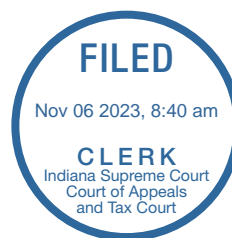


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Monty Cook,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 6, 2023

Court of Appeals Case No.
22A-CR-2394

Appeal from the Randolph Circuit
Court

The Honorable Jay L. Toney,
Judge

Trial Court Cause No.
68C01-1904-MR-289

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

- [1] While investigating the murder of David Brumley, police learned that Monty Cook had stolen Brumley’s car, his debit card, and a \$5,000 loan check issued in Brumley’s name. Police later discovered that Cook made incriminating internet searches in the weeks before and after Brumley’s death. And after Cook’s arrest, police matched his fingerprints and DNA to evidence found at the murder scene. A jury convicted Cook of Brumley’s murder as well as three counts of theft, and the trial court sentenced him to 64 years in prison. On appeal, Cook challenges the sufficiency of the evidence to support his murder conviction and the appropriateness of his sentence under Indiana Appellate Rule 7(B). We affirm on both grounds.

Facts

- [2] Cook and Brumley grew up together in Winchester, Indiana, and remained acquaintances as adults. Cook sometimes helped Brumley with projects around Brumley’s home. He also hung out with Brumley in the garage where Brumley kept his prized Ford Mustang show car.
- [3] Brumley was last seen alive on October 31, 2018, shortly after he obtained a \$5,000 loan to fix his broken furnace. The next day, security cameras at a Winchester bank recorded Cook depositing Brumley’s loan check into Brumley’s debit account. Cameras at other Winchester locations also recorded Cook driving Brumley’s Mustang and using Brumley’s debit card to make

purchases and withdraw cash. Within three days, Cook had spent and withdrawn over \$2,500 of Brumley's money.

[4] Brumley was found dead in his home on November 3, 2018. His body was lodged between a bed and a wall, and his head was covered by both a pillowcase and a black plastic garbage bag. The pillowcase was secured over Brumley's head by black electrical tape, which was wrapped around his neck. And the garbage bag was secured over the pillowcase by clear packaging tape, which was wrapped around Brumley's face. Brumley also had electrical tape wrapped around his right wrist, and he was wearing blue jeans with two missing belt loops. An autopsy revealed that Brumley died from asphyxia due to ligature neck compression and suffocation. His death was ruled a homicide.

[5] In the entry room of Brumley's home, police found scraps of black electrical tape and clear packaging tape. They also found a cardboard box containing a white disposable dust mask, multiple used zip ties, and two blue jean belt loops, one of which had a zip tie fastened to it. Fingerprints found on the scraps of tape were later identified as Cook's. And partial DNA profiles found on the dust mask were determined to be "consistent" with Brumley's DNA and a "very strong" match for Cook's. Tr. Vol. IV, p. 236.

[6] As part of their investigation into Brumley's death, police obtained the internet browsing history associated with two Google email addresses Cook was known to use. This evidence showed that Cook made incriminating internet searches in the two weeks before Brumley's death. Those searches included:

- “jobs outside the US”
- “how to disappear off the grid”
- “how to get fake social security cards”
- “Is there any poison which cannot be detected?”
- “whether you can get DNA from a burned body”
- “how fast does it take a body to burn”
- “whether you can distort a DNA test”
- “[c]an you dissolve a body in acid”
- “2004 Ford Mustang”
- “trunk size in 04 Mustang”
- “cabins in Tennessee mountains”

Exhs. Vol. V, pp. 60-61.

[7] Cook’s browsing history also showed that he made incriminating internet searches after Brumley’s death, including:

- “jobs in Bahamas”
- “how to disappear”
- “Winchester Indiana murder investigation”
- “How can I buy a legit social security number and a fake passport?”
- “how to run from the law with no money”
- “fugitives on the run the longest”
- “Monty Cook Indiana”
- “what’s the longest people have stayed hid that it (sic) wanted for murder”

Id. at 61-64.

