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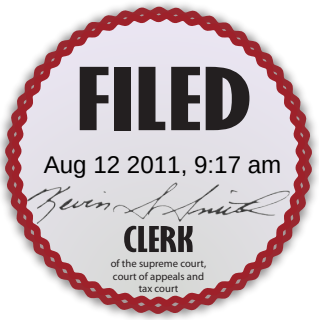

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IN THE COURT OF APPEALS OF INDIANA

MICHAEL BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1011-CR-1200
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0811-MR-258896

August 12, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Michael Brown appeals his convictions and consecutive sentences for two counts of murder.[1]

We affirm.

ISSUES

1. Whether the trial court abused its discretion in admitting evidence.

2. Whether Brown's consecutive sentences are inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

Milton Lindgren and Eric Hendricks lived at 9160 Middlebury Way in Camby and had lived together for several years. Both men were in their early seventies. Hendricks used a wheelchair due to complications from diabetes.

Brown lived with Lindgren and Hendricks from approximately February of 2008 until July of 2008, ostensibly as Hendricks' caretaker. Brown introduced himself to Lindgren and Hendricks' neighbors as a doctor. Lindgren and Hendricks referred to Brown as "Dr. Brown." (Tr. 42).

Brown met Keith Myers on the internet prior to moving in with Lindgren and Hendricks. In February of 2008, Brown asked Myers if Hendricks could have his mail forwarded to Myers' address because, as Brown explained, Hendricks "was going through a really bad divorce." (Tr. 233). Myers agreed and began receiving Hendricks'

[1] Ind. Code § 35-42-1-1.

mail in February. Myers would keep the mail at his house until Brown retrieved it. In August, Myers told Brown that he could no longer receive the mail because he was moving.

In late September of 2008, Lindgren complained to his mail carrier, Lisa Clark, that Hendricks had stopped getting mail. Clark informed him that a change-of-address had been requested in February and recalled that Brown had asked her for a change-of-address form.

Lindgren and Hendricks then went to their local post office to report that Hendricks was not receiving mail. The postmaster gave Lindgren and Hendricks a copy of the change-of-address form that had been submitted in Hendricks' name on or about February 28, 2008. The signature on the form did not match Hendricks' signature. The new mailing address listed on the form matched Myers' address.

In late September or early October of 2008, Lindgren informed Connie Ballard that he wanted to bring his van, a 2005 gold Dodge Caravan, into her repair shop prior to leaving on a trip. He wanted to "make sure everything was okay, change the oil, check the fluids, just make sure that they weren't going to break down . . . ." (Tr. 73).

Thereafter, at approximately 3:24 a.m. on October 9, 2008, surveillance cameras at a Wal-Mart near the Lindgren-Hendricks residence captured images of a person parking Lindgren's van in the parking lot and then leaving the parking lot on foot. The footage also reflected that, six minutes later, someone parked a silver Dodge Avenger, the same make and model vehicle that had been rented by Brown, next to the van; unloaded items

from the van into the Avenger; and then drove the Avenger out of the parking lot. Surveillance footage taken on October 13, 2008, showed a person being dropped off near the van and then driving the van off the lot.

On October 20, 2008, Brown came into Ballard's repair shop and "said he wanted to have [Lindgren]'s van towed in" from Franklin because "he thought someone had put sugar in the gas tank." (Tr. 75). When Ballard asked Brown how he came into possession of the van, Brown claimed that "someone left a voicemail on [his phone] that said the van was at Wal-Mart's parking lot, and the keys were in it, and [Lindgren] had loaned the van to this person." (Tr. 79-80). Brown claimed that he did not know the person. He also could not explain why he had the van towed from the Wal-Mart, which was near the Lindgren-Hendricks residence, to Franklin.

When Ballard became suspicious, she telephoned Anthony McClure, the owner of the firm providing security for Lindgren's housing development. Brown agreed to meet McClure at the residence.

Brown then left Ballard's shop and went to Lindgren and Hendricks' neighborhood, where he approached Kevin Tetrick, a neighbor of Lindgren and Hendricks. Brown told Tetrick "a pretty lengthy story about how he was [a] . . . caregiver for one of them, and how they were supposed to go on vacation but he hadn't seen them and he was trying to check on them or something." (Tr. 102).

