thompson, Smith, and Dawson all testified that everyone then left and went to celebrate. At this celebration, Thompson heard Rayford say that he shot people from the Snapchat video, and Dawson heard Rayford brag about shooting someone from the video. At the conclusion of the trial, the trial court found Rayford guilty as charged, remarking that Thompson, Smith, and Dawson were credible witnesses and that their testimony, particularly as it related to Rayford’s guilt, was mostly consistent and corroborated by evidence found at the crime scene.

⁶ Dijon Davis was also known by the nickname Dot Four, Treshawn Ford is also known as Trey Moe, Perry Watson was known as Polo, Taeshawn Overstreet was known as Tio, and Michael Williams was known as Mike Mike.

[10] On May 24, 2023, the trial court held a sentencing hearing. The evidence from Rayford's pre-sentence investigation report ("PSI") revealed that Rayford had contacts with the juvenile justice system in Illinois, but the resolution of those delinquency matters was unknown. As an adult, Rayford had one criminal conviction from Illinois for Class 4 felony aggravated unlawful use of a weapon in 2018. As a result of that conviction, he was sentenced to time served with twenty-four months on probation. Later, under the same case number, he was sentenced to one year in the Illinois DOC for an unknown reason, was released to parole after serving that sentence, and was released from parole a few months before he committed the instant offenses. In Indiana, Rayford was charged with Class A misdemeanor intimidation and Class C misdemeanor operating a motor vehicle without ever receiving a license, and both charges were still pending at the time the presentence investigation report was done.

[11] The PSI noted that Rayford admitted to being a member of the Black Disciples gang. He also reported that he began using marijuana at the age of thirteen and began to use it daily at the age of eighteen but had stopped using it four months before the instant crimes because he was on house arrest in Illinois. Rayford also said that he had previously used Xanax, ecstasy, and Percocet. Contained in the PSI was a victim impact statement that stated that the "young men did not stop at taking [Kinds's] and [Balderos's] lives but began desecrating burial plots and posting this online, with several statements of disrespect to the grieving families." Appellant's App. Vol. II p. 71.

[12] When sentencing Rayford, the trial court stated that Rayford “hunt[ed] people from another side of town . . . who were [not] necessarily involved in the prior murder” of Williams. Tr. Vol. III p. 115. The trial court remarked that it was “amazed, given the number of shots that were fired, not only by you personally with the high-powered weapon but by everybody that you were with collectively, that no one else was killed,” and described Rayford’s actions as evincing “reckless disregard” to the victims and society in general. *Id.* at 116. The trial court considered Rayford’s criminal history, including prior contacts with the juvenile justice system, and the nature of and circumstances of these offenses, including the “callous disregard” to what could happen to others and also the fact that Rayford and the others went and celebrated what they had done afterwards. *Id.* at 117. The trial court sentenced Rayford to the advisory term of fifty-five years for murder and the advisory term of thirty years for conspiracy to commit murder and ordered those sentences to be served concurrently.

[13] As to the firearm enhancement, the trial court stated that Rayford used an assault-style weapon to “hunt individuals who [he] believed [he] had some beef with” which Rayford believed justified hunting and shooting them. *Id.* at 119. The court further stated the fact that Rayford acted with other armed individuals to accomplish this agreement to hunt individuals in an “ambush style” created “an extreme danger.” *Id.* at 119. The trial court also considered that seventeen or eighteen of the shots were fired by Rayford’s assault rifle. Therefore, the trial court enhanced Rayford’s sentence by twenty years for the

firearm enhancement, resulting in an aggregate sentence of seventy-five years executed in the DOC. Rayford now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[14] Rayford argues that insufficient evidence was presented to support his convictions. When there is a challenge to the sufficiency of the evidence, “[w]e neither reweigh evidence nor judge witness credibility.” *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016), *cert. denied*. Instead, we consider only that evidence most favorable to the judgment together with all reasonable inferences drawn therefrom. *Id.* “We will affirm the judgment if it is supported by substantial evidence of probative value even if there is some conflict in that evidence.” *Id.* Further, “[w]e will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

[15] In order to convict Rayford of murder as charged, the State was required to prove that he knowingly or intentionally killed another human being. Ind. Code § 35-42-1-1(1). In order to convict Rayford of Level 1 felony conspiracy to commit murder, the State was required to prove that he, with the intent to commit murder, agreed with another person or persons to commit murder and committed one or more overt acts in furtherance of that agreement. I.C. §§ 35-42-1-1(1), 35-41-5-2. In order to support the firearm enhancement, the State

was required to prove that Rayford knowingly or intentionally used a firearm in the commission of his offense. I.C. § 35-50-2-11(d).

