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IN THE COURT OF APPEALS OF INDIANA

VINCENT BOYD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0905-CR-293
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0802-FA-46059

December 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Vincent Boyd appeals his conviction of Robbery[1] as a class A felony, presenting the following restated issues for review:

1. Did the trial court err in permitting the State to amend the charging information?

2. Was the evidence sufficient to support the conviction?

We affirm.

The facts most favorable to the conviction are that, while at school on February 12, 2008, Edward Blaine, Andrece Morphis, and Austin Hubbard discussed committing a robbery. Blaine, Boyd's nephew, indicated that Boyd had previously suggested a target and he asked Morphis if he wanted to participate in the robbery, which would involve stealing three hundred pounds of marijuana and some money. Morphis called his girlfriend, Andrea Allen, and asked her to pick up the three students early from school, which she did. In the car with Allen when she picked up the three was her friend, Shemika Campbell.

Guided by Blaine, Allen drove to Boyd's home. When they arrived, the three had an AK-47 assault rifle in their possession. Boyd told Blaine, Hubbard, and Morphis which house to rob, told them that it had as much as three hundred pounds of marijuana inside, that he had robbed the house before, that there were no weapons inside, and that no one would be home. Boyd gave the three of them money to repair a flat tire on Allen's car, and told them where to go to have the tire repaired. He also gave the group a revolver. Boyd described the home as located right down the street, told them that it had businesses nearby, and that there

1 Ind. Code Ann. § 35-42-5-1 (West, PREMISE through 2009 1st Regular Sess.).

was a white car in front. When Blaine, Hubbard, and Morphis arrived at the location, it appeared to them that two different houses matched the description given by Boyd. Seeking clarification, Blaine telephoned Boyd by cell phone, and Boyd drove to the location to point out which house was to be robbed.

Once at the house they thought Boyd had indicated, Blaine, Morphis, and Hubbard directed Allen to park in a nearby alley. Blaine then approached and knocked on the door while Hubbard and Morphis stood off to the side of the house. Dehaven Carpenter answered the door and Blaine called out to Hubbard and Morphis to join him. Morphis and Hubbard joined Blaine at the front door, armed with the AK-47 and the revolver that Boyd had provided. They forced Carpenter back into the house at gun point and ordered him to lay face-down on the floor. One of the men bound Carpenter with an extension cord and they began searching for marijuana. Finding no marijuana inside, they forced Carpenter down to the basement. Blaine left to call Boyd, leaving Hubbard and Morphis with Carpenter in the basement. Blaine informed Boyd "there's nothing here". *Transcript* at 113. Boyd responded, "Nothing? Did you look in the shed?" *Id*. Blaine told Boyd there was no shed. Blaine looked across the alley and saw a shed. After a brief discussion with Boyd, Blaine realized they had gone to the wrong house.

Blaine returned to the house where Hubbard and Morphis had tied up Carpenter in the basement. At about the time he arrived at the front door, he heard gunshots coming from inside the house. Morphis had shot Carpenter several times, killing him. Allen had left the scene by the time the shots were fired, but was still driving in the area a short time later when

she saw Morphis walking between houses. She picked him up and they returned to Boyd's house. Blaine and Hubbard walked back to Boyd's house. Allen eventually gave rides home to Blaine, Hubbard, Morphis, and Campbell.

Meanwhile, Carpenter's mother, Maxine Carpenter, who owned the home where the shooting took place, arrived home at 6:25 p.m. She observed that the house appeared to have been ransacked. She called her daughter, Ylonda Washington, who came to Carpenter's home. Washington discovered Carpenter's body in the basement, bound and lying on a mattress. Maxine Carpenter called 911 and Indianapolis Metropolitan Patrol Officer David Boiling was the first to arrive. Officer Bolling saw Carpenter's body lying on a mattress in the basement, arms spread, feet bound, and head falling off the back of the mattress. Detective Christine Mannina collected evidence at the scene, which revealed the presence of a latent fingerprint match for Blaine. The execution of a search warrant with respect to Blaine eventually led to the arrests of Hubbard, Morphis, Boyd, and Allen. Hubbard and Morphis identified Boyd from a photo array.