[8] Additionally, Cook visited websites hosting news articles with the following headlines:

- “police looking [for] mustang taken [from] dead man’s home [in] Winchester”
- “police looking for vehicle missing from deceased person’s residence”
- “man wanted in connection with death investigation in Winchester”

Id. at 61, 63.

[9] Police were unable to locate Cook in Indiana. But a few weeks after the murder, they found Brumley’s Mustang abandoned in the parking lot of an Arkansas

hotel. Police later learned that Cook hitched a ride from Arkansas to Nevada with Alexander Gross, a fellow traveler Cook met online. Once in Nevada, Cook robbed Gross at knifepoint and forced him to drive to Arizona. Cook then forced Gross to rent him a hotel room before letting Gross go free.

[10] About five months after Brumley's death, police located and arrested Cook in Arizona. The State of Indiana then charged him with one count of murder, two counts of Level 6 felony theft, and one count of Class A misdemeanor theft. A jury found Cook guilty as charged, and the trial court entered judgments of conviction on each count. The court sentenced Cook to a total of 64 years in prison, including 62 years for murder. Cook appeals only his murder conviction and sentence.

Discussion and Decision

[11] Cook argues that the State presented insufficient evidence to convict him of murder and that his 64-year sentence is inappropriate in light of the nature of the offenses and his character. We find sufficient evidence to support his conviction and are not persuaded that his sentence is inappropriate. We therefore affirm the trial court's judgment.

I. Sufficiency of the Evidence

[12] When reviewing the sufficiency of the evidence to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from

such evidence. *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

[13] To convict Cook of murder, the State was required to prove that he knowingly or intentionally killed Brumley. Ind. Code § 35-42-1-1(1). Cook acknowledges that Brumley was murdered but claims the State failed to prove Cook was the killer. According to Cook, the State presented no direct evidence that he was at Brumley’s home when the murder occurred. Therefore, Cook suggests, there exists a reasonable inference that he simply stole Brumley’s car, debit card, and loan check after finding Brumley dead.

[14] Contrary to Cook’s implication, a murder conviction “may be sustained on circumstantial evidence alone.” *Fry v. State*, 25 N.E.3d 237, 248 (Ind. Ct. App. 2015) (citing *Lacey v. State*, 755 N.E.2d 576, 578 (Ind. 2001)). And that evidence need not “negate every reasonable hypothesis of innocence.” *Thornton v. State*, 712 N.E.2d 960, 963 (Ind. 1999). It is adequate if “the inferences that may reasonably be drawn from the evidence are sufficient to enable the trier of fact to find guilt beyond a reasonable doubt.” *Id.*

[15] Here, Cook’s internet browsing history suggests that, in the weeks prior to Brumley’s murder, Cook planned to kill someone, dispose of the body, and go on the run. Security cameras then recorded Cook with Brumley’s car, debit card, and loan check the day after Brumley was last seen alive. Police later found Cook’s fingerprints at Brumley’s murder scene on scraps of tape that

matched the tape wrapped around Brumley’s neck, face, and wrist. They also found Cook’s DNA on a dust mask that was comingled in a box with two belt loops—presumably those missing from the blue jeans found on Brumley’s body. Additionally, Cook made incriminating internet searches after Brumley’s death, including: “The longest time a person stayed hidden that’s wanted for murder.” Tr. Vol. V, p. 16.

[16] This evidence supports a reasonable inference that Cook was the person who knowingly or intentionally killed Brumley. Cook’s claim to the contrary is merely an invitation to reweigh the evidence. *Bailey*, 907 N.E.2d at 1005.

II. Appropriateness of Sentence

[17] Indiana Appellate Rule 7(B) permits an appellate court to revise a sentence if, “after due consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). In reviewing the appropriateness of a sentence, our principal role is to attempt to leaven the outliers, not to achieve a perceived “correct” sentence. *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014). Accordingly, we give “substantial deference” to the trial court’s sentencing decision. *Id.* The trial court’s judgment should prevail unless it is “overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant’s character.” *Stephenson v. State*, 29 N.E.3d 111, 112 (Ind. 2015).

