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**IN THE
COURT OF APPEALS OF INDIANA**

KENNEDY PERKINS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0601-CR-19

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0412-MR-11

October 31, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Kennedy Perkins appeals his convictions of murder and attempted murder following a bench trial, and seeks review of his aggregate eighty-year sentence. Perkins raises the following two issues, which we restate as follows: (1) whether the trial court properly admitted into evidence a handgun found in the ceiling of an apartment building's laundry room; and (2) whether the trial court properly ordered that Perkins serve his sentences for murder and attempted murder consecutively. Finding that the trial court properly admitted the handgun into evidence, and that it did not abuse its discretion in ordering Perkins to serve his sentences consecutively, we affirm.

Facts and Procedural History

During the hours spanning the night of November 20, 2004, to the early morning of November 21, 2004, Perkins, who was twenty years old at the time, James Thompson, Brian McFarland, and LaShawn Davis (Perkins's girlfriend) were driving around in Davis's vehicle smoking marijuana and drinking alcohol. Perkins and Thompson both had handguns with them. Perkins drove to an area known as "Miller" in Lake County, Indiana, and stopped the vehicle. Perkins and Thompson exited the vehicle, followed by McFarland. Perkins then shot Thompson several times, fatally wounding him. Perkins and McFarland returned to the vehicle, and Perkins drove for a few blocks. During this time, Perkins asked McFarland several times whether he was going to tell anyone about Perkins shooting Thompson. Although McFarland said that he would not tell anyone, Perkins eventually stopped the vehicle and told McFarland to get out of the vehicle and walk home. After McFarland exited

the vehicle, Perkins got out of the vehicle and shot McFarland several times. McFarland survived, but was seriously wounded and was in a coma for a few days.

In early December, police arrested Davis, who gave a statement indicating that the gun used to kill Thompson was in the ceiling of the laundry room at Perkins's father's apartment building. Police officers, without obtaining a warrant, went to the apartment building and found the gun. At trial, a firearms expert testified that the firing pin impressions on the shell casings found at the crime scene matched those on the cartridges the expert had fired from the weapon. Other evidence introduced against Perkins included a statement given by Perkins to police in which Perkins admitted shooting Thompson and McFarland, and the eyewitness testimony of Davis and McFarland.

The trial court found Perkins guilty of the murder of Thompson and the attempted murder of McFarland. At the sentencing hearing, the trial court found Perkins's prior felony conviction for pointing a firearm to be an aggravating factor and Perkins's young age to be a mitigating factor. The trial court found that the aggravating and mitigating factors balanced and imposed the presumptive sentence of fifty-five years for murder, and a twenty-five year sentence (five years less than the presumptive sentence) for attempted murder. The trial court ordered that the sentences be served consecutively based on the number of victims. Perkins now appeals.

Discussion and Decision

I. Suppression of Evidence

A. Standard of Review

This case comes to us following a bench trial and conviction, not as an interlocutory appeal from the trial court's denial of Perkins's motion to suppress. Therefore, the issue on appeal is whether the trial court erred in admitting the evidence obtained during the allegedly illegal search. See Washington v. State, 784 N.E.2d 584, 586-87 (Ind. Ct. App. 2003). We will reverse the trial court's ruling only when it has abused its discretion in admitting the evidence. Id. at 587. A trial court abuses its discretion if its decision is clearly contrary to the facts and circumstances before it. Id.

B. Admissibility of the Handgun

Perkins argues that the trial court erred in admitting the handgun into evidence because the evidence was obtained pursuant to a search that violated his Fourth Amendment right to be free from unreasonable searches and seizures.¹

The Fourth Amendment to the United States Constitution protects persons from unreasonable search and seizure, and the Fourteenth Amendment extends this protection to the states. Taylor v. State, 842 N.E.2d 327, 330 (Ind. 2006). The Fourth Amendment's primary purpose is to protect citizens' legitimate expectations of privacy in their persons, homes, and belongings. Id. The defendant bears the burden of demonstrating his or her legitimate expectation of privacy in the searched premises. Arcuri v. State, 775 N.E.2d 1095, 1100 (Ind. Ct. App. 2002), trans. denied. To determine if the defendant has a legitimate expectation of privacy in the premises searched, we look to whether the defendant can demonstrate control over or ownership of the searched premises. Id.