After Tetrick asked whether Brown had checked the back door, Brown "immediately started walking towards the back, and [Tetrick] followed after him." (Tr.

103). Although the back door was locked, Tetrick noticed that window was open. He and Brown then went to the front of the residence to meet McClure.

When McClure declined to go into the house, Brown and Tetrick went back to the rear of the house. Brown then crawled through the open window to gain entry and unlocked the door for Tetrick. Both noticed a strong odor, like "decay." (Tr. 107). Brown immediately went upstairs; Tetrick, who had refused to go further, waited downstairs. Once upstairs, Brown informed Tetrick that there was "blood everywhere." (Tr. 107). Tetrick told Brown to leave, but Brown refused, saying that he had to "check on the other one." (Tr. 107). Brown remained in the house for several minutes, during which time Tetrick left the house and told McClure to telephone police.

At approximately 11:00 a.m., Indianapolis Metropolitan Police Officer Earl Fortune received a report of "[t]wo possible DOAs" at 9160 Middlebury Way. (Tr. 22). When Officer Fortune arrived at the residence, he found Brown, a neighbor, and several other officers already outside the residence. Officer Fortune entered the residence through a rear door.

When he entered the residence, Officer Fortune noticed "a very strong odor . . . that'd remind you of maybe some meat that went bad or something." (Tr. 28). Officer Fortune proceeded upstairs, where he observed "two deceased males in the bedrooms . . . ." (Tr. 29).

Shortly thereafter, Lynne McGrone Redd, a crime scene specialist with the Indianapolis-Marion County Forensic Services Agency (the "Crime Lab"), arrived at the

residence to collect evidence and document the scene. She observed that the home's thermostat had been set at 65 degrees.

Upstairs, Redd found Lindgren's body in the northwest bedroom. He was on the bed, underneath the covers, with only his head exposed. Redd noted blood spatter on the room's walls and ceiling.

Redd discovered Hendricks' body on the floor of the northeast bedroom. He wore only socks and a t-shirt. She noted blood spatter throughout the room. Redd observed drops of blood in the connecting bathroom. Although the bedroom contained a lot of clutter, the bathroom was tidy, and it appeared as if someone had wiped down the vanity.

Based on the level of decomposition, Dr. Michael Kenny, the forensic pathologist who performed the autopsies on Lindgren and Hendricks, estimated that they had been dead at least one week. An autopsy revealed that Hendricks had sustained a two inch laceration and skull fracture on the back of his head. Given that the bone in that area of the head is "quite thick," Dr. Kenny opined that a "significant amount of force" produced the injury. (Tr. 562). He also opined that "some club-like object," such as a baseball bat or hammer, was used. (Tr. 563). Dr. Kenny determined the cause of death to be "cranial cerebral trauma due to a blunt impact to the head." (Tr. 569).

An autopsy revealed multiple skull fractures to the left side of Lindgren's skull. Dr. Kenny opined that the injuries were caused by Lindgren being struck with something with a straight edge, such as "a rod, or a baseball bat, or hammer," and with "significant

force . . . ." (Tr. 566). He determined the cause of death to be "due to a brain laceration due to comminuted fractures of the skull due to blunt injury to the head." (Tr. 569).

On October 22, 2008, Brown took Lindgren's van to Matlock Ford-Mercury in Franklin for some repairs. After Brown informed the employees that the van belonged to a murder victim, they contacted law enforcement.

On October 28, 2008, Brown's then-girlfriend, Julie Esslinger, drove Brown to Indianapolis and dropped him off in the downtown area. Brown told her that he "was going to stay with a different friend." (Tr. 989). Esslinger gave Brown several hundred dollars.

On October 31, 2008, Brown telephoned Esslinger. She asked him if "he'd seen [her] baseball bat," meaning the aluminum baseball bat, which she had kept for protection. (Tr. 991). Esslinger had noticed that it was missing after she drove Brown to Indianapolis. Brown claimed that he did not know that she had a baseball bat. "A little while later," Brown again telephoned Esslinger and told her "not to tell anybody about it." (Tr. 993). Esslinger, however, reported the missing baseball bat, as well as the content of her conversations with Brown, to law enforcement.

