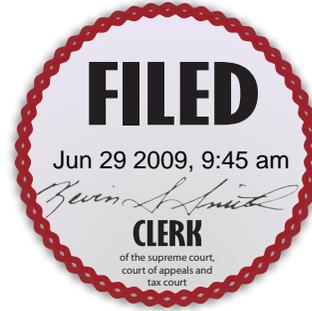


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DARIUS T. BLOCH,  
Appellant- Defendant,

vs.

STATE OF INDIANA,  
Appellee- Plaintiff,

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No. 20A03-0903-CR-96

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APPEAL FROM THE ELKHART CIRCUIT COURT  
The Honorable Terry C. Shewmaker, Judge  
Cause No. 20C01-0703-FB-21

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**June 29, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

### Case Summary and Issues

Following a jury trial, Darius Bloch appeals his convictions and sentence for attempted robbery, a Class B felony; auto theft, a Class D felony; and receiving stolen property, a Class D felony. On appeal, Bloch raises two issues, which we restate as 1) whether sufficient evidence supports Bloch's attempted robbery and receiving stolen property convictions and 2) whether Bloch's sentence is inappropriate in light of the nature of the offenses and his character. Concluding that sufficient evidence supports Bloch's attempted robbery conviction and that his sentence is not inappropriate, but that insufficient evidence supports Bloch's receiving stolen property conviction, we affirm in part, reverse in part, and remand with instructions for the trial court to vacate Bloch's receiving stolen property conviction.

### Facts and Procedural History

Bloch's convictions are based on two separate incidents that occurred in Elkhart County. In the first, on the morning of March 15, 2007, Bloch, then sixteen years old, stole a woman's vehicle when she left it running outside her sister's house. Officer Marvin Johnson of the Elkhart City Police Department saw Bloch exiting the vehicle later that morning. When Officer Johnson approached in his marked police vehicle, Bloch fled. Unable to catch Bloch, Officer Johnson checked the vehicle's identification number, confirmed it was stolen, and began searching it. The search resulted in the seizure of a handgun, which was subsequently determined to have been stolen from an Elkhart firearms retailer in September 2006. Bloch subsequently admitted to another police officer investigating the case that he stole the vehicle and that he discovered the

handgun in a parking lot, though the record does not state precisely when the discovery occurred.

The second incident occurred five days later; four men, one of whom was later identified as Bloch, entered a bank with firearms drawn, told several bank employees to “get on the floor,” and told the bank manager to open the vault. Transcript of Trial at 71. No money was taken, however, because the robbers fled shortly after arriving, apparently in response to their lookout driver honking the getaway vehicle’s horn. While the robbers were fleeing, the bank manager heard one of them tell an accomplice, “Come on, Darius, let’s go.” Id. at 74.

Bloch was apprehended some time after the bank robbery, the record is not entirely clear when, and the State charged him with attempted robbery, a Class B felony,<sup>1</sup> based on the March 20th incident, as well as receiving stolen property, a Class D felony, and auto theft, a Class D felony, based on the March 15th incident. On October 27 and 28, 2008, the trial court presided over a jury trial, during which the jury heard testimony from the woman whose car was stolen, Officer Johnson, and several of Bloch’s alleged accomplices, among others. Based on this evidence, the jury found Bloch guilty as charged, and the trial court entered judgments of conviction on all counts. On November 20, 2008, the trial court entered a sentencing order, finding that Bloch’s juvenile offender history, use of a stolen vehicle to commit the robbery, and abuse of drugs since age eleven were aggravating circumstances and that his age (Bloch was seventeen at the time of sentencing), family support, and addiction to drugs were mitigating circumstances.

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<sup>1</sup> The attempted robbery was charged as a Class B felony because the State alleged Bloch committed the offense while armed with a deadly weapon. See Ind. Code § 35-42-5-1.

The trial court concluded that “any one of the aggravators taken individually or all of them taken as a whole outweigh the mitigators warranting the imposition of an enhanced sentence.” Appellant’s Appendix at 118. Accordingly, the trial court sentenced Bloch to sixteen years for Class B felony attempted robbery, with two years suspended to probation; one and one-half years for Class D felony auto theft, all executed; and one and one-half years for Class D felony receiving stolen property, all executed. The trial court also ordered that Bloch serve the latter two sentences concurrently with each other, but consecutive to his sentence for attempted robbery, resulting in an aggregate sentence of seventeen and one-half years, with two of those years suspended to probation. Bloch now appeals.

