# MEMORANDUM DECISION





IN THE
# Court of Appeals of Indiana

Cornelius Johnson,
*Appellant-Defendant*

v.

State of Indiana,
*Appellee-Plaintiff*

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April 15, 2024

Court of Appeals Case No.
23A-CR-1152

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No.
02D05-2007-F2-22

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**Memorandum Decision by Judge Brown**
Judges Riley and Foley concur.

**Brown, Judge.**

[1] Cornelius Johnson appeals his convictions and sentence for burglary as a level 2 felony, criminal recklessness as a level 5 felony, and attempted battery as a level 5 felony. He claims the evidence is insufficient to sustain his convictions and his sentence is inappropriate. We affirm.

## Facts and Procedural History

[2] On July 13, 2020, Laquandra Jones, who lived next to Melissa Childs and her daughter, Tracee Childs, was watching television with her child and heard what sounded like breaking glass. Jones looked out her window and observed Melissa standing in the front yard. Jones opened her front door and asked Melissa if she was okay. Melissa asked Jones to call the police. Jones went back inside her residence, locked the door, and called 911. When dispatch asked Jones if she could speak to her neighbor, Jones walked outside, knocked on Melissa's front door, and handed her cellphone to Melissa. Melissa invited Jones into her home, and Jones stood directly inside the front door while Melissa had a conversation with the dispatcher. While she was waiting for Melissa to complete the call, Jones's thirteen-year-old daughter came next door and said that "he was back." Transcript Volume II at 239. Jones observed "[t]hat [Johnson] was running towards the house with a gun" and she "snatched [her] daughter inside the door" and closed and locked the door. *Id.* At this point, Jones's daughter and Tracee's daughter were both in the home. Jones yelled to "get down." *Id.* at 240. Jones went to the bathroom and heard gunfire.

[3] Meanwhile, Fort Wayne Police Officer Christian Lichtsinn received a dispatch regarding a call in which a complainant stated that her boyfriend, Johnson, was attempting to break her car window, had thrown something at her car, and was shooting at the house. Officer Lichtsinn arrived at the scene and observed shattered glass, a bloody handprint on the frame of the door, and a handgun sitting on the front porch. He observed that the damage to the front door indicated that it was "forced open." Transcript Volume III at 7. He also observed bullet holes from shots which appeared to be fired "towards the living room from the outside," there was a shell casing in front of the front door, and glass "all over the inside of the living room right there from where the front door was." *Id.* at 9. Fort Wayne Police Officer Nicholas Heyerly also responded to the scene and discovered curtains that had blood on them, a couch with bullet holes, and a computer monitor that had been shot.

[4] Fort Wayne Police Detective Geraud Bartels arrived at the scene and spoke with Tracee, Melissa, Jones, and Jones's daughter. Tracee told him that she had conversations with Johnson earlier that day regarding money, she had a bag with Johnson's belongings she wanted to give to him, she attempted to give him the bag through a car window, and he tried to punch her through the window. She also told him that Melissa had been on the front porch and yelled for Johnson to leave, Johnson went back to his vehicle, retrieved a tool, and threw it at Tracee's window, and Melissa then yelled at the neighbor to call 911. She further told him that Jones "saw him coming up the sidewalk, said he had a gun, and at that point, the door was kicked in and shots were fired." *Id.*

at 38. She also told him that the door was kicked in and she took cover behind the couch when the shots were fired. She told him that she retrieved her own firearm from her purse and fired one shot from behind the couch, "apparently striking" Johnson. *Id.* She also told him that she "came out from behind cover once he was outside," went to the door and tried to close the door, and Johnson "continued to fire from outside the house and rounds were coming through the door and curtain from the outside." *Id.* During his conversation with Tracee, Detective Bartels learned that Johnson was continuing to call and send her text messages, which "were all threatening in nature." *Id.* at 39. The messages included a photograph of a wounded hand and a message that stated: "B---- u dead u shot me." State's Exhibit 83.

[5] On July 23, 2020, the State charged Johnson with: Count I, burglary as a level 2 felony; Count II, unlawful possession of a firearm by a serious violent felon as a level 4 felony; Count III, criminal recklessness as a level 5 felony; and Count IV, attempted battery as a level 5 felony. The State later alleged Johnson was an habitual offender.

