MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Michael J. Karnuth,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

March 18, 2024

Court of Appeals Case No.
23A-CR-834

Appeal from the Jefferson Circuit Court

The Honorable Donald J. Mote, Judge

Trial Court Cause No.
39C01-2106-MR-654

Memorandum Decision by Judge Foley
Judges May and Weissmann concur.

Foley, Judge.

[1] Michael J. Karnuth ("Karnuth") was convicted after a bifurcated jury trial of murder,[1] a felony, and obstruction of justice[2] as a Level 6 felony. After the second phase, the jury found that a criminal organization sentencing enhancement[3] had been proven. The trial court sentenced Karnuth to sixty years for his murder conviction to run concurrently to a one-year sentence for his obstruction of justice conviction and enhanced the murder sentence by sixty years for the criminal organization enhancement, which resulted in an aggregate sentence of 120 years. On appeal, Karnuth raises several issues, which we restate as:

I. Whether the trial court abused its discretion in instructing the jury when it (A) refused to give Karnuth's proposed instruction on attempted theft as a lesser-included offense of attempted burglary and (B) gave the State's instruction on accomplice liability;

II. Whether sufficient evidence was presented to support Karnuth's (A) conviction for felony murder and (B) criminal organization enhancement;

III. Whether the trial court abused its discretion in sentencing Karnuth because he contends that it impermissibly

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[1] Ind. Code § 35-42-1-1(2).

[2] I.C. § 35-44.1-2-2(a)(3).

[3] I.C. § 35-50-2-15.

punished him for exercising his constitutional rights to a trial by jury; and

IV. Whether Karnuth's sentence is inappropriate in light of the nature of the offenses and the character of the offender

[2] We affirm.

Facts and Procedural History[4]

[3] Karnuth worked as a semi-truck driver at Central Petroleum, LLC and met Jason Brewer ("Brewer") through his employment. Both men rode motorcycles, and they began talking about motorcycles. Brewer knew that Karnuth was a member of the Warlocks motorcycle club ("Warlocks") because of the patches that Karnuth wore. Brewer told Karnuth that he wanted to ride with a group and did not want to ride by himself. Karnuth said that they could ride to and from work together sometimes and that Brewer could possibly meet some guys in the local chapter of the Warlocks, which was called the Heavy Hitters. In July 2020, Brewer became a prospect, or probationary member, of the Warlocks and became a full member in September 2020.

[4] In June 2021, Karnuth was the president of the Heavy Hitters, and Brewer was the treasurer and the sergeant, which is the person who acts as the right-hand

[4] Oral argument was heard on this case on February 6, 2024, at the Hulman Memorial Student Union at Indiana State University in Terre Haute, Indiana. We commend counsel on the excellent quality of their written and oral advocacy and thank the University for its hospitality.

man of the president. David Faulkner ("Faulkner") was the secretary of the Heavy Hitters. During the same timeframe, Gary Fletcher ("Fletcher") was also a member of the Warlocks and had been a fully patched member for about a year. Being fully patched meant that he was permitted to wear the club's insignia patch and a one-percent diamond patch. A one-percent diamond patch signifies that the person wearing it is in the "one percent of society that doesn't adhere to most laws." Tr. Vol. 5 p. 46. To earn a one-percent diamond patch, the person had to be "willing to do what the club asks you to do whether it was illegal or legal." *Id*. at 87.

[5] Sometime in late spring 2021, Shawn Rudis ("Rudis") was driving his motorcycle in North Vernon, Indiana, when he saw a motorcycle in the back of a pickup truck at a gas station and pulled in to see it. The motorcycle in the truck belonged to Karnuth, and when Rudis approached Karnuth, he saw the harpy image, which is associated with the Warlocks, on the back of Karnuth's shirt. Rudis introduced himself as the regional president of the Pagans, another motorcycle club, and told Karnuth that he was from Philadelphia. Sometime during this interaction, Karnuth sent a message to Brewer to ask him to stop at the gas station, introduce himself to Rudis, and find out if Rudis was who he said he was. Rudis spoke to Karnuth and Brewer for five to ten minutes and gave Karnuth his phone number, but not his address. Karnuth's girlfriend also took a picture of Rudis while he was at the gas station.

[6] However, in truth, Rudis was not a member of either the Pagans or the Warlocks. Although Rudis had tattoos associated with the Warlocks

motorcycle club, he had found the tattoos during an internet search and asked his wife to tattoo the harpy associated with the Warlocks and a one-percent diamond on him. At the time that Rudis met Karnuth and Brewer, he was sleeping in a tent on his sister's property and had been doing so for a couple of months. He had built a shed on the property, which had tarps covering the sides, and kept personal items in the shed. One of these items was a denim vest that had patches associated with the Pagans motorcycle club. Rudis had purchased the patches on eBay in 2022 and attached them to the denim vest, although he was not a member of the Pagans and never had been. He would wear the vest every time he rode his motorcycle, which was once or twice a week. Within motorcycle clubs, it is generally understood that a person is not supposed to wear patches they did not earn and "can be beat up for it" or "hurt for it." *Id*. at 47. A couple of weeks after Rudis met Karnuth, Rudis received a text from Karnuth asking him to come to a cookout where one of Rudis's friends was going to become a Warlocks member. Rudis had not talked to that friend in a while, so he thought the invitation was suspicious and blocked Karnuth's number.

[7] Karnuth was interested in Rudis because Rudis had a Warlocks tattoo on his forearm and talked about being a member of the Pagans from Philadelphia, who had left the Warlocks to become a member of the Pagans. Because Karnuth was interested in Rudis joining the Warlocks, he "wanted to find out if he was who he said he was." Tr. Vol. 4 p. 42. In the investigation of Rudis, Brewer contacted the Kentucky state leader of the Warlocks and a retired

member of the Warlocks from Philadelphia, but neither recognized Rudis. On June 18, 2021, Karnuth and Brewer went to Philadelphia, in part to see if Rudis was who he said he was, but no one they spoke to recognized him. After he returned from the trip to Philadelphia, Karnuth discovered that Rudis was never actually a member of either the Warlocks or the Pagans.