[18] In assessing the appropriateness of a sentence, we first look to the statutory ranges established for the offenses at issue. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Cook was convicted of murder, two Level 6 felony thefts, and Class A misdemeanor theft. He faced a maximum sentence of 71 years, a minimum sentence of 46 years, and an advisory sentence of 57 years. *See* Ind. Code §§ 35-50-2-3, -2-7, -3-2 (establishing sentencing schemes for murder, Level 6 felonies, and Class A misdemeanor, respectively). Cook received a sentence of 64 years in prison, including 62 years for murder.

[19] Cook makes no claim regarding the nature of his offenses, and he only states the following as to his character:

The trial court stated that Cook illustrated a “lack of remorse” as an apparent non-statutory aggravator. While the Court apparently gave it weight ostensibly to recognize that Cook was maintaining his innocence through the proceeding, it does not adequately recognize the character of Cook. The “lack of remorse” was merely an outward manifestation of his proclamation of innocence.

Appellant’s Brief, p. 24.

[20] “A defendant has the right to dispute [their] guilt throughout the criminal process, including sentencing.” *Hollen v. State*, 740 N.E.2d 149, 158 (Ind. Ct. App. 2000), *opinion adopted*, 761 N.E.2d 398 (Ind. 2002). And a trial court abuses its discretion when it “enhance[s] a sentence for lack of remorse based on a defendant’s good-faith assertion of innocence.” *Id.* Cook, however, does

not assert that the trial court abused its discretion, and his above statements do no more than hint that the court may have erred in considering lack of remorse as an aggravating circumstance.

[21] Cook also cites no authority to suggest that he is challenging his sentence on any basis other than Appellate Rule 7(B). Thus, if Cook intended to assert that the trial court abused its discretion by considering his lack of remorse at sentencing, he has waived the claim. *See Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) (“Generally, a party waives any issue raised on appeal where the party fails to . . . provide adequate citation to authority.”); *see also* Ind. Appellate Rule 46(A)(8)(a) (requiring appellant’s brief to contain citations to the authorities relied on). But even if the trial court abused its discretion, the error is harmless if the sentence imposed was not inappropriate. *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007).

[22] Neither the nature of Cook’s offenses nor his character convinces us that his 64-year sentence is inappropriate. Cook carried out the premeditated, unprovoked, and cruel murder of his longtime acquaintance before stealing his victim’s car and money and fleeing across the country. What is more, these offenses are just another chapter in Cook’s alarming history of criminal conduct.

[23] In 2005, Cook pleaded guilty to Class B felony arson and Class C felony burglary. At the same time, in a separate case, Cook pleaded guilty to two counts of Class B felony conspiracy to commit criminal confinement. *See generally* Ind. Code § 35-38-1-7.1(a)(2) (listing criminal history as an aggravating

circumstance that may be considered at sentencing). Cook was sentenced to 30 years in prison for these four convictions.

- [24] In 2018, after Cook’s release from prison but before he murdered Brumley, Cook was charged with arson as both a Level 4 and a Level 6 felony. These charges were pending at the time of Cook’s sentencing but have since been dismissed. *See generally Tunstill v. State*, 568 N.E.2d 539, 544-45 (Ind. 1991) (“[A]llegations of prior criminal activity need not be reduced to conviction before they may be properly considered as aggravating circumstances by a sentencing court.”).
- [25] Additionally, while on the run from the police for Brumley’s murder, Cook robbed Gross at knifepoint and forced him to drive to Arizona. *See generally Carter v. State*, 711 N.E.2d 835, 840 (Ind. 1999) (“Uncharged crimes may properly be considered at a sentencing hearing.”).
- [26] Cook has not convinced us that his 64-year sentence is inappropriate in light of the nature of his offenses or his character.

III. Conclusion

- [27] For the reasons set forth above, we affirm Cook’s murder conviction and 64-year prison sentence.

Riley, J., and Bradford, J., concur.