

Case Summary

Bronco L. Morgan (“Morgan”) appeals his conviction and sentence for Attempted Murder, a Class A felony.¹ We affirm.

Issues

Morgan presents two issues for review:

- I. Whether the admission of evidence that Morgan provided a false name to an investigating officer was fundamental error; and
- II. Whether Morgan’s fifty-year sentence is inappropriate.

Facts and Procedural History

During the early morning hours of June 17, 2008, Morgan and his half-brother, Craig Smith (“Smith”) were at a party at an apartment building in Elkhart. At some point, Morgan and Smith became involved in a physical altercation with a person called “Rat Boy.” (Tr. 400.) Smith held “Rat Boy” against a wall so that Morgan could strike him. Afterwards, “Rat Boy” left but announced that he “would be back.” (Tr. 401.) “Rat Boy” went into one of the nearby apartments and placed a call to his cousin, Varnell Dixon (“Dixon”).

Dixon arrived shortly thereafter and confronted Smith. Dixon shoved Smith and Smith struck Dixon in the face. Dixon “pulled his hand back behind him” and “started shooting.” (Tr. 339.) Smith was struck and killed by one of the bullets. Dixon fled.

Morgan rushed into an apartment which had a view of the street in front of the apartment building. Holding a gun, Morgan looked out the front window and said to Kevin

¹ Ind. Code §§ 35-42-1-1, 35-41-5-1.

Bush (“Bush”), “he must have went out the back.” (Tr. 484.) Morgan ran to the fire escape and emptied his gun. Dixon collapsed on the ground next to his vehicle.

Morgan returned to Bush’s apartment, handed Bush the gun, and directed him to dispose of it. Morgan told one of the party guests that he “got that m----- f-----“ because “he killed his brother.” (Tr. 405.)

Police officers responded to a 9-1-1 call reporting Smith’s death. During the initial investigation, Officer Jason Ray stepped onto the fire escape and heard someone gasping for air. His attention was drawn to a nearby parking lot. Officer Ray shined his flashlight in the area and found Dixon lying on the pavement, bleeding from a gunshot wound to his head.

Morgan was charged with Attempted Murder, and a jury found him guilty as charged. He was sentenced to fifty years imprisonment, with one year suspended to probation. He now appeals.

Discussion and Decision

I. Admission of Evidence

Morgan contends that the trial court erred in permitting Officer Christopher Bella to testify that Morgan had identified himself to Officer Bella as Jerod Smith, the brother of Craig Smith, and had claimed to have been in Chicago at the time of the shooting. Morgan argues that this testimony tends to establish his commission of a separate crime, that of false informing, in contravention of Indiana Evidence Rule 404(b). Because Morgan did not object at the time of Officer Bella’s testimony, his allegation is couched in terms of fundamental error. To be deemed fundamental, so as to allow an issue that is otherwise

waived to be raised on appeal, the error must be a substantial and blatant violation of basic principles that renders a trial unfair to a defendant. Townsend v. State, 632 N.E.2d 727, 730 (Ind. 1994).

The admission of evidence of uncharged bad conduct is constrained by Evidence Rule 404(b), which provides in relevant part as follows:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

Evidence of extrinsic offenses poses the danger that the jury will convict the defendant because he is a person of bad character generally, or has a tendency to commit crimes. Bassett v. State, 795 N.E.2d 1050, 1053 (Ind. 2003). The rationale for the prohibition against bad act and character evidence is “predicated upon our fundamental precept that every defendant should only be required to defend against the specific charges filed.” Oldham v. State, 779 N.E.2d 1162, 1173 (Ind. Ct. App. 2002), trans. denied.

To decide whether character evidence is admissible under Evid. R. 404(b), the trial court must: (1) determine whether the evidence of other crimes, wrongs or acts is relevant to a matter at issue other than the person’s propensity to engage in a wrongful act; and (2) balance the probative value of the evidence against its prejudicial effect pursuant to Indiana Evidence Rule 403. Bassett, 795 N.E.2d at 1053. As to the relevance determination, evidence is inadmissible if offered to prove the defendant’s propensity to commit the crime, but evidence of uncharged misconduct which is probative of the defendant’s motive and

which is “inextricably bound up” with the charged crime is properly admissible under Evidence Rule 404. Uteley v. State, 699 N.E.2d 723, 728-29 (Ind. Ct. App. 1998), trans. denied.

At the outset, we observe that Morgan’s statement to Officer Bella is not extrinsic to the charged crime. Morgan’s familial relationship to Craig Smith, whose death Officer Bella was then investigating, provides evidence of a motive for Dixon’s shooting. Moreover, Morgan’s false identification and denial that he was present represents an attempt to conceal or suppress evidence implicating him in Dixon’s murder. Evidence of an accused person’s “guilty knowledge” is relevant evidence. Johnson v. State, 472 N.E.2d 892, 910 (Ind. 1985). As such, evidence of attempts to conceal or suppress implicating evidence is admissible. See id. Accordingly, evidence that Morgan attempted to mislead Officer Bella was admissible for a purpose other than to merely show his propensity to engage in wrongful acts. Morgan has demonstrated no fundamental error.

II. Sentencing

Upon conviction of a Class A felony, Morgan faced a sentencing range of twenty years to fifty years, with the advisory sentence being thirty years. See Ind. Code § 35-50-2-4. He contends that his fifty-year sentence, with one year suspended to probation, is inappropriate.

Under Indiana Appellate Rule 7(B), this “Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the

offender.” In performing our review, we assess “the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008). A defendant ““must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.”” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

The nature of the offense is such that Morgan retaliated for his brother’s death by pursuing Dixon and shooting him in the head. The shooting took place at a parking lot where innocent bystanders were present, including a woman and her baby. Dixon survived the shooting, but remained in a vegetative state, with no consciousness or purposeful movement, by the time of trial. Morgan left Dixon gravely wounded and made no attempt to summon medical assistance, instead boasting that he had avenged his brother’s death. Morgan directed Bush to dispose of the gun and later gave false information to an investigating police officer.

As to the character of the offender, Morgan has been convicted of four prior felonies. His contacts with law enforcement include twenty-six arrests as an adult. He has violated probation, and has failed to appear as ordered on multiple occasions. He has maintained eight aliases and provided police officers with ten different birth dates and three different social security numbers. His reported employment history is extremely limited and he was not providing child support payments for his five children.

In sum, there is nothing in the nature of the offense or the character of the offender to persuade us that the fifty-year sentence is inappropriate.

Conclusion

Morgan has demonstrated no fundamental error in the admission of evidence. Additionally, he has not shown that his sentence is inappropriate.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.