[8] On June 21, 2021, after Karnuth and Brewer had returned to Indiana, they went to Dupont, Indiana to look for Rudis. Although Karnuth eventually found Rudis at the end of John Deere Road, Karnuth did not engage with him. After locating Rudis, Karnuth asked Brewer to have Faulkner go to Karnuth's house so that the three of them could go confront Rudis. Only Brewer and Faulkner ended up going out to where Rudis was living, but they did not confront Rudis. Later, on June 21, several men gathered at Karnuth's home to discuss getting the patches back from Rudis. Karnuth was at the gathering, as was Brewer, Fletcher, Faulkner, and Dustin Lindner ("Lindner"), who was a member of the Pagans and a long-time friend of Karnuth. Fletcher had not really wanted to go to Karnuth's house but "[f]elt like [he] didn't really have a choice" because Karnuth was the president of a chapter and Fletcher thought he might be hurt if he did not go. *Id.* at 235–36.

[9] Karnuth had an aerial map of where Rudis was living. The men developed a plan to go to Rudis's around midnight. Several of the men had guns with them: Brewer carried a ten-millimeter handgun "all the time" and had a nine-millimeter in his truck; Lindner had a revolver and a semi-automatic handgun in a holster; Karnuth also had a Glock that belonged to his girlfriend. Before

leaving his house, Karnuth told everyone to take off their "cuts," which meant their clothing with their patches, and instructed everyone to leave their phones in the house because they did not take their phones when they were "going to do anything illegal." Tr. Vol. 5 p. 74. Brewer drove his truck with Fletcher in the passenger seat, and Karnuth drove Brewer's car with Lindner and Faulkner as passengers. When they arrived at Rudis's dwelling, Rudis was in his vehicle with the headlights on and had been eating dinner. Brewer pulled up to Rudis's vehicle, while Lindner exited the car. Lindner said he was looking for Rudis; Rudis yelled back, "Shawn's not here. I'm calling the cops and I will shoot." Tr. Vol. 4 p. 57. The men then left and drove to the nearby Masonic Lodge in Dupont to regroup.

[10] Several of the men then went back to Karnuth's house, where they had a few more beers and smoked marijuana, while Brewer and Fletcher stayed at the Masonic Lodge parking lot to make sure Rudis did not drive by. Karnuth decided that they would return to Rudis's to take the vest with the Pagan patches back from Rudis. The men returned to the Masonic lodge and said they were going to return to Rudis's and take the patches, and there would be "no failure." *Id*. at 59. While holding a machete in his hand, Karnuth said that he was "going to peel the tattoo off [Rudis's] arm one way or the other." *Id*. Brewer, still driving the truck, went first but was told by Karnuth to park, aim his headlights at the tent, and "stay out of the way." *Id*. at 60.

[11] In the meantime, after the men had left the first time, Rudis snorted a line of methamphetamine and drove to the Walmart in Madison, Indiana to do a

video interview in the parking lot because he could get better reception there. After about an hour, Rudis returned to the John Deere Road property but not to his tent or shed because he was afraid. Instead, he parked nearby and watched the area until approximately 3:00 a.m. At that time, Rudis parked next to his shed, snorted another line of methamphetamine, and went into the shed. While inside, he heard a vehicle that sounded like Brewer's truck coming towards his shed. He retrieved his rifle, which he had loaded earlier, and got on the floor of the shed.

[12] When all four men arrived at Rudis's shed, both the truck and car parked with their headlights shining on the shed. Karnuth exited the car and stood next to it holding the machete. Faulkner and Lindner first went to the tent, and Lindner used a knife to cut open the tent. When they saw that no one was in the tent, they continued to the shed, and when Lindner pulled back the tarp, a shot came from inside the shed and hit Lindner. Lindner collapsed to the ground, and Faulkner fired several shots into the shed and heard at least one more shot come from inside the shed. Before leaving, Faulkner took a gun from Lindner's hands.

[13] As Rudis would later recount, after he heard the truck arrive, Rudis heard another vehicle and saw two people exit the vehicles holding handguns, one with a green laser and one with a red laser. He saw them first walk toward his tent, and when his dog started barking, Rudis heard one of them say kill the dog. The two men then approached the shed and tried to open the tarp that covered the entrance to the shed. When they did this, Rudis fired one round

from his rifle, which struck Lindner. It got quiet briefly, and then the men outside returned fire toward the shed. Rudis shot one more time toward where the gunfire was coming from, but his gun jammed. Rudis then called 911 while he was still in the shed, and the men left.

[14] When he heard the gunshots, Brewer got out of the truck, ran to the back of it, and fired a few shots before getting back in the truck with Fletcher and leaving the scene. Faulkner drove away in the car with Karnuth as a passenger. Lindner was left behind. After driving about a quarter of a mile, Faulkner slammed on the brakes of the car, causing Brewer to rear end it. Faulkner wanted to turn around to get Lindner, but Karnuth said no. After exiting the car, Faulkner walked for a while, climbed a tree to see if he could tell what was going on, and saw that police were coming. Eventually, Faulkner started walking back to North Vernon from Dupont, and along the way, he put the gun and handcuffs he was carrying in a ditch. After hitting the car with his truck, Brewer had to pull the front bumper away from the tire so he could drive. While he did that, Karnuth drove away in the car. The men left two handguns, including a Glock and one that had a green laser on it, in the cornfield near the scene of the crash.

[15] Brewer and Fletcher went back to Karnuth's house. When Karnuth arrived a few minutes later, he began packing all the Warlocks property and put it in Fletcher's car so Fletcher could dispose of it. Fletcher later threw the items away in a dumpster in Ohio. The men then drove to Seymour to meet Karnuth's girlfriend and find Brewer's car, which Karnuth had left on the side

of the road because it had broken down. After meeting up with Karnuth's girlfriend, Karnuth and Brewer got in her car and drove back to Karnuth's house while Fletcher drove back to Ohio. On the way back to Karnuth's, at the direction of Karnuth, Brewer threw his two guns out of the window: one from a bridge into a creek and the second from the dam of County Squire Lakes. Later, when the investigation was ongoing, members of the Indiana State Police Dive Team recovered a barrel of a ten-millimeter pistol on the edge of a lake in the County Squire Lakes area. The dive team also collected the slide and frame of a handgun in a creek.

