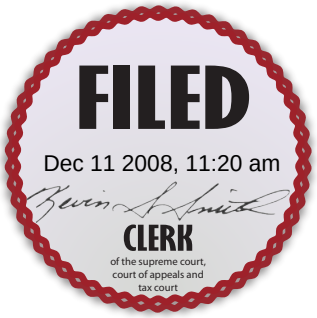

ATTORNEY FOR APPELLANT:

ELLEN M. O'CONNOR
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

LARRY HILL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0805-CR-427
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia J. Gifford, Judge
The Honorable Steven Rubick, Commissioner
Cause No. 49G04-0801-FB-016276

December 11, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Larry Hill ("Hill") was convicted in Marion Superior Court of Class B felony robbery and Class B felony criminal confinement. Hill was sentenced to an aggregate term of fifteen years, with twelve years executed and three years suspended. Hill appeals and argues that the trial court abused its discretion in denying his motion for a mistrial and that his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

In the early morning hours of January 17, 2008, a man wearing a black jacket with a brown fur-trimmed hood entered Mr. Dan's restaurant located on Massachusetts Avenue in Indianapolis. He pulled out a gun and ordered the restaurant's security guard, Roberta Price ("Price") to lie on the ground. He then demanded money from another employee, Deborah Hyde ("Hyde"). He took approximately $400 and ran out the front door, leaving footprints in the fresh snow. The two employees notified the police of the robbery. The entire robbery was captured on the restaurant security cameras.

The police followed the footprints with a K-9 unit to a house. The homeowner allowed entry and consented to a search of the premises. The police discovered Hill and his dark coat with a brown fur-trimmed hood in the basement. Hill's birth certificate was in the coat pocket. The police also found a gun matching the description given by the employees. The police then brought the two employees to the house, where they individually and separately identified Hill as the perpetrator.

On January 18, 2008, the State charged Hill with Class B felony robbery and Class B felony criminal confinement. At the beginning of the jury trial, Hill sought and received an order in limine that excluded statements related to marijuana, a shot gun, and ammunition found at the house but unrelated to the robbery. During the trial, a police officer testified to the presence of narcotics in the residence in response to the State's questioning about the search of the house. Hill objected and moved for a mistrial which the trial court denied. The trial court admonished the jury and ordered the statement stricken from the record. The jury convicted Hill on all counts. The trial court sentenced Hill to concurrent terms of fifteen years on each count, with twelve years executed and three years suspended. Hill appeals.

I. Mistrial

Hill argues that the trial court abused its discretion when it denied his motion for a mistrial. We recognize that the decision to grant or deny a motion for mistrial is left to the sound discretion of the trial court. Alvies v. State, 795 N.E.2d 493, 506 (Ind. Ct. App. 2003), trans. denied. We will only reverse the trial court's ruling if the trial court abused its discretion. Id. Also, we note that the trial court is afforded deference on appeal due to its ability to evaluate the circumstances of an event and its impact on the jury. Id. For Hill to prevail on appeal, he must show that the "conduct in question was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected." See id. "We determine the gravity of the peril based upon the probable persuasive effect of the misconduct on the jury's decision rather than upon the degree of impropriety of the conduct." Id.

Only when no other cure can be expected to rectify the situation, will the extreme sanction of mistrial be used. Id. "Reversible error is seldom found when the trial court has admonished the jury to disregard a statement made during the proceedings because a timely and accurate admonition to the jury is presumed to sufficiently protect a defendant's rights and remove any error created by the objectionable statement." Id.

Early in the officer's testimony, the officer noted that the owner of the house consented to the search the residence. Tr. p. 56. Later, the officer testified that he did not search the entire house, only the basement and another part of the residence. At that time, the officer stated that he located narcotics in the residence. Tr. p. 60. Hill objected and asked for a mistrial that the trial court denied. Id. Hill then asked for an admonishment that the trial court agreed to give to the jury. Id. The trial court admonished the jury to disregard the officer's last statement and ordered the statement stricken from the record. Id.

As noted above, a timely and accurate admonishment is presumed to cure any error in admission of evidence. James v. State, 613 N.E.2d 15, 22 (Ind. 1993). The trial court determined that an admonishment was appropriate and adequate and that a mistrial was unwarranted. Also, Hill has not shown that the admonishment was inadequate and that he was placed in grave peril as a result of the statement. The statement did not imply that the narcotics belonged to Hill; in fact, a more likely assumption is that the narcotics belonged to the owner of the residence. Also, the reference to narcotics was brief and does not provide any other information such as location or proximity to Hill or any other

occupant of the residence. We therefore conclude that the trial court did not abuse its discretion when it denied Hill's motion for mistrial.

II. Inappropriate Sentence

Hill next argues that his fifteen-year sentence was inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. "[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review." Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007). Additionally, "[s]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." Id. at 490.

The sentence under review is not inappropriate in light of the nature of the offenses and the character of the offender. The nature of the offenses is telling. Late one night, Hill entered a restaurant and, after asking to use the restroom, produced a handgun, threatened the security guard and another worker with it, robbed the restaurant, and fled with approximately $400.

Also, the character of this offender is informative. Hill has been involved with the criminal justice system since age eight. Hill is now twenty-three. While a juvenile, he was referred to the juvenile court six times, which resulted in one adjudication that would have been a felony if committed by an adult and one which would be a misdemeanor if committed by an adult. As an adult, Hill has been convicted of Class D felony residential

entry, two charges of Class A misdemeanor criminal mischief, Class B misdemeanor public intoxication, and Class C misdemeanor operating a vehicle never having received a license.

Accordingly, we conclude that Hill's fifteen-year sentence is not inappropriate in light of the nature of offenses and the character of the offender.

Conclusion

The trial court did not abuse its discretion when it denied Hill's motion for mistrial. Hill's fifteen-year sentence was not inappropriate in light of the nature of the offenses and the character of the offender.

Affirmed.

BAILEY, J., and BARNES, J., concur.