In Mays v. State, 719 N.E.2d 1263, 1266 (Ind. Ct. App. 1999), trans. denied, we held that the defendant had no legitimate expectation of privacy in an atrium of the apartment building in which the defendant lived. We noted that the entrance to the atrium was not locked and that tenants on the second floor used the atrium to gain access to their apartments. Similarly, the laundry room that the police searched in this case was not locked and was used by all the residents of Perkins's father's apartment building.² We hold that Perkins had no legitimate expectation of privacy in the laundry room and cannot challenge the constitutionality of the search. The trial court did not abuse its discretion in admitting the handgun.

II. Sentencing

A. Standard of Review

Whether to impose consecutive sentences is within the trial court's discretion, and we will reverse a trial court's decision to impose consecutive sentences only upon a showing of an abuse of that discretion. Hull v. State, 839 N.E.2d 1250, 1254 (Ind. Ct. App. 2005).

B. Imposition of Consecutive Sentences

Perkins argues that the trial court abused its discretion in ordering that Perkins serve his sentences consecutively because in its sentencing order the trial court stated, “[i]n regards to Count I and II, the court finds that the mitigating factor is equal to the aggravating factor.”

¹ Indiana citizens also have a state constitutional right to be free from unreasonable searches and seizures. However, Perkins does not raise a state constitutional argument.

² Apparently, Perkins was living with his father at the time of the search. If he was not actually living with his father, he would have no expectation of privacy in the laundry room or anywhere else in the apartment building.

Appellant's Appendix at 56. We agree that when the "trial court [finds] the aggravating and mitigating circumstances to be in balance, there is no basis on which to impose consecutive terms." Marcum v. State, 725 N.E.2d 852, 864 (Ind. 2000). However, in non-capital cases such as this, we do not limit our review to the sentencing order, but also look to the transcript of the sentencing proceedings. Walter v. State, 727 N.E.2d 443, 449 (Ind. 2000). At the sentencing proceeding, the trial court stated, "I believe the fact that there are two victims in this case and given the nature and circumstances of the event, there's no reason why a consecutive sentence should not be imposed." Sentencing Transcript at 14. The existence of multiple victims is a sufficient aggravating circumstance to warrant the imposition of consecutive sentences. French v. State, 839 N.E.2d 196, 197 (Ind. Ct. App. 2005), trans. denied.

It is clear from the sentencing transcript that the trial court based its decision to impose consecutive sentences on the fact that there were multiple victims. Its statement in the sentencing order that the aggravating and mitigating circumstances balance referred only to Perkins's age and prior criminal record, and was made for the purposes of explaining its decision to give Perkins the presumptive sentence for murder and a twenty-five year sentence for attempted murder. The better course would have been for the trial court to identify the existence of multiple victims as an aggravating circumstance in the sentencing order, and clearly indicate in the order that it imposed consecutive sentences based on this aggravating factor. However, it is clear from the sentencing transcript that the trial court found the multiple victims in this case to be an aggravating factor warranting the imposition of

consecutive sentences. Therefore, the trial court acted within its discretion in ordering Perkins to serve his sentences consecutively.

Conclusion

We hold that Perkins had no legitimate expectation of privacy in the laundry room in which the handgun was discovered and therefore the trial court acted within its discretion in admitting the evidence. We further hold that the trial court was within its discretion in ordering Perkins to serve his sentences consecutively based on the aggravating factor of multiple victims.

Affirmed.

SULLIVAN, J., and BARNES, J., concur.