[16] At approximately 4:00 a.m. on June 22, 2021, officers from the Jefferson County Sheriff's Department were dispatched to the John Deere Road property in Dupont in response to a 911 call of a report that someone had been shot. When officers arrived, they spoke to Rudis and determined that he was not injured. Rudis pointed the officers to the area of the property where the shooting had occurred, and the officers discovered a body lying face down on the ground. An officer rolled the body over to check for injuries and saw a gunshot wound to the victim's chest. After checking a wallet found in the victim's back pocket, the officer identified the victim as Lindner. The officer observed that Lindner was wearing a t-shirt that had both a one-percenter patch and a Pagan patch. Lindner was pronounced dead at the scene, and a gunshot wound to his chest was later determined to be the cause of death.

[17] On June 23, 2021, Karnuth called Brewer and told him that they needed to get rid of Lindner's car, which was parked at Karnuth's house. Karnuth directed

Brewer to call Faulkner and instructed him that they must move the car. On the same date, law enforcement learned of Karnuth's connection to Lindner, and the Indiana State Police sent an undercover officer to watch Karnuth's house. While they were watching the house, the officers learned that Lindner had driven a gold-colored Toyota, which was parked at Karnuth's residence. Through their investigation, the police had learned that there had been a crash near the location and time of the shooting. As they observed Karnuth's residence, the officers also saw a red truck in front of Karnuth's house with damage to the front end and observed Brewer driving the red truck and towing Lindner's car away from Karnuth's residence. Officers followed Brewer until he pulled next to a house associated with his girlfriend and parked next to a fire that was burning in the yard of the residence. Fearing the destruction of evidence, the police intervened and seized the vehicles.

[18] On June 24, 2021, law enforcement obtained a search warrant and conducted a search of Karnuth's house. In the closet of the primary bedroom, officers found a Glock gun case with a serial number that matched the serial number of the Glock that had been recovered in the cornfield next to the crash scene. They also found a vest of the type commonly worn by motorcycle riders that had previously had club patches affixed to it, but it appeared the patches had been removed. Other Warlocks memorabilia and items were also found, including business cards and a copy of the Warlocks bylaws.

[19] The Warlocks bylaws provided, in pertinent part, that "[a]nyone wishing to join the club must be sponsored by a '1%er'" and that the sponsor "must truly

believe that the prospect is a '1%er in spirit.'" Ex. Vol. 2 p. 44. They further provided that, "[u]nless special conditions exist[ed], chapters shall be arranged so officers are 1%ers." *Id*. at 45. The bylaws also required that "[a]nyone wishing to join the club must be of the White race and only of the White race." *Id*. at 44. Members of the Warlocks were forbidden from cooperating with law enforcement, and the bylaws stated that members were prohibited from providing information to law enforcement or testifying in any criminal matter. Additionally, "[m]embers are not to give law enforement [sic] personnel consent to search their car, home, place of business, clubhouse, or any other property on or in which they might be present." *Id*. at 49.

[20] On June 29, 2021, Karnuth was arrested at a home in Rising Sun, Indiana. Officers collected a phone associated with Karnuth from the house. The phone contained searches for Karnuth's name and for Faulkner's name. There were additional searches for "what to do if you were being followed," "Can God forgive suicide. Suicide and mortal sin, what is true forgiveness," and "do you have to be tough in prison." Tr. Vol. 5 pp. 210, 212.

[21] The State charged Karnuth with murder, attempted burglary as a Level 2 felony, attempted robbery as a Level 2 felony, and obstruction of justice as a Level 6 felony. The State also filed a criminal organization enhancement. A bifurcated jury trial began on January 30, 2023. At the close of evidence in the first phase of trial, Karnuth requested that the trial court instruct the jury that attempted theft is a lesser-included offense of attempted burglary. The trial court denied Karnuth's proposed instruction, finding that attempted theft was

not a lesser-included offense of attempted burglary. The State requested that the trial court give an instruction on accomplice liability. Karnuth objected to giving an accomplice liability instruction because he was not "charged with accomplice liability. He's been charged as more or less the principal." Tr. Vol. 6 p. 117. The trial court granted the State's request and subsequently gave the State's proffered instruction. After deliberation, the jury found Karnuth guilty as charged in the first phase of the trial, specifically for murder, Level 2 felony attempted burglary, Level 2 felony attempted robbery, and Level 6 felony obstruction of justice.

[22] In the second phase of trial, the State presented additional testimony to support the criminal organization enhancement. Specifically, the State presented evidence regarding the significance of the one-percent patch, with witnesses explaining that it originated in the 1940s when a motorcycle racing club event "got out of hand" and people were arrested. *Id*. at 207. Afterwards, the American Motorcycle Association released a statement that ninety-nine percent of motorcycle enthusiasts are law abiding, and it is only one percent that causes the problems. Jasmine Munn ("Munn"), a criminal intelligence analyst with the Indiana State Police, explained that people wear the one-percent patch as a badge of honor to let others know "that they do not care about laws" and that "they do whatever they choose to do" and "don't care about law enforcement or the rules that govern society." *Id*. at 194. Munn also stated that both the Warlocks and the Pagans were one-percent clubs. Sergeant Jeffrey Neace of the Jefferson County Sheriff's Department, who is a member of the Midwest Cycle

Intelligence Organization and the International Outlaw Motorcycle Gang Investigators Association, testified that people wear the one-percent patch to identify themselves as part of the one percent that causes problems and that both the Warlocks and the Pagans were one-percent clubs. At the conclusion of the second phase, the jury found that the State had proven the enhancement.

