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IN THE
COURT OF APPEALS OF INDIANA

ROBERTO S. CAMPOS,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 19A01-1008-CR-390
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE DUBOIS CIRCUIT COURT
The Honorable William E. Weikert, Judge
Cause No. 19C01-1002-FA-00034

March 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issues

Roberto Campos appeals his conviction and sentence for attempted murder, a Class A felony. For our review, Campos raises two issues: 1) whether the State presented sufficient evidence to sustain Campos's conviction for attempted murder; and 2) whether the advisory sentence of thirty years is inappropriate in light of the nature of the offense and Campos's character. Concluding sufficient evidence supports Campos's conviction for attempted murder and his sentence is not inappropriate, we affirm.

Facts and Procedural History

After finishing work for the day, Wilmer Romero consumed a couple of beers at his home and left to meet a friend at a bar in Huntingburg, Indiana. At the bar Romero drank more beers with Jose "Chepe" Serrano. After a period of time at the bar, Romero and Chepe decided to visit a friend, Jose "David" Crespin at David's trailer.

Sometime after Romero and Chepe arrived at David's trailer, Campos also arrived. Campos and Romero were familiar with one another and in the past had been involved in at least one confrontation that required police intervention. When Campos saw Romero at the trailer, he became enraged and attacked Romero with a knife. Campos and Romero wrestled and both fell backwards onto a couch. While wrestling on the couch, Campos managed to stab Romero in the chest. At this point, David intervened and took the knife away from Campos, but the struggle continued and Campos brandished a second knife. David also managed to take this knife away, the struggle soon ended, and Campos left the trailer immediately.

When Romero got up after the fight, the left side of his chest was bleeding from a stab wound. Romero covered the wound with a towel and decided to go home.

However, when Romero's wife saw the wound she called for an ambulance to take Romero to a hospital. Police arrived prior to the ambulance, and they questioned Romero about the wound. Romero did not tell the police what actually occurred until he was placed in the ambulance. Romero testified he thought death was imminent on his ride to the hospital.

Dr. Jason Vaughn evaluated Romero at Memorial Hospital and Healthcare Center in Jasper, Indiana. After administering a CAT scan, Dr. Vaughn found blood in between Romero's lung and chest, and also determined that Campos's knife was "a millimeter" away from puncturing Romero's lung. Transcript at 123. Dr. Vaughn testified that had Romero's lung been punctured, the injury would have been life-threatening. Dr. Vaughn also opined that even without puncturing the lung, the stab wound Romero suffered was potentially fatal.

As a result, the State charged Campos with attempted murder, a Class A felony, aggravated battery, a Class B felony, and battery by means of a deadly weapon, a Class C felony. A jury found Campos guilty as charged. The trial court sentenced Campos to thirty years in the Indiana Department of Correction.[1] Campos now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

Our supreme court has summarized our standard of review when assessing claims of insufficient evidence:

[1] The lesser-included counts were merged into the attempted murder conviction and Campos was sentenced only for the attempted murder conviction.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. 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. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations, citations, and footnote omitted) (emphasis in original).

B. Attempted Murder

To sustain a conviction for attempted murder, the State must prove beyond a reasonable doubt two elements: "First, the defendant must have been acting with a specific intent to commit the crime, and second, he must have engaged in an overt act which constitutes a substantial step toward the commission of the crime." Spradlin v. State, 569 N.E.2d 948, 949 (Ind. 1991) (emphasis in original) (quoting Zickefoose v. State, 270 Ind. 618, 622, 388 N.E.2d 507, 510 (1979)).

"Because intent is a mental state, we have noted that intent to kill may be inferred from the deliberate use of a deadly weapon in a manner likely to cause death or serious injury." Henley v. State, 881 N.E.2d 639, 652 (Ind. 2008). For instance, "firing a gun in the direction of an individual is substantial evidence from which a jury may infer intent to kill." Id. Likewise, our supreme court has held that use of a knife to multiple stab

wounds in a person's chest was sufficient evidence to support a finding of specific intent to kill. Johnson v. State, 622 N.E.2d 172, 174 (Ind. 1993).

In Johnson, two brothers began fighting each other after an argument. At some point during the fight, one brother took out a knife and stabbed the other four times; one stab wound was in the chest and missed the victim's heart by one-quarter inch. The Johnson court held the stabbing provided more than enough evidence "to support the jury's finding that at some point during the fight, the defendant determined to kill his brother." Id.

