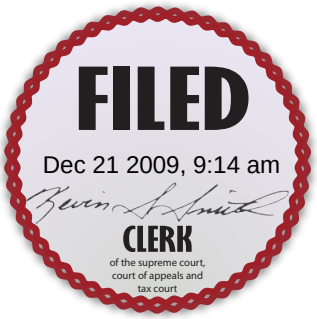

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IN THE COURT OF APPEALS OF INDIANA

DARNELL PERRY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0904-CR-174
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0805-MR-6

December 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Darnell Perry was convicted as an accessory to Class A felony voluntary manslaughter. He was sentenced to thirty-two years incarceration. We find sufficient evidence to sustain Perry's conviction, and we conclude his sentence is not inappropriate in light of the nature of the offense and his character. We affirm.

Facts and Procedural History

Perry was twenty-two years old and lived in South Bend, Indiana. He had a girlfriend Takisha, a cousin Marco, and a friend named Pickle. Pickle had on ongoing feud with Brandon Simpson. In early 2008, Pickle and Brandon were involved in a fight. Pickle wound up hospitalized and temporarily in a coma.

Roughly one month later, Brandon and his friend Landris were at a local gas station cruising and hanging out. The gas station parking lot was a popular nightspot and was crowded that evening. Brandon owned a customized blue Chevy Impala. Landris owned a Dodge Charger. They had swapped cars for the night, so Landris was driving the Impala. Brandon was in the Charger with another friend named Donnell.

Meanwhile Perry was driving around in an SUV with Takisha, Marco, and Pickle. Pickle had a 9mm handgun. Perry pulled into the gas station parking lot. Pickle recognized Brandon's blue Impala and decided to steal it.

Perry stopped the SUV next to the Impala. Pickle and Marco jumped out. Pickle approached the Impala and displayed his gun to Landris, who was seated inside. Pickle then managed to take the Impala from Landris and drive away. Perry followed in the SUV. Landris ran to his Charger to join Donnell and Brandon. Donnell, Brandon, and

Landris sped off to catch Pickle. Donnell was driving, Brandon was in the front passenger seat, and Landris was seated in back.

Perry, Marco, and Pickle met an associate named Fat Shawn and arranged to sell him the Impala. They hid the Impala in a garage at Fat Shawn's apartment. Marco and Pickle then returned to Perry's SUV, and Perry drove home to drop off Takisha.

Donnell, Brandon, and Landris had lost sight of the Impala, so Landris suggested that they proceed to Perry's house. When they were in the vicinity, they spotted Perry's SUV. Perry was driving, Pickle was in the front passenger seat, and Marco was in back. Perry, Marco, and Pickle saw Landris's Charger. Perry made a quick U-turn to pull behind and follow it.

Donnell sped up to escape, but Perry remained in close pursuit. Donnell handed a .45-caliber handgun to Brandon. Brandon put his arm out the window and fired a warning shot in the direction of Perry's SUV. Perry continued to follow. Marco took Pickle's gun, leaned out the rear passenger window, and fired six to nine shots toward the Charger. Landris was hit. Brandon returned fire from the Charger. Brandon and Donnell proceeded to a nearby police station. Perry drove away and threw the handgun out the car window. Perry took Marco and Pickle back to his home where they spent the night.

Landris died from his gunshot wound. Perry gave a statement to police the next morning in which he denied involvement in the episode. But ultimately he admitted that he had been inside the SUV and that Marco had fired shots at the other vehicle. The State charged Perry with murder and conspiracy to commit carjacking. Following a jury

trial, Perry was acquitted of conspiracy to commit carjacking but found guilty as an accessory to Class A felony voluntary manslaughter. The trial court sentenced him to thirty-two years. Perry now appeals.

Discussion and Decision

Perry raises two issues: (1) whether there is sufficient evidence to sustain his conviction for aiding or inducing voluntary manslaughter and (2) whether his sentence is appropriate in light of the nature of the offense and his character.

I. Sufficiency of the Evidence

Perry first argues that there is insufficient evidence to sustain his conviction for aiding or inducing voluntary manslaughter. Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Fought v. State*, 898 N.E.2d 447, 450 (Ind. Ct. App. 2008). We will consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* A conviction may be based upon circumstantial evidence alone. *Id.* Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

Perry was charged as an accessory to murder and was convicted as an accessory to Class A felony voluntary manslaughter. "A person who . . . knowingly or intentionally kills another human being . . . commits murder, a felony." Ind. Code § 35-42-1-1. "A person who knowingly or intentionally . . . kills another human being . . . while acting

under sudden heat commits voluntary manslaughter . . . . [T]he offense is a Class A felony if it is committed by means of a deadly weapon." I.C. § 35-42-1-3. "The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder . . . to voluntary manslaughter." I.C. § 35-42-1-3(b). Sudden heat is "anger, rage, resentment, or terror sufficient to obscure the reason of an ordinary man; it prevents deliberation and premeditation, excludes malice, and renders a person incapable of cool reflection." *Wilson v. State*, 697 N.E.2d 466, 474 (Ind. 1998).