[23] On March 15, 2023, a sentencing hearing was held. Karnuth, who was thirty-four years old at the time of sentencing, had a prior criminal conviction for Class C felony battery resulting in serious bodily injury. The trial court found as a mitigating factor that Karnuth had a supportive family, citing his mother's and aunt's testimony at sentencing. As aggravating factors, the trial court found (1) Karnuth's lack of remorse, (2) his attempts to avoid detection, (3) that a mitigated sentence would depreciate the seriousness of the offense, (4) his criminal history, (5) that the offense was well-planned, and (6) the nature and circumstances of the offense. In his sentencing argument, Karnuth's attorney asserted his resentment that Karnuth was not offered a plea agreement when the other co-defendants all received reasonable plea offers. The trial court noted that it was clear from the evidence and the record why Karnuth had been treated differently than his other co-defendants in terms of plea negotiations with the State, stating that the evidence in the record demonstrated that Karnuth was the person who organized the criminal behavior in that Karnuth recruited the others, located Rudis, and Karnuth's residence was the center of operations. To address double jeopardy concerns, the trial court vacated Karnuth's convictions for attempted burglary and attempted robbery. The trial

court found that the aggravating factors outweighed the mitigating factors and sentenced Karnuth to a term of sixty years on his murder conviction, enhanced by sixty years for the criminal organization enhancement, and a concurrent term of one year for his obstruction of justice conviction, resulting in an aggregate sentence of 120 years. Karnuth now appeals.

Discussion and Decision

I. Jury Instructions

[24] Karnuth argues that the trial court abused its discretion when it denied his request for an instruction on attempted theft as a lesser-included offense of his charged offense of attempted burglary. He also argues that it was an abuse of discretion for the trial court to give a jury instruction on accomplice liability.

[25] The instruction of the jury lies within the trial court's sound discretion, and we review the trial court's decisions regarding jury instructions only for an abuse of that discretion. *Harrison v. State*, 32 N.E.3d 240, 251 (Ind. Ct. App. 2015), *trans. denied*. For the trial court to abuse its discretion, an instruction that is given to the jury must be erroneous, and the instructions viewed as a whole must misstate the law or otherwise mislead the jury. *Winkleman v. State,* 22 N.E.3d 844, 849 (Ind. Ct. App. 2014), *trans. denied.* When a defendant seeks reversal based on instructional error, he must demonstrate a reasonable probability that his substantial rights have been adversely affected. *Harrison*, 32 N.E.2d at 251.

A. Lesser Included Offense

[26] Karnuth first raises an assertion that it was an abuse of discretion for the trial court to refuse to give his proffered final instruction on attempted theft as a lesser-included offense of attempted burglary. When determining whether to instruct a jury on a lesser-included offense, the trial court must perform a three-step analysis: (1) compare the statute defining the crime charged with the statute defining the alleged lesser-included offense to determine if the latter is inherently included in the former; if not, (2) determine if the alleged lesser-included offense is factually included in the crime charged by comparing the statute defining the alleged lesser-included offense to the charging instrument in the case; and, if either, (3) determine if there is a serious evidentiary dispute about the element or elements distinguishing the greater offense from the lesser offense and if, in view of this dispute, a jury could conclude that the lesser offense was committed but not the greater. *Wright v. State*, 658 N.E.2d 563, 566–67 (Ind. 1995). An offense is an inherently lesser-included offense if it may be established by proof of the same material elements defining the crime charged or the only feature distinguishing the alleged lesser-included offense from the crime charged is a lesser culpability. *Id*. at 566. An offense is factually included "[i]f the charging instrument alleges that the means used to commit the crime charged included all of the elements of the alleged lesser included offense." *Id*. at 567. In deciding if there is a serious evidentiary dispute, the court must look at the evidence presented in the case by both parties. *Id.* at 567. If the third step is reached and answered in the affirmative, the trial court will

be found to have committed reversible error by not giving the requested instruction. *Id.* Our Supreme Court has cautioned: "when the question to instruct on a lesser included offense is a close one, it is prudent for the trial court to give the instruction and avoid the risk of the expense and delay involved in a retrial." *Champlain v. State*, 681 N.E.2d 696, 701 (Ind. 1997).

[27] When the trial court has made a finding on the existence or lack of a serious evidentiary dispute, our standard of review is abuse of discretion. *Miller v. State*, 720 N.E.2d 696, 702 (Ind. 1999) (citing *Brown v. State*, 703 N.E.2d 1010, 1019 (Ind. 1998)). However, where there is no such finding, the reviewing court makes the required determination de novo based on its own review of the evidence. *Id.* Here, Karnuth proffered a final instruction on attempted theft as a lesser-included offense of his charged offense of attempted burglary. The trial court rejected Karnuth's argument on the basis that attempted theft was not an inherently lesser-included offense of attempted burglary; in doing so, the trial court said it was relying on *Jones v. State*, 519 N.E.2d 1233, 1235 (Ind. 1988), which held that theft is not inherently a lesser-included offense of burglary. Tr. Vol. 6 p. 113. Therefore, the trial court made no determination on the record as to the existence or lack of a serious evidentiary dispute, so we will review the trial court's decision de novo.

[28] Looking to the *Wright* analysis, Karnuth concedes that attempted theft is not an inherently included offense of attempted burglary because in comparing the statutes, the offense of theft is not established by proof of the same material elements or less than all the material elements required to establish the

commission of burglary. *See Jones*, 519 N.E.2d at 1235 ("Comparing the elements of the two crimes reveals that proof of burglary with the intent to commit theft does not necessitate proof of theft, only proof of intent to commit theft. Theft is not inherently a lesser included offense of burglary."). Instead, Karnuth argues that the offense of attempted theft is factually included based on the way the State charged the offense of attempted burglary.

[29] In determining whether an offense is factually included in another offense, we look to determine "[i]f the charging instrument alleges that the means used to commit the crime charged include all of the elements of the alleged lesser included offense." *Wright,* 658 N.E.2d at 567. Here, the charging information for attempted burglary alleged that Karnuth did "attempt to break and enter into building or structure of another person, to wit: [ ] Rudis, with the intent to commit theft therein" and alleged that the substantial step toward the commission of the crime was traveling to the John Deere Road address and approaching Rudis's residence while armed with a deadly weapon. Appellant's App. Vol. 2 p. 35. The elements of attempted theft are knowingly or intentionally attempting to exert unauthorized control over the property of another with the intent to deprive the other person of any part of the value or use of said property, by engaging in conduct, which constituted a substantial step toward commission of theft. *See* Ind. Code §§ 35-41-5-1, 35-43-4-2. Looking to the language of the charging information and the elements of attempted theft, the charging information did not explicitly allege that the means used to commit the crime of attempted burglary included all of the

elements of the attempted theft. The charging information for attempted burglary did not explicitly allege that Karnuth went to Rudis's address and attempted to break and enter into his residence with the intent to commit a theft therein and go on to list each of the elements of theft, i.e. the charging information did not specifically allege that Karnuth attempted to break and enter Rudis's residence with the intent *to knowingly exert unauthorized control over the property of Rudis, with intent to deprive Rudis of any part of its value or use*. Therefore, attempted theft was not a factually lesser-included offense of attempted burglary in this case.