[6] On the morning of the jury trial, Johnson doused his defense counsel with water. The court stated that Johnson had forfeited his right to attend trial and observed that Johnson had screamed during a prior hearing resulting in his removal from the courtroom.

[7] The prosecutor informed the court that Melissa refused to be served for the trial. The prosecutor also stated that she told defense counsel that Johnson had been

"in constant communication with Tracee Childs, who is the daughter of Melissa Childs, so while everybody else has not been able to have access to them, Mr. Johnson has and has had access to them." Transcript Volume II at 48. The State presented the testimony of Officer Lichtsinn, Jones, Detective Bartels, Fort Wayne Police Detective Ricky Alan Brumett, and Lyndsey Skipton, a forensic biologist. The State also presented and the court admitted multiple exhibits including a recording of the 911 call.

[8] After the State rested, Johnson's counsel moved for judgment on the evidence, and the court denied the motion. The jury found Johnson guilty of Counts I, III, and IV.[1] The jury also found he was an habitual offender.

[9] On March 24, 2023, the court began a sentencing hearing, but Johnson lunged at and spit on his defense counsel. After some discussion, the court scheduled the sentencing hearing for April 14, 2023, and stated that it wanted Johnson in a restraint chair and a spit mask at the next hearing. On April 14, 2023, the court held a sentencing hearing and stated that it was informed that Johnson refused to leave his cell. The court continued the hearing over the prosecutor's objection. On April 21, 2023, the court held a sentencing hearing and stated that it was "informed this morning again that Mr. Johnson is refusing to come out of his cell." Transcript Volume III at 192. The court stated that Johnson

[1] After some discussion regarding Count II, unlawful possession of a firearm by a serious violent felon as a level 4 felony, the court stated: "I understand the State's desire to amend its information to comport with the evidence, but I'm not gonna let you do that, I'm not sending count two back to the jury." Transcript Volume III at 162.

had "through the course of his pending case, has demonstrated repeated disrespect to the Court and the process, repeated disrespect to other people in the courtroom." *Id.* The court proceeded with the sentencing hearing. Johnson's counsel argued that "any significant sentence would, essentially, be a life term for Mr. Johnson," he "does have a dependent child, a seven-year old or eight-year old daughter at this point," and he had maintained employment while out of custody. *Id.* at 197. The court found the aggravating factors included Johnson's criminal record with failed efforts at rehabilitation and the presence of children under the age of eighteen during the commission of the offenses. The court also stated that it appreciated the proffered mitigating circumstances advanced by defense counsel but declined to find those to be mitigating circumstances. The court sentenced Johnson to consecutive sentences of thirty years for Count I enhanced by twenty years for his status as an habitual offender, five years for Count III, and five years for Count IV.

## Discussion

I.

[10] Johnson argues that the State failed to "provide sufficient evidence to prove the element of identification." Appellant's Brief at 10. He argues that the two victims, Tracee and Melissa, chose not to participate and refused to appear at trial. He asserts that Jones testified that she was not familiar with him. He also argues that police did not conduct a photo array with Jones to see if she could identify the shooter, Jones did not describe what the perpetrator was driving that day, she was not asked to provide a description of the perpetrator for the

jury, no witness identified him as the shooter "through an in-court identification or in a photo array," and no witness testified he fired a gun or kicked in the door. *Id.* at 12.

[11] When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh'g denied*. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* A conviction may be sustained on the uncorroborated testimony of a single witness or victim. *Baltimore v. State*, 878 N.E.2d 253, 258 (Ind. Ct. App. 2007), *trans. denied*. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Jordan*, 656 N.E.2d at 817.