[16] The evidence most favorable to the judgment demonstrated that Rayford and a group of other Westsiders left to go shoot some Eastsiders, whom they believed were responsible for the death of Williams, after they saw a video on social media disrespecting Westsiders. When Rayford and the others arrived at the Waterford Glen apartments, Rayford was armed with an assault rifle, while the rest of the co-defendants had handguns. After an initial attempt to get the occupants of the apartment to come out failed, Rayford and a few others went back to knock on the door. A shootout then ensued, during which both Kinds and Balderos were shot and killed by rounds fired from a high velocity rifle, which was the weapon wielded by Rayford, and rifle casings were found at the scene as well. Further, Rayford admitted to others afterwards that he had shot someone and pulled up the social media video on his phone, pointing to Balderos and Kinds and saying that he shot them. A “conviction can be sustained on the uncorroborated testimony of a single witness.” *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012) (citation omitted). Here, the trial court heard consistent testimony from three witnesses: Thompson, Smith, and Dawson, and the trial court specifically found that the testimony of the three witnesses was credible. Therefore, the evidence presented was sufficient to support Rayford’s convictions and the sentencing enhancement.

[17] However, Rayford asserts that we should disregard the testimony of Thompson, Smith, and Dawson because the incredible dubiousity rule applies. The

incredible dubiousity rule recognizes that, in very rare cases, a witness's credibility is so untrustworthy and lacking as to justify reversal on appeal. *Moore v. State*, 27 N.E.3d 749, 755 (Ind. 2015). However, the Indiana Supreme Court has explained that we should only invoke this doctrine "where a *sole witness* presents inherently contradictory testimony which is equivocal or the result of coercion and there is a *complete lack of circumstantial evidence* of the appellant's guilt." *Id.* (emphases in original). This standard is not an impossible burden to meet, but it is a difficult one, and the testimony must be such that no reasonable person could believe it. *Id.* at 756.

[18] Here, we find that the incredible dubiousity rule is inapplicable. First, as discussed above, there were three witnesses who testified against Rayford regarding the shooting. All three testified that Rayford participated in the shootout and was the only one armed with an assault rifle. Second, although Rayford contends that the testimony of Thompson, Smith, and Dawson were inconsistent and unreliable, each witness's testimony regarding Rayford's actions was consistent within their own testimony and generally consistent with each other's testimony. They all consistently testified that Rayford was present at the Waterford Glen apartments, was the only one armed with an assault rifle, and was in the second group that knocked on the apartment door immediately before the shooting began. Dawson testified that he saw Rayford shoot the rifle, and Thompson and Dawson both heard Rayford brag about shooting people from the Snapchat video. Although there were minor inconsistencies between the testimony of Thompson, Smith, and Dawson, the individual

testimony of each witness was not inherently contradictory. Further, there was not a complete lack of circumstantial evidence in this case because in addition to the witnesses' testimony, there was physical evidence that corroborated their testimony. Each witness testified that Rayford was armed with the only assault rifle, and shell casings from a rifle were found at the scene. Additionally, the fatal wounds to the victims were determined to be inflicted by a high velocity rifle. We, therefore, conclude that the incredible dubiousity rule does not apply, and sufficient evidence was presented to support Rayford's convictions and the firearm enhancement.

II. Inappropriate Sentence

[19] The Indiana Constitution authorizes appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). "That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court's decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender." *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[20] Our review under Appellate Rule 7(B) focuses 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." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We generally defer to the trial court's decision, and our goal is to determine whether the defendant's sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*,