[30] However, even if attempted theft was factually included in the charge of attempted burglary, there was no serious evidentiary dispute about the element or elements distinguishing the greater from the lesser offense and if, in view of this dispute, a jury could conclude that the lesser offense was committed but not the greater. *See Webb*, 963 N.E.2d at 1106. Here, the evidence presented at trial revealed that five men went to Rudis's dwelling two separate times on the night of June 21, 2021, to take Rudis's unearned patches and both times they were armed. On the second time, when the charged offenses occurred, Lindner and Faulkner had their guns drawn when they approached the shed Rudis was in, and Karnuth stood at the front of the car with a machete in his hand. When Lindner and Faulkner reached the tent, they cut open the tent and then lifted the tarp to attempt to enter the shed, which was Rudis's dwelling. The evidence established that Rudis was using the tent and shed as his dwelling, and the evidence left no doubt that, by cutting open the tent and lifting the tarp, the men

were breaking and trying to enter Rudis's dwelling for the purpose of taking the Pagans patch. Thus, the evidence clearly demonstrated that Karnuth and his co-defendants were committing attempted burglary and not just attempted theft. Because there was no serious evidentiary dispute such that the jury could conclude that attempted theft was committed and not attempted burglary, we conclude that the trial court properly refused to give Karnuth's proffered instruction on attempted theft.

B. Accomplice Liability

[31] Karnuth next argues that the trial court abused its discretion when it gave an accomplice liability instruction to the jury over his objection. Karnuth concedes that the Indiana Supreme Court has held that "where the circumstances of the case raise a reasonable inference that the defendant acted as an accomplice, it is appropriate to instruct the jury on accomplice liability even where the defendant was charged as a principal." *Brooks v. State*, 895 N.E.2d 130, 133 (Ind. Ct. App. 2008). Nonetheless, Karnuth asserts that "this principle should be reviewed in light of the lack of due process notice it provides a defendant preparing for trial." Appellant's Br. p. 25. Karnuth urges that an accused is entitled to clear notice of the charge or charges against which he is to defend himself, and therefore, when a defendant is brought to trial on a charging information that clearly identifies him as a principal, the defendant is deprived of such notice when the State is allowed to switch its theory and simultaneously instruct the jury on accomplice liability.

[32] However, we find Karnuth's argument unavailing. First, our Supreme Court has long held that "no reference to the accomplice liability statute need be included in the charging information in order for a defendant to be convicted of a crime, regardless of whether the evidence showed that he or she acted alone or with an accomplice." *Wise v. State*, 719 N.E.2d 1192, 1198–99 (Ind. 1999) (citing *Taylor v. State,* 495 N.E.2d 710, 713 (Ind. 1986)). This is because, in Indiana, the responsibility of a principal and an accomplice is the same, and due process does not require that the State give a defendant some pretrial notice that it intended to try him as an accessory rather than as a principal. *Taylor v. State*, 840 N.E.2d 324, 338 (Ind. 2006). Second, although Karnuth asserts that "allowing a defendant to be blindsided at the conclusion of trial [with an accomplice liability instruction], runs afoul of basic principles of due process and notice," Appellant's Br. p. 25, in his opening statement, Karnuth's trial counsel stated, "the State's going to try to convince you, the jury, that through accomplice liability, a felony murder, other legal ideas, that . . . Karnuth is the one responsible for all of this." Tr. Vol. 2 p. 167. This contradicts Karnuth's argument that he was blindsided by the giving of the accomplice liability instruction. Further, our Supreme Court has made clear that it is not a violation of due process to give an accomplice liability instruction even if the accomplice liability statute is not referenced in the charging information. The trial court did not abuse its discretion in giving the State's requested accomplice liability instruction.

II. Sufficiency of the Evidence

[33] Karnuth next argues that insufficient evidence was presented to support both his conviction for felony murder and the criminal organization enhancement. When there is a challenge to the sufficiency of the evidence, "[w]e neither reweigh evidence nor judge witness credibility." *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016), *cert. denied*. Instead, we consider only that evidence most favorable to the judgment together with all reasonable inferences drawn therefrom. *Id.* "We will affirm the judgment if it is supported by substantial evidence of probative value even if there is some conflict in that evidence." *Id.* Further, "[w]e will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

A. Felony Murder

[34] In order to convict Karnuth of murder as charged, the State was required to prove that he killed another human being, Lindner, while attempting to commit robbery or burglary. Ind. Code § 35-42-1-1(2); Appellant's App. Vol. 2 p. 34. In interpreting this statute, our Supreme Court has determined that the State need not prove intent to kill, only the intent to commit the underlying felony. *Dalton v. State*, 56 N.E.3d 644, 648 (Ind. Ct. App. 2016), *trans. denied*. "[T]he felony murder rule applies 'when, in committing any of the designated felonies, the felon contributes to the death of *any* person.'" *Forney v. State,* 742 N.E.2d 934, 938 (Ind. 2001) (quoting *Palmer v. State,* 704 N.E.2d 124, 126 (Ind. 1999) (footnote omitted, emphasis in original)).

[35] A person who commits or attempts to commit one of the felonies designated in the felony-murder statute is criminally responsible for the death of another during the commission of said crime when the accused reasonably should have "'foreseen that the commission of or attempt to commit the contemplated felony would likely create a situation which would expose another to the danger of death.'" *Palmer,* 704 N.E.2d at 126 (quoting *Sheckles v. State,* 684 N.E.2d 201, 205 (Ind. Ct. App. 1997), *trans. denied*). Where the death that occurs could reasonably have been foreseen, "'the creation of such a dangerous situation is an intermediary, secondary, or medium in effecting or bringing about the death of the victim. There, the situation is a mediate contribution to the victim's killing.'" *Id.* (quoting *Sheckles,* 684 N.E.2d at 205). Therefore, the question is whether the defendant's conduct caused or contributed to the victim's death or set in motion a series of events that could reasonably be expected and did, in fact, result in the death. *Pittman v. State,* 528 N.E.2d 67, 70 (Ind. 1988).

