



## **Case Summary**

James C. Ritenour, Jr. (“Ritenour”) appeals his conviction and eight-year sentence for attempted battery, as a class C felony<sup>1</sup>. We affirm.

### **Issues**

Ritenour raises two issues for our review, which we restate as:

- I. Whether sufficient evidence supports his conviction for attempted battery; and
- II. Whether his eight-year sentence is inappropriate in light of his character and the nature of his offense.

### **Facts and Procedural History**

Shena Ritenour (“Shena”) is Ritenour’s daughter-in-law. She and her husband, James Ritenour, III (“James”), moved in with Ritenour and his wife, Jane, in 2008, but Shena and Ritenour never got along. Ritenour often (sometimes three or four times a night), called Shena names such as “whore,” “lard ass,” “laboring slab of goo,” or “beast” and would ask her if she was “retarded.” Tr. 189, 268. Other times he would lecture her on how she needed “to woman up and be a mother, and take on responsibility.” Tr. 231.

On the evening of February 27, 2010, at around 9:30 p.m. when Shena was putting her son<sup>2</sup> to sleep, Ritenour called her to come out of her room. Shena went into the living room with her son, sat on the arm of a chair, and Ritenour angrily lectured her for ten minutes

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<sup>1</sup> Ind. Code §§ 35-41-5-1, 35-42-2-1(a)(3); App. p. 21.

<sup>2</sup> Shena and James had one son together, born on June 23, 2009.

about her not having a job. Ritenour then got up, took Shena's son out of her hands, and handed him to James, who had been drinking beer since noon. That night, Shena observed Ritenour drink at least one gallon jug of vodka and grapefruit juice of his typical two.

Ritenour stood between one and one and one-half feet away from Shena, pulled out a handgun, and asked her if she had ever said negative things about his family. Shena said no and Ritenour pointed the gun at her left foot and fired, but missed. He then brought the gun up to her head, asked her again if she ever talked negatively about him or his family, and again she told him no. In response, Ritenour and James called her a "lying whore" and Ritenour told James to go into the kitchen. Tr. 191. Ritenour then sat on the living room couch, about ten feet away from Shena and again asked her if she had ever said negative things about his family. Again she said no, and Ritenour shot at her left side, but again missed. Shena, now hysterical, cried, shook, and pleaded with Ritenour to stop.

At this point James entered the living room and attempted to hit Shena, but Ritenour stopped him and told him to go back in the kitchen. Ritenour then retrieved a shotgun from a closet, came back to the living room, handed Shena his handgun, and said, "Let's see who can be faster." Tr. 191. Shena put the handgun in the seat of the chair. Ritenour repeatedly told her to pick it up, but Shena refused.

Ritenour eventually stopped asking and went back to his weapons closet. He returned with a large knife, described by Shena as a "miniature sword," and retrieved another knife from a cabinet above the television. Tr. 192. He then said to Shena, "Let's see who can be better with these" and laid the large knife in her lap. Tr. 192. Shena again refused the

challenge, so Ritenour took out a pocketknife and suggested that she could do better with it than any other knife. He said that “[a]ll it would take was one slash” and placed the knife up to her neck. Tr. 192. Ritenour then quit and told his wife to hand Shena her son, stating, “Give the heathen to the beast.” Tr. 192. As Ritenour watched, James beat Shena, tried to gouge her eyes out, pulled her hair, and attempted to strangle her while she was holding her son, all of which left her with a black and bloodshot eye, bruises on her arm, stomach, and legs, and marks on her neck and elbows.

For the next three days, Shena was not allowed to leave the house by herself. At one point she heard Ritenour and James discussing what to do if anyone asked about her injuries, and they decided to blame it on Jane. On March 2, Shena was sent out by bike to find a job. While out, Shena ran into some friends, one of whom called the police. Officers came and interviewed Shena, and called for an ambulance. The officers then went to Ritenour’s home, executed a search warrant, and found a bullet hole in the wall and in the floor, a closet containing various guns and knives, and a handgun in the kitchen.

The police arrested Ritenour and charged him with attempted voluntary manslaughter, possession of marijuana, attempted aggravated battery, and attempted battery. A trial was held, and the jury found Ritenour guilty of possession of marijuana, attempted battery, and the lesser included offense of criminal recklessness. The judge entered judgment of conviction on the possession of marijuana and attempted battery offenses, and sentenced Ritenour to one year in Starke County Jail for possession of marijuana and eight years in the Department of Correction for attempted battery, with the sentences to run concurrently. He

now appeals.<sup>3</sup>

## **Discussion and Decision**

### **I. Sufficiency of the Evidence**

Ritenour challenges the sufficiency of the evidence supporting his conviction for attempted battery, as a Class C felony. When reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh evidence. Id. We will affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). “The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” Id. (quoting Pickens v. State, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001)).