On November 13, 2008, the State charged Brown with two counts of murder. On November 15, 2008, United States Marshals apprehended Brown in San Diego, California. The trial court commenced a four-day jury trial on September 27, 2010.

Edward Raifsnider testified that he met Brown in December of 2008, while they both were incarcerated in Oklahoma City at the Federal Transfer Center, awaiting

extradition. He testified that Brown eventually told him that "he had murdered two elderly gay men by the name of Eric and Milton in Camby, Indiana, by bashing their brains in." (Tr. 290). According to Raifsnider, Brown informed him that he killed the men because "they had found out that he'd been stealing from them . . . ." (Tr. 290). Also, "he had gained access to their safe and strongbox and revealed that Eric was worth a great deal of money, and he wanted it." (Tr. 290).

Brown described the weapons he had used as "a hammer," a "flagpole-type belonging to a flagpole kit," and a "dull aluminum baseball bat," missing its grip. (Tr. 290). Brown further related to Raifsnider that on either September 29 or October 6, "he didn't remember what day it was, but he knew it was on a Monday," (tr. 298), he entered the victims' residence with a key that "he had while he was living with Eric and Milt." (Tr. 298). He then went upstairs, into Lindgren's bedroom, where he "bashed his head in" as he lay in bed. (Tr. 299). He then proceeded to Hendricks' bedroom, but Hendricks "must have been awake and heard him coming, because Eric had come to him and tried to fight him back and blocked the blows." (Tr. 299-300). He "said that Eric had fell [sic] down due to his bad legs," after which he "bashed his head until he laid unconscious." (Tr. 300).

After, Brown said that he "took a shower" and sprayed the bathroom "down with ammonia . . . to kill the DNA . . . ." (Tr. 300-01). He also put his clothes in a plastic bag. When he finished cleaning up, he opened a downstairs window "to make it look like an intruder came in from that way." (Tr. 301).

According to Raifsnider, Brown also described loading Lindberg's van with several items before parking it in a nearby Wal-Mart parking lot. He then walked back to the house "to check to see if he had locked the front door and the screen door." (Tr. 302). Brown told Raifsnider that as he did so, "a lady across the street" saw him and "asked him what he was doing there so late, and where was his car." (Tr. 302). After telling the woman that he was checking to see if the men had gone on vacation, he walked back to Wal-Mart, parked his car next to the van, loaded the items from the van into his car, and then drove to Franklin, where he discarded the baseball bat and his clothes in dumpsters.

Raifsnider further testified that Brown offered him money to testify on his behalf. Specifically, he asked Raifsnider to testify that he went to a garage sale in Camby, being held by men matching the victims' descriptions, and tried to purchase a safe from them, but was told that "the safe had already been sold to a friend of theirs . . . ." (Tr. 317).

Raifsnider testified that after speaking with Brown, he transcribed as much information as possible and sent his notes to his son and daughter-in-law. The trial court admitted the notes into evidence.

Hunter Burchett testified that in February of 2008, Brown and Lindgren came into the Staples store where Burchett worked. According to Burchett, Brown "represented himself as a doctor of internal medicine" and that he was "setting up a medical office." (Tr. 397). During one of Brown's several visits to the store, he purchased a computer. Pursuant to store policy, the large purchase amount required a manager to verify Brown's identity and credit card. Burchett testified that although Brown introduced himself as

"Dr. Michael Brown," (tr. 401), his identification and credit card read "Eric P. Hendricks." (Tr. 402). Brown claimed that to be his real name.

Patrice Wagner, a sales associate for Ashley Furniture Store, testified that in the fall of 2008, a man, identifying himself as "Dr. Eric Hendricks with Clarian Health," (tr. 410), "came in to look for furniture for a new place." (Tr. 408). He visited the store several times and purchased several items with a credit card in Hendricks' name. Wagner identified Brown as the person who made the purchases.

Carol Dingle, a sales associate for Value City Furniture, testified that Brown came into the store in the spring of 2008 and introduced himself as "Eric Hendricks," (tr. 415), and claimed to be an "orthopedic surgeon from Clarian West Hospital." (Tr. 417). She further testified that Brown visited the store several times and "purchase[d] a lot of furniture," using a credit card in Hendricks' name. (Tr. 418). At one point, Dingle telephoned Brown on his cell phone to inform him about a new collection. When he answered, however, he identified himself as "Dr. Brown." (Tr. 421).