[12] Elements of offenses and identity may be established entirely by circumstantial evidence and the logical inferences drawn therefrom. *Bustamante v. State*, 557 N.E.2d 1313, 1317 (Ind. 1990). Identification testimony need not necessarily be unequivocal to sustain a conviction. *Cherry v. State*, 57 N.E.3d 867, 877 (Ind. Ct. App. 2016), *trans. denied*. Inconsistencies in identification testimony impact only the weight of that testimony because it is the task of the trier of fact to weigh the evidence and determine the credibility of the witnesses. *Gleaves v. State*, 859 N.E.2d 766, 770 (Ind. Ct. App. 2007). As with other sufficiency matters, we will not weigh the evidence or resolve questions of credibility when determining whether identification evidence is sufficient to sustain a conviction. *Holloway v. State*, 983 N.E.2d 1175, 1178 (Ind. Ct. App. 2013).

[13] Jones testified that she observed Johnson running towards the house with a gun, she heard gunfire, and, after police arrived, the house was "smoky," "things were broken," "there was glass all over the floor," and the front door was kicked in and the glass in the door was broken. Transcript Volume II at 241. On direct examination, when asked for the name of the person "who did this," Jones answered: "Conelius Johnson." *Id.* at 242. Officer Lichtsinn testified that the front door "was locked when it was closed and it was forced open, because it's still in the locked position." Transcript Volume III at 8-9. He also testified that there appeared to be bullet holes from shots which appeared to be fired "towards the living room from the outside," a shell casing in front of the front door, and glass "all over the inside of the living room right there from where the front door was." *Id.* at 9. He testified that a photograph showed "at least three rounds of impact where a handgun was fired towards this direction from the front of the house." *Id.* at 10. He testified: "[I]t looks like the rounds were fired from the outside in because the holes were small; if you look here, they're bigger, because those are exit areas, which, through my training and experiences, leads me to believe that these rounds were fired from the outside of the house to the inside." *Id.* at 11-12. Detective Brumett testified that his experience suggested that a round was fired through the curtain "from the doorway or from the area of the doorway into the residence." *Id.* at 55-56. Skipton, the forensic biologist, testified that the DNA profile from seven cuttings of the curtain was "at least one trillion times more likely if it originated from Cornelius Johnson than if it originated from an unknown, unrelated

individual."[2] *Id.* at 80. Detective Bartels testified that he spoke with Tracee who told him that Jones saw Johnson coming up the sidewalk with a gun, the door was kicked in, and shots were fired. He testified that Tracee told him she retrieved her own firearm from her purse and fired one shot from behind the couch. He also testified that Tracee told him that she "came out from behind cover once he was outside," she went to the door and tried to close the door, and Johnson "continued to fire from outside the house and rounds were coming through the door and curtain from the outside." *Id.* at 38. During his conversation with Tracee, Detective Bartels learned that Johnson was continuing to call and send her text messages including a photograph of a wounded hand. The State also presented the recording of the 911 call in which Melissa identified Johnson as the person who vandalized her vehicle and shouted that he was returning and gunshots can be heard. Based upon the record, we conclude that evidence of probative value exists from which a trier of fact could have found Johnson guilty beyond a reasonable doubt.

II.

[14] Johnson argues that his sentence is inappropriate. He asserts that, "[a]lthough [his] sentence wasn't fully maxed out at sixty-two (62) years, he was given an

[2] Skipton testified that one trillion was not the actual number but she reports it as one trillion because "the real number is kind of difficult to say, and one trillion is a number that most individuals can conceptualize." Transcript Volume III at 80. When asked for the actual number, she answered: "Those seven areas, they all vary slightly; however, it is – one of them in particular, the seventh one, is 49 nonillion, which is 49 with 30 zeros behind it." *Id.* at 81.

aggregate sentence of sixty (60) years, implying that the Court . . . considered him as nearly the worst of the worst" and that this "implication is simply not supported by the evidence." Appellant's Brief at 14. He also asserts that the evidence showed he had one dependent child who would be negatively impacted by the sentence.

[15] Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[16] Ind. Code § 35-50-2-4.5 provides that a person who commits a level 2 felony shall be imprisoned for a fixed term of between ten and thirty years with the advisory sentence being seventeen and one-half years. Ind. Code § 35-50-2-6 provides that a person who commits a level 5 felony shall be imprisoned for a fixed term of between one and six years with the advisory sentence being three years. At the time of the offense, Ind. Code § 35-50-2-8(i) provided that the court shall sentence a person found to be an habitual offender to an additional

fixed term that is between six years and twenty years for a person convicted of a level 2 felony and that the additional term is nonsuspendible.[3]

[17] Our review of the nature of the offenses reveals that Johnson ran toward the home of Tracee and Melissa with a gun, forced open the locked front door while Jones's thirteen-year-old daughter and Tracee's daughter were in the home, fired shots into the home occupied by multiple persons, exited the house, continued to fire from outside the house, and later sent threatening messages to Tracee.