On February 25, 2008, Boyd was charged with conspiracy to commit class A felony robbery, carrying a handgun without a license, a class A misdemeanor, and unlawful possession of a firearm by a serious violent felon, a class B felony. On April 1, 2008, the State added a habitual offender allegation. On April 15, 2009, the State moved to amend the charging information. The amended information added the following language to the original charge of conspiracy to commit robbery as a class B felony: "[S]aid crime resulted in serious bodily injury to Dehaven Carpenter, that is: death. . ." *Appellant's Appendix* at 107. Boyd

objected to the amendment. The trial court discussed the matter at a hearing on April 17, 2009 and granted the amendments "as of April 16, 2009". *Transcript* at 806.

Boyd was tried by jury on April 20-21, 2009, and found guilty of conspiracy to commit robbery as a class A felony. The jury later determined Boyd to be a habitual offender. On April 30, 2009, Boyd was sentenced to forty years for conspiracy to commit robbery, which was enhanced by thirty years for the habitual offender finding, for a total executed sentence of seventy years.

1.

Boyd contends the trial court erred in permitting the State to amend the charging information just days before the trial was to begin. In *Fajardo v. State*, 859 N.E.2d 1201 (Ind. 2007), our Supreme Court discussed the timeliness of amendments to charging informations. Interpreting I.C. § 35-34-1-5(b), the Court held that when an individual is charged with a felony, amendments to matters of substance are permissible only if made more than thirty days before the omnibus date. *Fajardo v. State*, 859 N.E.2d 1201. In response to *Fajardo*, the Indiana General Assembly revised I.C. § 35-34-1-5. Subsection (b) of that statute now reads as follows:

> (b) The indictment or information may be amended in matters of substance and the names of material witnesses may be added, by the prosecuting attorney, upon giving written notice to the defendant at any time:
>
> (1) up to:
>
> (A) thirty (30) days if the defendant is charged with a felony; or
>
> (B) fifteen (15) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date; or

(2) before commencement of trial;

if the amendment does not prejudice the substantial rights of the defendant.

Under the revised subsection (b), the State can make an amendment to a matter of substance at any time before the commencement of trial so long as the amendment does not prejudice the defendant's substantial rights. *Ramon v. State*, 888 N.E.2d 244 (Ind. Ct. App. 2008). We have discussed the meaning of "substantial rights" in this context as follows:

> A defendant's substantial rights include a right to sufficient notice and an opportunity to be heard regarding the charge; and, if the amendment does not affect any particular defense or change the positions of either of the parties, it does not violate these rights. *Jones v. State*, 863 N.E.2d 333 (Ind. Ct. App. 2007). *Our Supreme Court has stated that "[u]ltimately, the question is whether the defendant had a reasonable opportunity to prepare for and defend against the charges*." *Sides v. State*, 693 N.E.2d 1310, 1313 (Ind. 1998), abrogated on other grounds by *Fajardo v. State*, 859 N.E.2d 1201.

Id. at 252.

We conclude that Boyd's substantial rights were not violated by the amendment. Originally, the prosecutions against Boyd, Blaine, Morphis, and Hubbard were joined in a single, eight-count action. The charges against Boyd included Counts IV (conspiracy to commit robbery), VII (carrying a handgun without a license), and VIII (possession of a firearm by a serious violent felon). Count I, against Blaine, Morphis, and Hubbard, alleged the offense of attempted robbery as a class A felony and included an allegation that the named defendants inflicted mortal injuries upon the victim. The action against Boyd was eventually severed from the case involving the other three. In the original information,