Here, Campos initiated the fight by attacking Romero with a knife. Similar to Johnson, Campos stabbed Romero in the chest, coming within one millimeter of puncturing Romero's lung. Additionally, after Campos stabbed Romero the first time and had his knife taken away, Campos attempted to stab Romero a second time with another knife he brandished from his jacket. Dr. Vaughn testified the injuries Romero suffered from the stabbing were potentially life-threatening.

Although we recognize the various witnesses at trial provided inconsistent testimony, it was for the trier of fact, here the jury, to assess the witnesses' credibility. The trier of fact is free to believe one part of a witness's testimony and disbelieve another part. Foulks v. State, 582 N.E.2d 374, 377 (Ind. 1991). We must decline Campos's invitation to reweigh the evidence or judge the credibility of the witnesses. Based on the foregoing, there is ample evidence in this case to support the jury's finding that Campos acted with the specific intent to kill Romero.

II. Inappropriate Sentence[2]

Campos was convicted of attempted murder, a Class A felony, and sentenced to thirty years in the Department of Correction. The advisory sentence for a Class A felony is thirty years, with a minimum sentence of twenty years and a maximum of fifty years. Ind. Code § 35-50-2-4.

A. Standard of Review

Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences. Childress v. State, 848 N.E.2d 1073, 1079-80 (Ind. 2006). This court has authority to revise a sentence "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." Ind. Appellate Rule 7(B). In determining whether a sentence is inappropriate, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied; see also McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) ("[I]nappropriateness review should not be limited . . . to a simple rundown of the aggravating and mitigating circumstances found by the trial court."). The burden is on the defendant to demonstrate that his or her sentence is inappropriate. Childress, 848 N.E.2d at 1080. "[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other

[2] Campos's appellate brief refers to our abuse of discretion standard of reviewing a trial court's sentencing decision, but he makes no argument to this effect. Campos's argument is limited to the inappropriateness of his sentence in light of the nature of his offense and his character. Thus, we limit our review accordingly.

factors that come to light in a given case." Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008).

B. Nature of the Offense

Campos's thirty-year sentence represents the advisory sentence for a Class A felony. See Ind. Code § 35-50-2-4. In reviewing the nature of the offense, it is clear that previous bad blood enraged Campos when he saw Romero, leading Campos to attack with a knife. Campos stabbed Romero in the chest during the fight. Despite having the knife taken away from him, Campos took out a second knife and attempted to stab Romero again, but due to David's intervention, was not successful. The offense also led to Romero writing a victim impact statement expressing concern that Campos continues to be a threat to him and his family. Campos makes no argument regarding the nature of the offense and we find the advisory sentence to be appropriate based on the violent nature of the crime.

C. Character of the Offender

At sentencing, the trial court reviewed Campos's criminal history and found his seven prior misdemeanors were an aggravating factor. The trial court also noted Campos violated the conditions of his pre-trial release for one of these misdemeanors by committing the current offense.

Campos's sole argument in defense of his character is that his misdemeanors were related to drugs and alcohol. The significance of a criminal history in assessing a defendant's character varies based on the gravity, nature, and number of prior offenses in relation to the current offense. Rutherford v. State, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Despite his prior offenses being unrelated to the instant crime, the number of his

prior convictions shows Campos is no stranger to the criminal justice system and has a propensity for criminal activity. The record shows Campos admitted to being "very drunk" the evening he stabbed Romero. Tr. at 225. Thus, Campos's pattern of alcohol-related offenses may increase his propensity for violent conduct. Campos also violated the conditions of his pre-trial release for one of his misdemeanors by committing the instant offense, again showing his proclivity for criminal behavior.

Additionally, Campos had been in altercations requiring police intervention in the past, showing his tendency toward violence. We also note the sentence Campos received was not enhanced by the trial court; instead Campos's sentence was the advisory sentence for attempted murder. The burden is on the defendant to persuade us that his sentence is inappropriate, Childress, 848 N.E.2d at 1080, and Campos has failed to do so.

Conclusion

We conclude that sufficient evidence supports Campos's conviction for attempted murder and that his sentence is not inappropriate.

Affirmed.

RILEY, J., and BROWN, J., concur.