### Discussion and Decision

#### I. Sufficiency of Evidence

Bloch argues insufficient evidence supports his attempted robbery and receiving stolen property convictions. We will address the sufficiency of the evidence supporting each conviction in turn, but first note that in reviewing such challenges, we do not reweigh evidence or judge witness credibility. Perez v. State, 872 N.E.2d 208, 213 (Ind. Ct. App. 2007), trans. denied. Instead, our review is limited to “whether a reasonable juror could have found the existence of each of the elements of the crime charged beyond a reasonable doubt.” Smith v. State, 636 N.E.2d 124, 126 (Ind. 1994). In conducting this review, we consider only the evidence most favorable to the verdict, as well as the reasonable inferences drawn therefrom. Id.

### A. Attempted Robbery

To convict Bloch of attempted robbery as a Class B felony, the State had to prove beyond a reasonable doubt that Bloch, either as an accomplice or directly, and while armed with a deadly weapon, intentionally took a substantial step toward taking property from the bank employees by putting any person in fear. See Ind. Code §§ 35-41-2-4, 35-41-5-1, and 35-42-5-1. Bloch does not dispute that the four men who entered the bank on March 20, 2007, attempted to rob it; instead, he contends there was insufficient evidence for the jury to conclude he was one of those men.

It is well-established that the uncorroborated testimony of a single eyewitness may be sufficient to sustain a conviction. See Toney v. State, 715 N.E.2d 367, 369 (Ind. 1999); Greenlee v. State, 463 N.E.2d 1096, 1097 (Ind. 1984); Jones v. State, 253 Ind. 480, 483, 255 N.E.2d 219, 221 (1970). In that regard, Travis Beamon, one of the four men who entered the bank,<sup>2</sup> testified that Bloch entered with him and the other two and was armed with a gun. Bloch attempts to sidestep this testimony by noting it was not elicited live to the jury. We acknowledge Beamon's testimony was presented to the jury in an unusual manner, but to understand why it was presented in such a manner, some additional background is in order.

Beamon had apparently made a prior sworn statement implicating Bloch in the attempted robbery. Due to some reluctance in answering during his direct examination, the prosecutor asked to treat Beamon as a hostile witness. The trial court granted the request, but dismissed the jury before the prosecutor proceeded. In the ensuing

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<sup>2</sup> At the time of Bloch's trial, Beamon had already been convicted of attempted robbery based on the same incident.

examination, the prosecutor elicited direct testimony from Beamon that implicated Bloch in the attempted robbery; that is, testimony that was consistent with his prior statement. Bloch then cross-examined, the prosecutor redirected, and the trial court adjourned for the day. The following morning, the trial court presented Beamon's testimony to the jury by reading a transcript, with the parties' counsel reading their respective questions and an employee from the prosecutor's office reading Beamon's answers.

Although it is not entirely clear from the record, the trial court apparently employed this procedure because it anticipated, in light of Beamon's initial reluctance, that he would refuse to answer questions despite the trial court's order to do so and thereby be held in contempt. Had Beamon's examination unfolded in such a manner, the prosecutor presumably could have established his unavailability pursuant to Indiana Evidence Rule 804(a), which in turn would have permitted the prosecutor to introduce Beamon's prior statement as substantive evidence pursuant to the statement-against-interest exception, Indiana Evidence Rule 804(b)(3), assuming of course that Beamon implicated himself in his prior statement.

We offer the foregoing simply as an explanation of the trial court's decision to examine Beamon in the absence of the jury. Although we suspect it would have been preferable for the trial court to have proceeded in the jury's presence,<sup>3</sup> it does not follow that Bloch's argument – that the trial court's procedure was somehow flawed because Beamon's testimony was not live – has merit. Bloch does not direct us to any authority

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<sup>3</sup> Assuming our explanation is an accurate description of the trial court's thinking on the matter, Beamon either would have refused to testify, in which case he would have been held in contempt and the State would have moved to admit his prior statement as substantive evidence, or, as actually occurred, testified consistently with his prior statement. We do not see the harm in allowing the jury to see the events unfold in either case. Particularly with regard to the latter instance, instead of recreating the testimony from a transcript, live testimony would have given the jury the added benefit of observing Beamon's facial gestures and other non-verbal conduct.

proscribing the trial court's procedure or otherwise indicating it is erroneous. Moreover, as the State points out, far from objecting to this procedure, Bloch participated by having his counsel cross-examine Beamon. As such, Beamon's testimony, though presented in an unusual manner to the jury, was presented nonetheless, and Bloch offers nothing to support his argument. And because the uncorroborated testimony of a single eyewitness, if credited, permits a finding of guilt beyond a reasonable doubt, it follows that sufficient evidence supports Bloch's attempted robbery conviction.