The State tried Perry on a theory of accomplice liability. Indiana Code section 35-41-2-4 provides that "[a] person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense . . . ." The individual who aids another person in committing a crime is as guilty as the actual perpetrator. *Boyd v. State*, 766 N.E.2d 396, 399 (Ind. Ct. App. 2002). In determining whether a person aided another in the commission of a crime, we consider the following factors: (1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) a defendant's conduct before, during, and after the occurrence of the crime. *Garland v. State*, 788 N.E.2d 425, 431 (Ind. 2003). An accomplice is criminally responsible for the probable and natural consequences of the principal's plan. *Hudak v. State*, 446 N.E.2d 615, 617 (Ind. Ct. App. 1983). The evidence need not show that the accomplice personally participated in the commission of each element. *Id.*

A person may be convicted as an accessory to voluntary manslaughter. *See Thomas v. State*, 510 N.E.2d 651, 654 (Ind. 1987); *Rainey v. State*, 572 N.E.2d 517, 519

n.1 (Ind. Ct. App. 1991). "While the accessory may not share or contribute to the sudden heat present in the mind of the principal, the accessory may readily contribute to the homicide by an act such as handing the perpetrator a gun, knowing that the recipient is acting under sudden heat." *Rainey*, 572 N.E.2d at 519 n.1.

Here, Perry drove Marco and Pickle around for most of the night in question. He brought Marco and Pickle to the gas station where Pickle brandished a handgun and stole Brandon's Impala. He picked Pickle and Marco up after hiding the Impala at Fat Shawn's garage. And most significantly, Perry drove the vehicle from which Marco shot Landris. He specifically followed Landris's Charger as Marco discharged the handgun. Perry continued to follow the Charger even after the shots were fired, and he took Marco and Pickle home with him after Donnell, Brandon, and Landris went to the police station. We find sufficient evidence from which a jury could conclude that Perry knowingly or intentionally aided or induced Landris's homicide. *Cf. id.* Perry argues that he was surprised by the gunshots and had no knowledge of Marco's intent to shoot Landris. He said so in his statements to police. But it was within the province of the jury to decide whom to believe and which details were important. Perry's argument amounts to nothing more than an invitation to reweigh the evidence and reassess the credibility of the witnesses, which we may not do. There is sufficient evidence to sustain Perry's conviction.

II. Inappropriateness of the Sentence

Perry next argues that his sentence is "inappropriate in light of the nature of the offense and the character of the offender." Appellant's Br. p. 1, 13. We should first

point out that although Perry frames his argument as one of inappropriateness, his brief interweaves arguments, rules, and standards of review from the abuse-of-discretion context. Our Supreme Court has clarified that abuse-of-discretion and inappropriateness are separate and distinct sentencing claims. *See Anglemyer v. State*, 868 N.E.2d 482, 490-91 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Since Perry has labeled the overall issue as one of inappropriateness, we review his sentence on those grounds alone and decline to address any tacit abuse-of-discretion arguments. *See King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008) (reviewing sentence only for inappropriateness, where appellant interspersed references to the abuse-of-discretion standard).

Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Appellate Rule 7(B), which provides that a court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offense, Perry notes that "the shooting was a sudden thing which occurred with little time for reflection" and that "he was the less culpable of any one involved in the incident." Appellant's Br. p. 16. We acknowledge that Perry was an accomplice who more or less drove the principal around. But Perry aggressively

followed Brandon's car, and his complicity resulted in a dangerous car chase and shooting death. We find Perry's thirty-two-year term is not inappropriate in light of the nature of his offense.

With regard to his character, Perry alludes to his youth, minimal criminal history, successful completion of prior probation, cooperation with police, expression of remorse, and the hardship that his incarceration will place on dependents. Several of these factors are suspect. Perry's remorse was conveniently expressed at sentencing. His five children will likely suffer minimal financial hardship from his incarceration, as Perry was not meeting his child support obligations in the first place. Perry initially lied to police and only became truthful when confronted with mounting evidence. And his criminal history includes misdemeanor convictions for theft, possession of a handgun without a permit, and driving without a license. Even if we resolved all of these issues in Perry's favor, we would not find them so compelling as to depart from the thirty-two-year term imposed.

In conclusion, we cannot say Perry's sentence is inappropriate.

Affirmed.

RILEY, J., and CRONE, J., concur.