In order to convict Ritenour of Attempted Battery as a Class C felony as charged, the State had to prove beyond a reasonable doubt that he (1) engaged in the commission of a substantial step toward (2) knowingly or intentionally (3) touching Shena (4) in a rude, insolent or angry manner (5) by means of a deadly weapon. See App. p. 21; I.C. §§ 35-41-5-1, 35-42-2-1(a)(3); Stewart v. State, 866 N.E.2d 858, 864 (Ind. Ct. App. 2007). Ritenour “intentionally” engaged in conduct if, when he engaged in the conduct, it was his conscious objective to do so. See I.C. § 35-41-2-2(a). Ritenour “knowingly” engaged in conduct if, when he engaged in the conduct, he was aware of the high probability that he was doing so.

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<sup>3</sup> Ritenour does not challenge his conviction or sentence for the marijuana offense.

See I.C. § 35-41-2-2(b). Thus, “[t]he requisite culpability for attempted battery with a deadly weapon exists if the defendant’s conscious objective is to shoot another person, or where the defendant is at least aware of a high probability that, by his or her conduct of shooting, one of the bullets would strike another person.” Stewart, 866 N.E.2d at 864. “Firing a gun at another but fortuitously missing the target is an attempted battery.” McEwen v. State, 695 N.E.2d 79, 88 (Ind. 1998).

Here, Shena testified that Ritenour pulled out a handgun, angrily asked her whether she spoke negatively about his family, and then fired at her left foot from a close distance. Shena also testified that Ritenour again fired at her, this time from ten feet away. Thus, even if Ritenour did not intend to hit Shena, the jury could infer that he was aware of a high probability that that he would do so from the fact that he twice aimed his handgun at her and shot from close distances. See Matthews v. State, 476 N.E.2d 847, 850 (Ind. 1985) (“[T]he intent to commit battery may be inferred from the deliberate use of a deadly weapon in a manner calculated to strike another person”). Moreover, when police officers executed a search warrant on Ritenour’s home, they found bullet holes in the floor and the wall in the approximate area where Ritenour was alleged to have fired his gun, as well as a handgun and several other weapons. Thus, the State presented sufficient evidence to convict Ritenour of attempted battery. His arguments to the contrary, highlighting the lack of ballistic tests and conflicting testimony, amount to an invitation to reweigh the evidence, which we will not do. Drane, 867 N.E.2d at 146.

## II. Sentence

Ritenour next argues that his eight-year sentence is inappropriate, and asks us to revise it pursuant to Indiana Appellate Rule 7(B). In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a 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. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to “leaven the outliers.” Id. at 1225. “Whether 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 factors that come to light in a given case.” Id. at 1224.

The sentencing range for a Class C felony runs between two years and eight years, with an advisory sentence of four years. I.C. § 35-50-2-6. The trial court sentenced Ritenour to eight years, the maximum term. He now asks that we revise his sentence down to the

advisory term of four years.

The character of the offender is such that he carried on a campaign of verbal abuse against the victim in the form of name calling and lectures while she was living in his house. Ritenour also threatened Shena by warning that if she ever told the police about anything that went on in his house, he would kill her and her parents, and he did not let Shena call her parents while she was in his house. Moreover, after his attempted battery, Ritenour watched as his son beat Shena. He has a criminal history that includes Public Intoxication in 1996 and Intimidation in 1997. Ritenour does not think that he has a problem with drugs or alcohol, but he considers himself a heavy drinker and admits to using cocaine, Darvocet, heroin, LSD, marijuana, methadone, opium, Oxycontin, Valium, Vicodin, and Xanax.

The nature of the offense is such that, after drinking significant amounts of alcohol, Ritenour angrily lectured and yelled at Shena before he twice shot at her from close distances while her infant son was nearby. Between these shots, he held a handgun to the victim's forehead, and, after not receiving the answer he wanted, called her a "lying whore." After his second shot and while Shena was crying and hysterical, Ritenour challenged her to a duel with guns, and, when she declined, to a duel with knives, eventually placing one near her throat and stating "[a]ll it would take was one slash." Tr. 192. Ritenour then called her another name and watched as his son beat her with her son in her arms. Later, Ritenour and James would conspire to place the blame for the entire incident on Jane if anyone asked questions. When initially questioned by the police, Ritenour denied even owning firearms.

Ritenour argues that "there was nothing particularly egregious" about his conduct

beyond that necessary to establish a Class C felony. Appellant's Br. p. 8. We disagree. Ritenour's crime was more than a mere attempt at battery; he engaged in a drawn-out campaign of intimidation of Shena utilizing guns and knives in the presence of family members after drinking significant amounts of alcohol. Under these circumstances, we do not think his eight-year sentence is inappropriate.

### **Conclusion**

The State presented sufficient evidence to convict Ritenour of attempted battery. His sentence, although the maximum allowed under statute, is not inappropriate given the nature of his offense and his character.

Affirmed.

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