



## Case Summary

Jerry Williams appeals his convictions for four counts of Class A felony criminal deviate conduct. We affirm.

### Issue

The sole issue before us is whether there is sufficient evidence to support Williams's convictions.

### Facts

The evidence most favorable to the convictions reveals that in the early morning hours of September 29, 2007, T.R. encountered three men on the street while walking home from a friend's house in Indianapolis. The three men introduced themselves as "Slim," "Little D," and "Shorty." Tr. p. 42. "Slim" was Williams, "Little D" was Dionne Stewart, and "Shorty" was William Baxter. T.R. did not tell the men her real name at this time. After making various comments to T.R., including telling her that she was "cute" and suggesting that they all "hang out" together, T.R. agreed to walk with the men in an opposite direction from her house. Id. at 41, 43.

Stewart then encouraged T.R. to ingest some cocaine, and she did so, after receiving assurances that it was "for free." Id. at 45. T.R. followed Stewart to a street between two abandoned houses, where he kissed her. After T.R. told Stewart that he was "moving too fast," Stewart unzipped his pants and demanded that T.R. touch his penis. Id. at 48. T.R. refused to do so and tried to start walking back to her house.

The three men followed after T.R., with Stewart or Baxter yelling that she was “bulls\*\*\*ing” and taking their “stuff.” Id. at 51. Williams, however, told T.R. that his friends were the ones “bulls\*\*\*ing.” Id. at 52. T.R. took this as a sign that Williams was taking her side over the other two men, and she felt comfortable enough to shake Williams’s hand and tell him her real name. After T.R. reiterated that she was going to walk home, Williams told her that he knew a shortcut to where she was headed.

The shortcut, however, led to an alley behind a garage. When T.R. and the three men reached that location, Williams said, “now.” Id. at 54. Stewart and Baxter grabbed T.R., and she threatened to scream and yell. Williams then told Stewart and Baxter, “Knock the b\*\*\*\* out.” Id. Stewart and Baxter began hitting T.R. on the back of her head, and she finally pleaded that she would “do anything” as long as they didn’t knock her out. Id. The men forcibly removed T.R.’s shirt and pants, and Williams announced that “he was going to go first.” Id. at 56. Williams then forced T.R. to perform oral sex on him until he ejaculated.

Stewart then forced T.R. to perform oral sex on him while Baxter had forcible vaginal intercourse with her. After a period of time, the two men switched positions. They also both forced their penises into T.R.’s anus during the attack.

While Stewart and Baxter were assaulting T.R., Williams stood about ten feet away and watched. At one point, T.R. begged Williams directly to “make it stop,” telling him that she was a mother and a human being. Id. at 62. Williams refused to take any action. After Stewart and Baxter ejaculated, Williams threw T.R. her jacket and said to

the other two men, “Come on.” Id. at 64. As they were leaving, Stewart took T.R.’s cell phone and keys from her and punched her in the face when she begged him not to take them.

T.R. eventually was able to find someone to call the police for her. DNA analysis revealed the presence of seminal fluid on T.R.’s clothes that matched the DNA of Stewart, Baxter, and Williams. T.R. also identified the three men as her attackers from photo arrays.

After amendment, the State charged Williams with five counts of Class A felony criminal deviate conduct, one count of Class A felony rape, one count of Class A felony robbery, and one count of Class C felony battery.<sup>1</sup> After a jury trial held on May 10-11, 2011, Williams was convicted of five counts of Class A felony criminal deviate conduct and one count of Class C felony battery; he was acquitted of the rape and robbery charges. At sentencing the trial court merged the battery conviction into one of the criminal deviate conduct convictions. Williams now appeals four of the five criminal deviate conduct convictions.