#### B. Receiving Stolen Property

To convict Bloch of receiving stolen property as a Class D felony, the State had to prove beyond a reasonable doubt that Bloch knowingly or intentionally received, retained, or disposed of the handgun discovered in the stolen vehicle, while knowing that the handgun was the subject of a theft. See Ind. Code § 35-43-4-2(b); Barnett v. State, 834 N.E.2d 169, 172 (Ind. Ct. App. 2005). Bloch argues the evidence is insufficient to support his conviction because there is "an absolute failure of proof" regarding whether he knew the handgun was stolen. Appellant's Brief at 5. The State counters that a reasonable juror could have inferred knowledge based on Officer Johnson's testimony that Bloch ran from the stolen vehicle (and thereby the handgun; it was found in the vehicle's glove compartment) and based on opinion testimony from another officer that stolen handguns are "sometimes" purchased on the black market because such purchasers are unable to acquire them legally. Appellee's Brief at 11.

Like most crimes, receiving stolen property can be proved by circumstantial evidence alone. See Adkins v. State, 532 N.E.2d 6, 8 (Ind. 1989). This standard of proof

in instances of theft is known as the “unexplained possession” rule; it states that “unexplained possession of recently stolen property provides support for an inference of guilt of theft of that property.” Allen v. State, 743 N.E.2d 1222, 1230 (Ind. Ct. App. 2001), trans. denied. However, where, as here, the charge pertains to receiving stolen property, the State is also required to prove “additional circumstances which support an inference that the accused knew that the property was stolen.” J.B. v. State, 748 N.E.2d 914, 918 (Ind. Ct. App. 2001).

Three of the rule’s key terms are worth describing in further detail. First, in determining whether possession was recent, a reviewing court considers

not only the length of time between the theft and the possession but also the circumstances of the case (such as defendant’s familiarity or proximity to the property at the time of the theft) and the character of the goods (such as whether they are readily salable and easily portable or difficult to dispose of and cumbersome).

Allen, 743 N.E.2d at 1230 (quoting Morgan v. State, 427 N.E.2d 1131, 1133 (Ind. Ct. App. 1981)). However, “[w]here the length of time between the crime and the possession is short, that fact itself makes the possession recent.” Id. Second, possession is “‘unexplained’ when the trier of fact rejects the defendant’s explanation as being unworthy of credit.” Id. Finally, “additional circumstances include ‘attempts at concealment, evasive or false statements, or an unusual manner of acquisition.’” J.B., 748 N.E.2d at 916 n.2 (quoting Gibson v. State, 643 N.E.2d 885, 888 (Ind. 1994)).

Regarding whether Bloch’s possession was recent, the State introduced evidence that the handgun was stolen on either the evening of September 7, 2006, or the early morning hours of September 8th. Coupling this evidence with Officer Johnson’s

discovery of the handgun on March 15, 2007, there is a period of slightly over six months between the theft of the handgun and the first instance where Bloch was observed in possession of it.

The State's failure to present evidence that Bloch was in possession of the handgun prior to March 15th is fatal to its case. In the absence of such evidence, any finding that Bloch possessed the handgun prior to that date (for example, within twenty-four hours of the theft, which in turn would typically qualify as "recent" for purposes of applying the unexplained possession rule, see Allen, 743 N.E.2d at 1231 n.11) would be based more on speculation than reasonable inference. Morgan supports our conclusion. In that case, a panel of this court concluded as a matter of law that the defendant's possession of a handgun was not recent for purposes of applying the unexplained possession rule because the period of two and one-half weeks between the theft and defendant's possession was "not short" and because handguns are "easily portable and readily transferable." 427 N.E.2d at 1134. If a period of two and one-half weeks is insufficiently short for a defendant's possession of a handgun to be considered recent, then *a fortiori* a period of slightly over six months is not recent.

Because the evidence does not establish that Bloch's possession of the handgun was recent, the jury was precluded from applying the unexplained possession rule to infer Bloch's guilt. Accordingly, insufficient evidence supports Bloch's receiving stolen property conviction, and we instruct the trial court to enter an order vacating this conviction.