[36] Karnuth first argues that insufficient evidence was presented to support his conviction for felony murder because neither he nor any of his co-defendants engaged in dangerously violent and threatening conduct such that their conduct created a situation that exposed people present to the danger of death. In making this argument, Karnuth relies on *Layman v. State*, 42 N.E.3d 972 (Ind. 2015), where our Supreme Court reiterated that, for there to be sufficient evidence of felony murder, the defendant's felonious conduct must be the mediate or immediate cause of his accomplice's death and that is only when a

defendant engages in dangerously violent and threatening conduct that creates a situation that exposes those present to the danger of death at the hands of a non-participant who might resist or respond to the felonious conduct. *Id*. at 979 (citing *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000) and *Palmer*, 704 N.E.2d at 126). In *Layman*, our Supreme Court reversed the defendant's conviction for felony murder, where a group of juveniles committed burglary by kicking in the door of a home, and the homeowner fired his gun, hitting two of the co-defendants, killing one. *Layman*, 42 N.E.3d at 974. [5] Our Supreme Court determined that, in contrast to past cases where felony murder convictions had been upheld, the record reflected that when the co-defendants broke and entered the residence of the homeowner intending to commit a theft, and thus committing a burglary, they were unarmed and none of the co-defendants engaged in any dangerously violent and threatening conduct. *Id*. The Court held that there was nothing about the defendant's conduct or the conduct of his cohorts that was clearly the mediate or immediate cause of the victim's death and, therefore, although there was sufficient evidence of burglary, the evidence was not sufficient for felony murder. *Id*. at 979–80.

[37] Karnuth's reliance on *Layman* is misplaced because the circumstances that led to the Supreme Court reversing the conviction for felony murder in *Layman* are different from the facts and circumstances in the present case. Here, all of the

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[5] Karnuth also cites to *Sharpe v. State*, 42 N.E.3d 512 (Ind. 2015), which was decided on the same day as *Layman* and involved a co-defendant, whose conviction for felony murder was also reversed under the same analysis as *Layman*.

co-defendants who went to Rudis's dwelling were armed, and at least two of them had firearms drawn when they approached the shed where Rudis was located and when Lindner lifted the tarp in an attempt to break and enter Rudis's dwelling. Further, Karnuth was holding a machete and standing in front of the car within five feet of the shed. Contrary to Karnuth's contention that he and his co-defendants arrived at Rudis's dwelling to speak to him about the patches and tattoos, the evidence showed that, at least Lindner and Faulkner had their guns in their hands, and Rudis was able to see lasers from the guns. Thus, unlike the defendants in *Layman*, who broke into the home while unarmed and did not engage in any dangerously violent and threatening conduct, here, the co-defendants were armed and were engaging in violent and threatening behavior because they had their guns drawn as they approached Rudis's dwelling and attempted to enter by pulling back the tarp.

[38] Karnuth also contends that there was insufficient evidence to support his conviction for felony murder because he was not the mediate cause or immediate cause of Lindner's death. He maintains that he could not have reasonably anticipated that "Rudis would get high on meth and shoot someone from the dark for touching a tarp" or that he and his co-defendants "trying to talk to Rudis would lead to the death of his friend." Appellant's Br. pp. 28–29. The felony murder statute applies when, in committing any of the designated felonies, the felon, although not the killer, reasonably should have foreseen that his felonious conduct would result in the "mediate or immediate cause" of the victim's death. *Layman*, 42 N.E.3d at 977. The question is whether the

defendant's conduct caused or contributed to the victim's death or set in motion a series of events that could reasonably be expected and did, in fact, result in the death. *Pittman,* 528 N.E.2d at 70.

[39] Here, the evidence most favorable to the verdict reveals that Karnuth should have reasonably foreseen that his felonious conduct would result in the mediate or immediate cause of Lindner's death. Specifically, Karnuth recruited his co-defendants to go to Rudis's residence to take back the unearned patches and "to peel the tattoo off [Rudis's] arm one way or the other." Tr. Vol. 4 p. 59. Before leaving Karnuth's house, Karnuth told everyone to take off their clothing with their patches, and instructed everyone to leave their phones in the house because they did not take their phones when they were "going to do anything illegal." Tr. Vol. 5 p. 74. As they headed to confront Rudis and take the unearned patches and tattoos from him, most of the defendants were armed in some fashion, with several of them having guns, and Karnuth also having a machete. The two men who approached Rudis's tent and shed had their guns drawn, and Rudis was able to see the laser sights on the guns. Additionally, the defendants had previously been out to Rudis's property earlier the same evening, and Rudis told them he would shoot them. Rudis's decision to fire his gun at Lindner was not an intervening cause because it was entirely foreseeable that the victim of an armed invasion of their dwelling might shoot at the would-be intruders. Rudis did not shoot until Lindner tried to lift the tarp to enter the shed and Rudis testified that prior to that, he could see that the men who approached his shed were armed. Rudis's use of methamphetamine was not

intervening because Rudis testified that it made him focus, and because "a defendant takes his victim as he finds him." *Bailey v. State*, 979 N.E.2d 133, 142 (Ind. 2012). We, therefore, conclude that sufficient evidence was presented to support Karnuth's conviction for felony murder.

B. Criminal Organization Enhancement

[40] To prove the criminal organization enhancement as charged, the State was required to prove that Karnuth knowingly or intentionally was a member of a criminal organization while committing a felony offense and committed the felony offense with the intent to benefit, promote, or further the interests of a criminal organization. I.C. § 35-50-2-15(b); Appellant's App. Vol. 2 p. 39. Criminal organization means a formal or informal group with at least three members that specifically either promotes, sponsors, or assists in; participates in; has one of its goals; or requires as a condition of membership or continued membership the commission of a felony or a battery offense. I.C. § 35-45-9-1.