### **Analysis**

Williams challenges the sufficiency of the evidence supporting four of his convictions. When we review the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the

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<sup>1</sup> Stewart and Baxter were separately tried and convicted of numerous offenses. See Stewart v. State, No. 49A02-0905-CR-462 (Ind. Ct. App. Jan. 11, 2010); Baxter v. State, No. 49A02-0905-CR-461 (Ind. Ct. App. Feb. 16, 2010).

judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). “It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction.” Id. When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

With respect to Williams’s five convictions for criminal deviate conduct, he was charged as a principal for one of those offenses, by forcing T.R. to perform oral sex on him. Williams concedes that there is sufficient evidence to support that conviction. As for the other four counts of criminal deviate conduct, he was charged and convicted as an accomplice to forcible acts of oral and anal intercourse committed by Baxter and Stewart. Williams argues that there is insufficient evidence to support the conclusion that he aided Baxter and Stewart in the acts they committed.

Indiana Code Section 35-41-2-4 provides, “A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense . . . .” “In Indiana, the responsibility of a principal and an accomplice is the same.” Taylor v. State, 840 N.E.2d 324, 338 (Ind. 2006). Factors to be considered in determining whether a defendant aided another in the commission of a crime include: (1) presence at the scene of the crime; (2) companionship with another engaged in a crime; (3) failure to oppose the commission of the crime; and (4) the course of conduct before, during, and after the occurrence of the crime. Wieland v. State, 736 N.E.2d 1198, 1202

(Ind. 2000). Although a defendant's presence during the commission of the crime or his or her failure to oppose the crime are, by themselves, insufficient to establish accomplice liability, the trier of fact may consider them along with the factors above to determine participation. Id. Furthermore, accomplice liability applies to the contemplated offense and all acts that are a probable and natural consequence of the concerted action. Id. An accomplice need not participate in each and every element of a crime in order to be convicted of it. Townsend v. State, 934 N.E.2d 118, 127 (Ind. Ct. App. 2010), trans. denied.

There is ample evidence here from which the jury reasonably could have concluded that Williams aided Baxter and Stewart in their commission of criminal deviate conduct against T.R. When T.R. indicated that she was going to go home after her first interaction with Stewart, it was Williams who was friendly towards her and convinced her that he knew a purported shortcut to where she was headed. That shortcut, of course, turned out to be a trap for T.R. And Williams knowingly sprung it so that he and his companions could commit numerous heinous sexual acts against T.R. When T.R. threatened to scream, it was Williams who told Stewart and Baxter to knock her unconscious. After Williams completed his sexual act against T.R., he stood idly by and watched Stewart and Baxter repeatedly violate her and refused to do anything to stop them, even when T.R. begged him to do so. Williams did not have to contemplate or be positively certain as to precisely what sex acts his companions would perform upon T.R. in order to be liable for their commission of those acts. He clearly was much more than

an “innocent bystander” as to those acts, and there is sufficient evidence that he aided in their commission.

Williams also contends that there is insufficient evidence that Baxter had anal intercourse with T.R., so as to support Williams’s conviction for assisting Baxter in committing that act of criminal deviate conduct. Williams contends that T.R.’s trial testimony was unclear as to whether Baxter and Stewart, or only Stewart, had anal intercourse with her. It is true that T.R.’s recollection of that traumatic event was not always perfect, with respect to precisely what was being done to her by whom at any given moment. She initially testified that “either Little D or Shorty” had anal intercourse with her. Tr. p. 60. She then testified, however, with respect to the anal intercourse:

Q. And do you recall who did that first?

A. I don’t recall who did it first.

Q. Did the other one do it too?

A. Yes.

Id. at 61. This testimony indicates that both Stewart and Baxter had anal intercourse with her. Any inconsistencies or vagueness in T.R.’s testimony was a matter for the jury to consider in weighing her testimony. We will not second-guess its determination that there was sufficient evidence that Baxter had anal intercourse with T.R.

### **Conclusion**

There is sufficient evidence to support all five of Williams’s convictions for criminal deviate conduct. We affirm.

Affirmed.

BAKER, J., and VAIDIK, J., concur.