Steven Flanagan testified that in 2008, Brown came into Flanagan's furniture store and identified himself as Eric Hendricks. According to Flanagan, Brown informed Flanagan that he had relocated to the area "to take a new position at a hospital as chief of staff." (Tr. 433). Flanagan testified that Brown came into the store several times and "bought quite a bit of furniture . . . ." (Tr. 433). Flanagan recalled that the name "Hendricks" was on the credit card and identification card used by Brown. (Tr. 435).

Flanagan further testified that Brown had his purchases "delivered somewhere in a storage unit, somewhere on the west side." (Tr. 441).

Keith Skaggs testified that he met Brown after Brown sought assistance at Skaggs' church. Brown introduced himself as "Dr. Brown" and represented that he was opening a new medical practice. (Tr. 448). In the spring of 2008, Skaggs helped Brown "move some furniture that he had bought from Value City into a storage unit" in Avon. (Tr. 449). In addition to the furniture, Skaggs noticed "a couple of flat screen TVs still in the box" and "several boxes of liquor . . . ." (Tr. 454). A search of the storage unit pursuant to a warrant subsequently revealed several of the items purchased by Brown in Hendricks' name.

Beverly Marker testified that in October of 2008, she lived across the street from Lindgren and Hendricks. Marker met Brown in the summer of 2008, after seeing him "come and go from the property across the street[.]" (Tr. 480). Marker testified that Brown had told her that he was a doctor.

Marker further testified that in late September or early October of 2008, she arrived home late, after dark, and saw Brown. She asked Brown where his car was, and he waved his arm, indicating that he had left it somewhere. He then asked Marker whether she had seen Lindgren and Hendricks lately, indicating that he believed them to be on vacation.

Donald Ladd testified that in October, Brown telephoned him "and said that [Lindgren]'s van was sitting at the [Wal-Mart] parking lot and asked [him] if [he]'d go

take him over to get it." (Tr. 777). Ladd agreed and picked up Brown at Brown's girlfriend's residence. Brown later gave Ladd two safes. Ladd testified that he received the safes, which Brown had been keeping at his girlfriend's house, "right before the 28th of October[.]" (Tr. 778). Brown told Ladd that the safes contained "some important papers and some old coins." (Tr. 779). Brown also gave Ladd "three or four" boxes. (Tr. 775). A subsequent search by police officers revealed that the boxes contained several items belonging to Lindgren and Hendricks.

During the trial, the State sought to admit into evidence a letter by the Assistant Board Director of the Medical Licensing Board for Indiana, affirming that Brown is not licensed to practice medicine in Indiana and has not applied for a medical license in Indiana. The trial court overruled Brown's objection, finding the letter to be a public record.

The jury found Brown guilty as charged. The trial court ordered a pre-sentence investigation report ("PSI") and held a sentencing hearing on October 13, 2010.

According to the PSI, Brown had been convicted of robbery and insufficient funds in California in the 1970s. In Indiana, Brown had convictions for felony forgery and felony fraud[2] as well as possession of a firearm by a serious violent felon.

Brown presented his three years of military service from 1970 to 1973 as a mitigating circumstance. Although Brown expressed sympathy for Lindgren's daughter's

[2] The PSI shows that the State charged Brown with seven counts of class C felony forgery and six counts of class D felony fraud. Brown pleaded guilty as charged to five of those counts.

loss, he claimed that "[t]here are a lot of things [she] had no clue of what was going on." (Tr. 1304). He also denied taking advantage of the victims.

The trial court found Brown's military service to be a mitigating circumstance. As to aggravating circumstances, the trial court found that Brown had placed himself in a position of trust by representing himself as a doctor. The trial court also found the nature and circumstances of the crime to be an aggravator; specifically, that Brown murdered Lindgren and Hendricks in an attempt to cover up his deception. The trial court further found Brown's criminal history and that there were multiple victims to be aggravating circumstances. Finding that the aggravators outweighed the mitigator, the trial court sentenced Brown to consecutive sentences of sixty years on each count, for a total sentence of 120 years.