[18] Our review of the character of the offender reveals that the presentence investigation report ("PSI") indicates that Johnson, who was born in April 1975, refused to participate in the presentence investigation interview on March 9, 2023, and March 13, 2023. It also indicated that information was obtained from a prior presentence investigation report completed in September 2015. The PSI indicates that Johnson reported having a poor childhood and that he was physically abused by his mother and his mother's boyfriends. It states that Johnson reported that he and "Yolanda Perry, 29, Arizona," had two children and that he owed between $3,500 and $4,000 in arrearages. Appellant's Appendix Volume IV at 134. Johnson admitted to first using marijuana at age thirteen and using daily until an arrest in 2011 "when he claimed to quit,"

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[3] Ind. Code § 35-50-2-8(i) was amended, effective July 1, 2023, to provide that the court shall sentence a person found to be an habitual offender to an additional fixed term that is between eight and twenty years for a person convicted of a level 2 felony. Pub. L. No. 37-2023, § 2 (eff. July 1, 2023).

experimenting with cocaine and ecstasy when he was thirty-five years old and "using a couple times before quitting," and using "k2/spice daily from 2011 until 2014, when his rate of use decreased to two (2) or three (3) times per week, with his last use on May 9, 2015." *Id.* at 136.

[19] As a juvenile, Johnson was adjudicated a delinquent for acts that would constitute trespass and two counts of battery if committed by an adult. As an adult, Johnson has convictions for criminal conversion, carrying a handgun without a license, and resisting law enforcement as class A misdemeanors in 1993; disorderly conduct as a class B misdemeanor, criminal trespass as a class A misdemeanor, "Never Receiving a License" and minor consuming alcohol as class C misdemeanors, and robbery as a class B felony in 1994; burglary resulting in bodily injury as a class A felony and carrying a handgun without a license as a class C felony in 2001; false informing as a class B misdemeanor and domestic battery and two counts of resisting law enforcement as class A misdemeanors in 2008; check deception as a class A misdemeanor in 2009; strangulation and domestic battery as class D felonies and two counts of invasion of privacy as class A misdemeanors in 2011; possession of marijuana, hash oil, hashish, salvia, synthetic cannabinoid as a class A misdemeanor in 2013; and theft as a class D felony and battery with moderate bodily injury as a level 6 felony in 2015. *Id.* at 130. The PSI states that Johnson has had a suspended sentence revoked once, his probation revoked twice, and his home detention placement revoked twice. The PSI further provides that Johnson's

overall risk assessment score using the Indiana Risk Assessment System places him in the very high risk to reoffend category.

[20] After due consideration, we conclude that Johnson has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offenses and his character.[4]

[21] For the foregoing reasons, we affirm Johnson's convictions and sentence.

[22] Affirmed.

Riley, J., and Foley, J., concur.

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[4] To the extent Johnson asserts the trial court abused its discretion in sentencing him because it did not find the impact on a dependent child as a mitigator, we need not address this issue because we find that his sentence is not inappropriate. *See Chappell v. State*, 966 N.E.2d 124, 134 n.10 (Ind. Ct. App. 2012) (noting that any error in failing to consider the defendant's guilty plea as a mitigating factor is harmless if the sentence is not inappropriate) (citing *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007) (holding that, in the absence of a proper sentencing order, Indiana appellate courts may either remand for resentencing or exercise their authority to review the sentence pursuant to Ind. Appellate Rule 7(B)), *reh'g denied*; *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (noting that, "even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate"), *trans. denied*), *trans. denied*. Even if we were to address whether the court abused its discretion in sentencing him, we would not find his argument to be persuasive in light of the record. *See generally Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999) ("Many persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship.").

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