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IN THE COURT OF APPEALS OF INDIANA

TYRELL MORRIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0708-CR-409
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0612-FA-76

January 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Tyrell Morris appeals his class B felony robbery conviction. We affirm.

The facts most favorable to the conviction are that on the evening of December 18, 2007, James Martz and Justin Taritas were at Martz's Allen County home. Morris called Martz and asked if he was at home. Martz said no. Later that evening, Morris opened Martz's front door without knocking and told Christopher Nelson to join him inside the home. After Nelson entered, Morris took Martz's cell phone and kicked him repeatedly in the head and ribs. Morris pulled Martz's pants around his ankles and took two twenty-dollar bills from his pants pocket. Morris then went outside with Nelson. Martz locked the front door and ran out the back door.

Afterward, Martz's brother and the police arrived. Martz's brother used his cell phone to dial the number of Martz's missing cell phone. Over the phone's loudspeaker, Martz and Detective Calvin Dubose heard Morris say that Martz would have to pay Morris and Nelson fifty dollars if he did not "want this to happen again." Tr. at 211. Morris's girlfriend Rachel Goodmann was in a vehicle with Morris and Nelson when this conversation occurred. Police later located the vehicle, in which they found Morris, Nelson, Goodmann, and Martz's cell phone.

The State charged both Morris and Nelson with class A felony burglary and class B felony robbery as principals and tried them as codefendants. At the outset, the court told the jury that the trial was scheduled for two days. At the end of the first day, the State rested its case, and both Morris and Nelson rested without presenting evidence. The court admonished and released the jury for the day. At the ensuing final instructions conference, the trial court refused the State's tendered instructions on accomplice liability on the basis that Morris and

Nelson had been charged as principals and that it had heard no evidence to support the giving of the instructions.

The next morning, the State asked to reopen its case to call Goodmann to testify regarding accomplice liability. The prosecutor said, "[Goodmann] was listed by the State as a witness and identified. She did not appear yesterday because, I'm told by my Detective that she had her days mixed up." *Id*. at 262. The prosecutor further stated, "I could not locate my subpoena yesterday to show that I had good service on her so, I made the tactical decision to go forward yesterday without her, anticipating that she would not show up at all." *Id*. at 263. Over the objections of Morris and Nelson, the court allowed the State to reopen its case and call Goodmann as a witness. Both Morris and Nelson cross-examined Goodmann. Morris called Detective Dubose as a rebuttal witness and then took the stand himself. The court instructed the jury on accomplice liability. The jury found Morris and Nelson not guilty of class A felony burglary and guilty of class B felony robbery.[1]

On appeal, Morris contends that the trial court erred in allowing the State to reopen its case. Our supreme court has stated,

> Whether to grant a party's motion to reopen his case after having rested is a matter committed to the sound discretion of the trial judge. The decision will be set aside only when it appears that this discretion has been abused. Among the factors which weigh in the exercise of discretion are whether there is any prejudice to the opposing party, whether the party seeking to reopen appears to have rested inadvertently or purposely, the stage of the proceedings at which the request is made, and whether any real confusion or inconvenience would result from granting the request.

[1] Nelson was also charged with and found guilty of class A misdemeanor resisting law enforcement.

Flynn v. State, 497 N.E.2d 912, 914 (Ind. 1986) (citation omitted). A party should be permitted to reopen its case to submit evidence that would have been a proper part of its case in chief. *Lewis v. State*, 406 N.E.2d 1226, 1230 (Ind. Ct. App. 1980). "The opportunity for a party to reopen its case includes the chance to cure a claimed insufficiency of evidence." *Id.* (citing *Eskridge v. State*, 258 Ind. 363, 281 N.E.2d 490, 493 (1972)).

It is true, as Morris points out, that the State did not rest inadvertently, but he offers no support for his assertion that he was prejudiced by the State's reopening of its case. "To show reversible error, an appellant must affirmatively demonstrate prejudice to his substantial rights." *Hughett v. State*, 557 N.E.2d 1015, 1022 (Ind. 1990). Morris's argument boils down to mere speculation that "[t]he calling of Ms. Goodmann placed an undue amount of emphasis on her testimony by calling her after all of the parties had rested." Appellant's Br. at 13. We agree with the State that "[n]othing in the record supports [Morris's] claim that the jury was somehow 'cued' to give more weight to Goodmann's testimony." Appellee's Br. at 7. Moreover, the record does not indicate that any confusion or inconvenience resulted from the reopening of the State's case. As such, we find no abuse of discretion.

Affirmed.

NAJAM, J., and BAILEY, J., concur.