972 N.E.2d 864, 876 (Ind. 2012). “Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant’s character (such as substantial virtuous traits or persistent examples of good character).” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[21] When reviewing a sentence under Appellate Rule 7(B), we remain mindful that the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Here, Rayford was convicted of one count of murder, one count of Level 1 felony conspiracy to commit murder, and a firearm enhancement. A conviction for murder carries a sentencing range of forty-five to sixty-five years, with the advisory sentence being fifty-five years. I.C. § 35-50-2-3(a). A conviction for a Level 1 felony carries a sentencing range of twenty to forty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4(b). The sentencing enhancement for using a firearm in the commission of a crime imposes an additional term between five and twenty years. I.C. § 35-50-2-11. Thus, Rayford’s convictions for murder and conspiracy to commit murder with the enhancement for using a firearm carried a maximum aggregate sentence of 125 years. The trial court sentenced Rayford to the advisory sentence for murder, fifty-five years, and the advisory for a Level 1 felony, thirty years, to be served concurrently and to be enhanced by the maximum twenty years for the firearm sentencing enhancement, resulting in an aggregate sentence of seventy-five years in the DOC.

[22] When reviewing the nature of the offense, this court considers “the details and circumstances of the commission of the offense.” *Merriweather v. State*, 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020). In looking at the nature and circumstances of Rayford’s crimes, it is revealed that Rayford used an assault rifle to hunt and ambush rivals from another side of town based on a video that Rayford and his co-defendants found to be disrespectful. The evidence showed that Rayford and other Westsiders were congregated at a memorial for a friend that they believed had been killed by Eastsiders when they saw a video on social media disrespecting Westsiders. As a result of the video, several people from the memorial jumped into three separate cars to go shoot some Eastsiders. They arrived at an apartment where one of the people from the video lived and attempted to get the occupants to come out. Rayford was armed with the only assault rifle, while the rest of the group had handguns. After a second attempt to lure the occupants of the apartment out proved successful, a large shootout ensued, which resulted in at least forty shots being fired and two people being killed. Rayford shot Balderos, hitting the femoral arteries in both of his legs, and he shot Kinds, resulting in a large wound in his chest. Both Balderos and Kinds died as a result of their injuries. Three vehicles in the parking lot were hit by the gunfire, as well as many areas of the apartment building, including the brick facade of the building, the siding, doors, windows, a light fixture, furniture, and stairwell walls. One of the bullets went through the wall above a neighbor’s bed while he was sleeping. The trial court remarked that Rayford showed a “reckless disregard” to the victims and society in general, and that it was “amazed” no one else was killed. Tr. Vol. III p. 116. Further, Rayford

was charged and convicted of only one count of murder, although he killed both Balderos and Kinds. Rayford has failed to portray the nature of the offenses in a positive light “such as accompanied by restraint, regard, and lack of brutality” to support revising his sentence. *Stephenson*, 29 N.E.3d at 122.

[23] The character of the offender is found in what we learn from the offender’s life and conduct. *Merriweather*, 151 N.E.3d at 1286. “A defendant’s criminal history is one relevant factor in analyzing character, the significance of which varies based on the ‘gravity, nature, and number of prior offenses in relation to the current offense.’” *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct. App. 2021) (quoting *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007)). Even a minor criminal history reflects poorly on a defendant’s character for the purposes of sentencing. *Id.*

[24] In looking at Rayford’s character, although he did not have a lengthy criminal history, the evidence showed that he had a prior conviction for Class 4 felony aggravated unlawful use of a weapon, and he had prior contacts with the justice system. Rayford also had two charges that were pending at the time the PSI was completed. Rayford was also a member of a gang, had a history of substance abuse, and was on house arrest in Illinois as recently as four months prior to the present offenses. *See* Appellant’s App. Vol. II p. 56. Further, a victim impact statement noted that the “young men did not stop at taking [Kinds’s] and [Balderos’s] lives but began desecrating burial plots and posting this online, with several statements of disrespect to the grieving families.” *Id.* at 71. Consequently, Rayford has failed to identify “substantial virtuous traits or

persistent examples of good character” to support revising his sentence.

Stephenson, 29 N.E.3d at 122.

- [25] Based on the facts in the record, Rayford has not shown that his advisory sentences for murder and Level 1 felony conspiracy to commit murder ordered to be served concurrently and enhanced for the use of a firearm are inappropriate in light of the nature of the offenses and his character, especially since he was only charged and convicted for one murder when two victims were killed.

Conclusion

- [26] Rayford’s convictions and sentencing enhancement were supported by sufficient evidence, and his sentence is not inappropriate.
- [27] Affirmed.

Pyle, J. and Tavitas, J., concur.

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