DECISION

1. Admission of Evidence

Brown asserts that the trial court abused its discretion in admitting into evidence the licensing board's letter that Brown did not have a medical license in Indiana. Specifically, he argues that the evidence was irrelevant; prejudicial; and prohibited by Evidence Rule 404(b), which provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."

"Generally, a trial court's ruling on the admissibility of evidence is reviewed for an abuse of discretion." *Hape v. State*, 903 N.E.2d 977, 991 (Ind. Ct. App. 2009), *trans.*

denied. We will reverse a trial court's decision only if it clearly against the logic and effect of the facts and circumstances of the case. *Id.* "Even if the decision was an abuse of discretion, we will not reverse if the admission of evidence constituted harmless error." *Id.*

Here, we do not decide whether the trial court improperly admitted the letter because we conclude any error to be harmless.

> No error in the admission of evidence is grounds for setting aside a conviction unless such erroneous admission appears inconsistent with substantial justice or affects the substantial rights of the parties. The improper admission of evidence is harmless error when the conviction is supported by such substantial independent evidence of guilt as to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction.

Lafayette v. State, 917 N.E.2d 660, 668 (Ind. 2009) (internal citations omitted).

"A reversal may be obtained only if the record as a whole discloses that the erroneously admitted evidence was likely to have had a prejudicial impact upon the mind of the average juror, thereby contributing to the verdict." *Wales v. State*, 768 N.E.2d 513, 521 (Ind. Ct. App. 2002). Thus, "'[t]he question is not whether there is sufficient evidence to support the conviction absent the erroneously admitted evidence, but whether the evidence was likely to have had a prejudicial impact on the jury.'" *Shepherd v. State*, 902 N.E.2d 360, 364 (Ind. Ct. App. 2009) (quoting *Camm v. State*, 812 N.E.2d 1127, 1137 (Ind. Ct. App. 2004)), *trans. denied*.

Here, Raifsnider testified that Brown admitted to murdering Lindgren and Hendricks. Raifsnider's testimony provided numerous details of the murders and was substantiated by additional evidence and testimony.

The State also presented evidence that Brown lied about his identity to several people, including the victims; rerouted Hendricks' mail; purchased several items with Hendricks' credit cards; and took property belonging to Lindgren and Hendricks. Moreover, the State presented extensive testimony from which the jury could infer that Brown lied about being a physician.

In light of the evidence and Brown's conduct, we cannot say that admitting the letter from the licensing board prejudiced Brown. We therefore find that any error in admitting the evidence must be disregarded as harmless.

2. Inappropriate Sentence

Brown asserts that his total sentence of 120 years is inappropriate because the "murders were not carried out as a part of a well-thought-out plan" but rather "were ones of desperation." Brown's Br. at 21. Brown also argues that his sentence is inappropriate because he is not the worst of offenders.

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "'persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on*

reh'g, 875 N.E.2d 218 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress*, 848 N.E.2d at 1081. The advisory sentence for murder is fifty-five years. I.C. § 35-50-2-3. The potential maximum sentence is sixty-five years. *Id.* Brown received two sixty-year sentences, to be served consecutively. Brown argues that these sentences should be served concurrently.

Regarding Brown's offenses, the record discloses that he took advantage of his victims' trust. When his scheme to defraud Lindgren and Hendricks began to unravel, he invaded the sanctity of their home and bludgeoned them to death. It is clear that neither Lindgren nor Hendricks posed any physical threat to Brown. Both men were in their seventies and suffered from infirmities. Brown killed Lindgren as he lay in bed and then attacked a wheelchair-bound Hendricks in his bedroom.

As to his character, Brown has a criminal history of felony convictions, including prior convictions for fraud and forgery. Brown's criminal history indicates no deterrence from criminal activity and an escalation of his crimes. In light of the nature of the offense and the character of the offender, we cannot conclude that Brown's total sentence is inappropriate.

Finally, we note that consecutive sentences are appropriate in cases involving multiple killings as they "'vindicate the fact that there were separate harms and separate

acts against more than one person.'" *Townsend v. State*, 860 N.E.2d 1268, 1273 (Ind. Ct. App. 2007) (quoting *Perry v. State*, 845 N.E.2d 1093, 1097 (Ind. Ct. App. 2006)). We find Brown's consecutive sentences to be appropriate as he killed two people.

Affirmed.

RILEY, J., and BARNES, J., concur.