[41] Karnuth argues that insufficient evidence was presented to support the criminal organization enhancement. Specifically, he contends that the State's evidence that he was a part of a criminal organization consisted of overly broad assertions regarding national motorcycle clubs and the history of certain symbols and that none of the evidence was specific to the Warlocks in general or the Heavy Hitters specifically. He asserts that there was no indication that the motorcycle club Karnuth belonged to regularly required its members to commit criminal offenses or was otherwise involved in promoting, sponsoring, assisting, or committing criminal offenses and that the only criminal offense

ever specifically alleged to have been engaged in by the Warlocks was the instant offense. Therefore, Karnuth only challenges whether the State's evidence demonstrated that the Warlocks were a criminal organization and not the other elements of the enhancement.

[42] The evidence most favorable to the verdict established that the Warlocks promoted unlawful behavior. The evidence revealed that the Warlocks were a one-percent club and that one-percent referred to the one-percent of motorcycle enthusiasts who are not law-abiding citizens. To obtain a one-percent patch, the member had to demonstrate that he was willing to do what the club asked whether it was legal or not, and the Warlocks' bylaws required that new members be sponsored by a one-percenter and that the sponsor believe that the prospect is a one-percenter in spirit. Further, the officers of the chapter were required to be one-percenters unless special circumstances existed, and the evidence demonstrated that all five of the men who went to Rudis's either had the one-percent patch or were officers. The jury could reasonably infer that even if members of the Warlocks had not previously committed a crime, the organization required its members to be willing to do so and promoted the commission of crimes to the benefit of the organization.

[43] In any case, even if the evidence did not prove that the Warlocks were a criminal organization, it did establish that the five men who planned and agreed to commit a crime in the early morning hours of June 21, 2021, constituted a criminal organization. The statute provides that criminal organizations may be informal. I.C. § 35-45-9-1. Caselaw has also identified sufficient evidence to

support a criminal organization enhancement based on the evidence of the underlying crime where a group of at least three members assisted in or participated in the commission of a felony or a battery offense. *See Parrish v. State*, 166 N.E.3d 953, 960–61 (Ind. Ct. App. 2021) (finding sufficient evidence to sustain a criminal organization enhancement based on evidence that three men assisted in or participated in the commission of several felonies on the night of the robbery), *trans. denied*; *Cole v. State*, 967 N.E.2d 1044, 1050 (Ind. Ct. App. 2012) (finding that the State presented sufficient evidence that the defendant "knowingly and intentionally participated in a criminal gang by joining with two other men to burglarize, rob, criminally confine, and intimidate" two victims).

[44] Here, at the very least, the evidence indicated that the co-defendants consisted of an informal group of more than three members that formed together at Karnuth's request to go to Rudis's home to retrieve Rudis's unearned patches. When they left together, they armed themselves and left their cell phones. The evidence was presented that Karnuth agreed to go with the other co-defendants to Rudis's home to commit a felony and to forcibly take the patches from Rudis. By agreeing with the others to go to Rudis's home to commit a felony, Karnuth joined a criminal organization even if he was not a member of a criminal organization by virtue of his membership in the Warlocks. The evidence presented was sufficient to support the criminal organization enhancement.

III. Abuse of Discretion in Sentence

[45] Karnuth argues that the trial court erred in sentencing him because the trial court unconstitutionally sentenced him based on his decision to exercise his right to a jury trial. We review the trial court's sentence for an abuse of discretion. *Anglemyer v. State,* 868 N.E.2d 482, 490 (Ind.2007), *clarified on reh'g,* 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances. *Id.* It is improper to rely on a defendant's maintaining his innocence as an aggravator, and a defendant's constitutional privilege against self-incrimination protects him from having to confess to the police. *Angleton v. State,* 686 N.E.2d 803, 816 (Ind. 1997). Further, it is constitutionally impermissible for a trial court to impose a more severe sentence because the defendant has chosen to stand trial rather than plead guilty. *Hill v. State,* 499 N.E.2d 1103, 1107 (Ind. 1986) (citing *Walker v. State,* 454 N.E.2d 425, 429 (Ind. Ct. App. 1983), *trans. denied*).

[46] Karnuth contends that the trial court violated his constitutional rights because it imposed a more severe sentence on him merely because he insisted on his right to a jury trial. We disagree. Karnuth was not punished for proceeding to trial. There is no indication here that the trial court increased Karnuth's sentence because he elected to exercise his right to a jury trial. While a more severe sentence may not be imposed on a defendant because he exercised his right to a jury trial, determining whether the severity of a particular sentence was improperly influenced by a defendant's jury trial election requires an individualized consideration. *Hill*, 499 N.E.2d at 1107. The record reflects

that, in its detailed sentencing statement, the trial court made it clear that it carefully considered the facts of the case and Karnuth's involvement in the planning of the crime and the attempted cover-up afterwards before arriving at its sentence.

[47] As support for his argument that he was punished for going to trial, Karnuth points only to the fact that his co-defendants were offered plea agreements that required them to testify. However, he fails to cite to any authority that would support his contention. In fact, when pronouncing the sentence, the trial court stated that it was "clear from the evidence and the record why [Karnuth] was treated differently than the others" in plea negotiations, which was because Karnuth was clearly the director of the others' actions. Tr. Vol. 6 p. 243. The State is entitled to determine which cases it finds appropriate to offer a plea agreement and those it does not. Further, there was no indication that the trial court was involved in plea negotiations, encouraged Karnuth to plead guilty, or threatened Karnuth if he did not plead guilty. "Absent a significant indicia that the defendant's exercise of his jury trial right may have contributed to the severity of his resulting sentence, we will not remand for resentencing upon this issue." *Hill*, 499 N.E.2d at 1107. In our review of the record, we find no support for Karnuth's assertion that the trial court imposed a more severe sentence due to his decision to exercise his right to a jury trial, and we, therefore, conclude that the trial court did not abuse its discretion in sentencing Karnuth.