## II. Appropriateness of Sentence

Bloch argues his sentence is inappropriate. 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). We may “revise sentences when certain broad conditions are satisfied,” Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005), and recognize the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed,” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). In determining whether a sentence is inappropriate, we examine both the nature of the offenses and the character of the offender. Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When making this examination, 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. In conducting this review, however, the burden is on the defendant to demonstrate that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The trial court sentenced Bloch to sixteen years for Class B felony attempted robbery, with two years suspended to probation and one and one-half years for Class D felony auto theft, all executed.<sup>4</sup> Ordering these sentences to be served consecutively, Bloch received an aggregate sentence of seventeen and one-half years, with two of those years suspended to probation. See Weaver v. State, 845 N.E.2d 1066, 1072 n.4 (Ind. Ct. App. 2006) (explaining that a defendant’s total sentence includes both the executed and

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<sup>4</sup> In light of our conclusion in Part I.B. above that insufficient evidence supported Bloch’s receiving stolen property conviction, we omit discussion of his sentence for that offense.

suspended portion of a sentence). Indiana Code section 35-50-2-5 states, “A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.” Thus, Bloch effectively received a sentence slightly below the Class B felony statutory maximum for his crimes.

Regarding the nature of the offenses, there is nothing in the record to indicate the auto theft was more egregious than is typical. The attempted robbery, however, is a different story. The evidence indicated the attempted robbery was a fairly well-planned, albeit poorly executed, scheme that included two accomplices casing the bank prior to the robbers’ entry, as well as another accomplice setting a building across town on fire in an attempt to divert the police and thereby increase the robbers’ chances of making a successful getaway. The trial court described the plan as “[u]nbelievably elaborate,” transcript of sentencing at 35, and we agree the calculated nature of Bloch’s offense makes it more egregious than a typical attempted robbery. Cf. Angleton v. State, 714 N.E.2d 156, 160 (Ind. 1999) (concluding trial court did not abuse its discretion when it found that the nature and circumstances of the crime were aggravating because the offense was “calculated and cold-blooded”), cert. denied, 529 U.S. 1132 (2000); Willsey v. State, 698 N.E.2d 784, 796 (Ind. 1998) (concluding defendant’s sentence was not manifestly unreasonable in part because the nature of the offense demonstrated “manipulative and calculating behavior” on defendant’s part).

Regarding Bloch’s character, although the instant offenses are his first adult convictions, we cannot overlook that he has amassed a significant juvenile offender

history in a relatively short period of time. In four separate incidents from approximately March 2004 to November 2005, Bloch has been adjudicated delinquent on true findings of residential entry, visiting a common nuisance, and two counts of battery. To use the State's words, "[t]he majority of [these] crimes are either property crimes or violent crimes, which make them very similar in nature to the instant offenses." Appellee's Br. at 13. We also note that Bloch's true finding of residential entry coupled with the attempted robbery conviction in the instant case suggests he has graduated to more serious criminal conduct. Bloch's juvenile history therefore comments very negatively on his character.

Bloch contends his addiction to drugs, family support, and youth offset his juvenile history. The trial court acknowledged that the former two were mitigating circumstances, but they generally are of marginal weight. See Kincaid v. State, 839 N.E.2d 1201, 1206 n.6 (Ind. Ct. App. 2005) (concluding trial court did not abuse its discretion when it concluded defendant's family support was not a significant mitigating circumstance); Iddings v. State, 772 N.E.2d 1006, 1018 (Ind. Ct. App. 2002) (indicating that a history of substance abuse may constitute an aggravating circumstance), trans. denied. As to Bloch's youth, our supreme court has noted that young age as a mitigator depends on the facts and circumstances of each case because "[t]here are both relatively old offenders who seem clueless and relatively young ones who appear hardened and purposeful." Monegan v. State, 756 N.E.2d 499, 504 (Ind. 2001). Bloch's lengthy juvenile offender history indicates his youth does not comment particularly favorably on

his character. If anything, and notwithstanding the trial court's finding that his age was a mitigating circumstance, Bloch appears hardened and purposeful.

The burden was on Bloch to demonstrate that his sentence of seventeen and one-half years was inappropriate in light of the nature of the offenses and his character. After due consideration of the record, and particularly the calculating nature of the offenses and Bloch's extensive juvenile offender history, we are not convinced Bloch has carried his burden. Accordingly, we conclude Bloch's sentence is not inappropriate.

#### Conclusion

Sufficient evidence supports Bloch's attempted robbery conviction, and Bloch's sentence is not inappropriate in light of the nature of the offenses and his character. However, because insufficient evidence supports Bloch's receiving stolen property conviction, we reverse that conviction and remand to the trial court.

Affirmed in part, reversed in part, and remanded with instructions.

BAILEY, J., concurs.

DARDEN, J., concurs in result.