Count IV charged Boyd with conspiracy to commit robbery as a class A felony. The amended charge in the severed action did not change the class of offense or the specific criminal conduct that was alleged, but merely added the allegation of serious bodily injury. Boyd would have been aware of that allegation based upon Count I in the original charging information, and he certainly was aware that Carpenter had been killed in the attempted robbery. Although the trial court granted the motion to amend without a hearing, it did give Boyd an opportunity to be heard on the matter at the pretrial hearing three days before trial. Boyd objected to the amendment, but conceded he was aware that the attempted robbery resulted in Carpenter's death. More importantly, Boyd conceded that his defense was unaffected by the change and he specifically declined the offer of a continuance, as reflected in the following:

> **THE COURT:** Is there – in light of the fact that the defendant has objected for the record, is there anything additional he would need to do to prepare, knowing that the Court is granting the amendment?
>
> **[DEFENSE COUNSEL]:** No, Judge.
>
> **THE COURT:** Okay. Because I think that his remedy at this point, if he objects, and because a charging information has been amended this close to trial, if it – if it would cause him to need to evaluate his case or prepare his case more or differently as a result of the amendment, then he would be entitled to a continuance. So --
>
> **[DEFENSE COUNSEL]:** We're prepared for trial, Your Honor.

Transcript at 806. Thus, after the trial court granted the motion to amend, not only did Boyd not seek a continuance for additional time to prepare an adequate defense, as provided for under I.C. § 35-34-1-5(d), but he affirmatively declined the court's offer of a continuance.

By his own admission, Boyd had a reasonable opportunity to prepare for and defend against the charge of conspiracy to commit robbery, as amended, and thus his substantial rights were not affected by the amendment.[2] *See Ramon v. State*, 888 N.E.2d 244.

2.

Boyd contends the evidence was insufficient to support the conviction. Specifically, he contends "there was no evidence that Mr. Boyd agreed to cause serious bodily injury to anyone." *Appellant's Brief* at 9. Our standard of review for challenges to the sufficiency of evidence is well settled.

> When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id*. at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Gleaves v. State, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

Essentially, Boyd contends there is no evidence he knew Morphis intended to inflict serious bodily injury in the commission of the robbery, and he therefore could not have conspired to commit robbery resulting in serious bodily injury. The State is not, however, required to prove an agreement to aggravating circumstances such as the infliction of serious bodily injury as long as they are the natural and probable consequences of the conspiracy.

[2] Based upon our conclusion that Boyd did have an opportunity to be heard on the amendment before trial, and that he suffered no prejudice as a result of the amendment, we summarily reject his cursory due process challenge to the constitutionality of I.C. § 35-34-1-5(b).

Sherwood v. State, 702 N.E.2d 694 (Ind. 1998).

There was evidence that Boyd did not merely participate in the planning of the robbery, he proposed it to Blaine in the first place. He enticed Blaine and the others to break into the home of a drug dealer and take a stash of drugs. Moreover, he gave his fellow conspirators a gun – the same gun used to shoot and kill Carpenter. This evidence supports a finding Boyd conspired to commit robbery. Therefore, he "is criminally liable for everything done by his confederates which flows incidentally from the natural consequences of the criminal act, even though it was not intended as part of the original plan or whether the co-conspirators were present at the time the act occurred." *Smith v. State*, 549 N.E.2d 1036, 1038 (Ind. 1990). As our Supreme Court stated in discussing a similar challenge to a robbery conviction, "the State was not required to show that the conspiracy included an agreement to use a firearm and to intentionally injure another. It was sufficient to prove the underlying conspiracy and the natural and probable consequences of the conspiracy simply flow therefrom." *Sherwood v. State*, 702 N.E.2d at 699. Because Boyd armed his co-conspirators and sent them to rob the house of a known drug dealer, we cannot say the shooting of an occupant of the targeted house was beyond the natural consequences of their conspiracy to commit robbery. The evidence was sufficient to support the conviction.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.