IV. Inappropriate Sentence

[48] The Indiana Constitution authorizes appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). "That authority is implemented through Appellate Rule 7(B), which 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." *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[49] Our review under Appellate Rule 7(B) focuses on "the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We generally defer to the trial court's decision, and our goal is to determine whether the defendant's sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[50] When reviewing a sentence under Appellate Rule 7(B), we remain mindful that the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657

(Ind. 2014). Here, Karnuth was convicted of one count of murder, enhanced by the criminal organization enhancement, and one count of Level 6 felony obstruction of justice. A conviction for murder carries a sentencing range of forty-five to sixty-five years, with the advisory sentence being fifty-five years. I.C. § 35-50-2-3(a). A conviction for a Level 6 felony carries a sentencing range of six months to two-and-a-half years, with the advisory sentence being one year. I.C. §35-50-2-7(b). If a criminal organization enhancement is found to be proven, the trial court shall sentence the person to an additional fixed consecutive term of imprisonment equal to the longest sentence imposed for the underlying felonies, if the person is being sentenced for more than one felony. I.C. § 35-50-2-15(d)(2), (e). Here, the trial court sentenced Karnuth to sixty years for his murder conviction to run concurrently with a one-year sentence for his obstruction of justice conviction; Karnuth's sixty-year murder sentence was enhanced by sixty years for the criminal organization enhancement for a total executed sentence of 120 years. Karnuth's sixty-year-sentence for murder was not the maximum sentence and was actually only five years more than the advisory.

[51] When reviewing the nature of the offense, this court considers "the details and circumstances of the commission of the offense." *Merriweather v. State*, 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020). Karnuth argues, as to the nature of his offenses, that it was not his or his co-defendants' intention for death or violence to ensue when they went to Rudis's home; rather, they merely went to communicate with Rudis and convince him to remove the unearned patches

and tattoos. Karnuth further asserts that his alleged offense did not exceed the statutory elements necessary to prove the offense and that he did not personally commit any acts of violence.

[52] An examination of the nature and circumstances of Karnuth's crime reveals that, contrary to his assertion that he and his co-defendants just wanted to speak with Rudis, the crime was more egregious than that. The evidence demonstrated that Karnuth spent weeks trying to learn if Rudis was who he said he was, and when Karnuth discovered that Rudis was not, he devised a plan to find Rudis and retrieve the unearned patches and tattoos. At all relevant times, Karnuth directed the actions of the others, first to find where Rudis lived and then assembling them to go to Rudis's home. Before they left to find Rudis and obtain the unearned patches and tattoos, Karnuth ordered the other men to leave their motorcycle gear to obscure their identity as Warlocks and to leave their cell phones at his house because they did not take their phones when they were "going to do anything illegal." Tr. Vol. 5 p. 74. When the initial attempt was unsuccessful, Karnuth said they would go back and that he was "going to peel the tattoo off [Rudis's] arm one way or the other" while holding a machete. Tr. Vol. 4 p. 59. On the second attempt, Lindner was shot and killed as he tried to lift the tarp on Rudis's shed in an attempt to enter. Karnuth and the others fled the scene. Karnuth refused to go back for Lindner when Falkner requested to do so. Afterwards, Karnuth directed the others to get rid of all of their Warlocks gear stored at his home, to throw their guns in the water, and to dispose of Lindner's car. Therefore, the nature and

circumstances of the offenses were particularly egregious, in that Karnuth planned to burglarize and rob Rudis in order to retrieve unearned motorcycle patches and tattoos and further planned to cover up the crime. Additionally, the evidence revealed that Karnuth was a member and the president of the local chapter of the Warlocks, a one-percent motorcycle club that promoted criminal unlawful behavior. The evidence further established that, in addition to the Warlocks promoting of criminal activity, Karnuth's agreement with his co-defendants to commit the instant offenses constituted a criminal organization. Karnuth has failed to portray the nature of the offense in a positive light "such as accompanied by restraint, regard, and lack of brutality" to support revising his sentence. *Stephenson*, 29 N.E.3d at 122.

[53] The character of the offender is found in what we learn from the offender's life and conduct. *Merriweather*, 151 N.E.3d at 1286. "A defendant's criminal history is one relevant factor in analyzing character, the significance of which varies based on the 'gravity, nature, and number of prior offenses in relation to the current offense.'" *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct. App. 2021) (quoting *Rutherford v. State,* 866 N.E.2d 867, 874 (Ind. Ct. App. 2007)). Even a minor criminal history reflects poorly on a defendant's character for the purposes of sentencing. *Id.*

[54] Karnuth maintains that his character did not warrant such a lengthy sentence because the evidence demonstrated that he was thirty-four at the time of sentencing, was a high school graduate with some post-secondary education, was recently employed, and had only one prior criminal conviction for battery

resulting in serious bodily injury in 2008. He further points to testimony by both his mother and aunt regarding his compassion and good character.

[55] In looking at Karnuth's character, although he did not have an extensive criminal history, he did have a 2008 conviction for Class C felony battery resulting in serious bodily injury from an incident where he used a baseball bat to batter his victim. While this is not a lengthy criminal history, it is significant in that it demonstrates that Karnuth has a disregard for the law and has a history of resorting to violence. His poor character is also revealed in his commitment to the Warlocks, which was a one-percent motorcycle club that promoted criminal behavior and required its members to be willing to prove themselves by committing illegal acts if ordered. Karnuth's position as president of the local Warlocks chapter also underscored his propensity toward criminal behavior, especially in light of the evidence that he was the organizer and leader of the events that led to the underlying crimes. Consequently, Karnuth has failed to identify "substantial virtuous traits or persistent examples of good character" to support revising his sentence. *Stephenson*, 29 N.E.3d at 122.

[56] Based on the facts in the record, Karnuth has not shown that his sentence for murder with a criminal organization enhancement and Level 6 felony obstruction of justice is inappropriate in light of the nature of the offenses and his character.

Conclusion

[57] Based on the above, we conclude that the trial court did not err in declining to give Karnuth's proposed jury instruction on attempted theft as a lesser-included offense and did not abuse its discretion in giving a jury instruction on accomplice liability. We also find that sufficient evidence was presented to support both Karnuth's conviction for felony murder and the criminal organization enhancement. Further, we conclude that the trial court did not abuse its discretion in sentencing Karnuth, and his sentence is not inappropriate in light of the nature of the offenses and his character.

[58] Affirmed.

May, J., and Weissmann, J., concur.

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