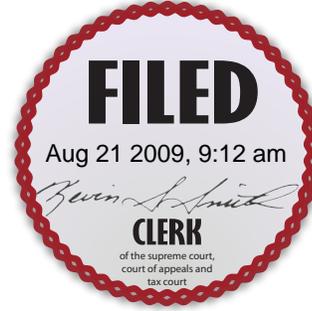


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CORDERO LOVE,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 71A04-0904-CR-222

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-0809-FB-128

August 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Cordero Love appeals his conviction and sentence for Robbery, as a Class B felony.¹ We affirm.

Issues

Love raises three issues on appeal:

- I. Whether there is sufficient evidence to support his conviction;
- II. Whether the trial court abused its discretion in determining Love's juvenile history was an aggravator based on the evidence in the record; and
- III. Whether his sentence was inappropriate.

Facts and Procedural History

At approximately 10 p.m. on September 27, 2008, Michael Osysko was driving his white 1999 Ford Explorer towards his residence when he noticed three young men, possibly teenagers, on two bicycles. When Osysko was parallel parking his car, the same three individuals rode up beside his car and motioned for Osysko to roll down his window. Osysko obliged, answered a question posed by the individuals and rolled up his window as the three individuals appeared to ride down the street. However, as Osysko exited his car and walked around the front of the car to the passenger side, the three males walked from behind the Explorer, one holding a gun pointed at Osysko. The males demanded that Osysko empty his pockets. Osysko handed over his keys, cell phone and cash. One of the males tried to figure out which key started the car, but finally had to ask Osysko. With the car started, two

¹ Ind. Code § 35-42-5-1.

of the males drove away in Osysko's car, smashing it into another car, while the third rode off on one of the bicycles.

Osysko immediately called the police to report the incident. South Bend Police Officer Joseph Stitsworth responded to the location within five minutes of the dispatch. The description of Osysko's vehicle, a white two-door Ford Explorer with Ohio license plates and an American flag in the back window, was broadcast over the local police radio. While speaking with Osysko, Officer Stitsworth heard over the police radio that another officer located the stolen vehicle. Officer Stitsworth then transported Osysko to the local gas station where the vehicle and occupants, two young males and one female, had been detained. When asked if the two male occupants of the car were those who took his car, Osysko indicated that he was "pretty sure" that the individuals had the same body types and similar clothing but that he could not be one hundred percent sure because his attention was focused on the gun during the incident. However, Osysko identified the black Kyocera cell phone, found in Love's shorts pocket, as the one taken from him.

On September 30, 2008, the State charged Love with Carjacking, a Class B felony,² and Robbery, as a Class B felony. A jury found Love guilty as charged. For double jeopardy purposes, the trial court only entered a conviction for Robbery and dismissed the other count. Love was sentenced to ten years imprisonment.

Love now appeals.

² Ind. Code § 35-42-5-2.

Discussion and Decision

I. Sufficiency of Evidence

First, Love contends that there is insufficient evidence that he was one of the three individuals that committed the robbery. Our standard of review for insufficiency claims is as follows:

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) (citations and quotations omitted).

Love concedes that there is sufficient evidence to support that a robbery occurred, but he contends that there was “little evidence to suggest that [he] was involved in the crime whatsoever.” Appellant's Br. at 5. While Osysko was not one hundred percent certain that the two males were the ones who took his car while pointing a gun at him, Love was in the driver's seat of the stolen vehicle and in possession of the stolen phone when apprehended. Furthermore, the apprehension occurred within a short time of the incident³ and within a

³ Osysko testified that he was taken to identify the suspects within twenty to thirty minutes of the incident.

short distance from Osysko's residence.⁴ Additionally, the bicycle left at the scene was identified as belonging to the other male occupant of the stolen car. "The mere unexplained exclusive possession of recently stolen property" will sustain a conviction of theft, robbery or burglary, especially where the lapse of time between the time of the crime and arrest is not considerable. Shelby v. State, 875 N.E.2d 381, 385 (Ind. Ct. App. 2007), trans. denied. The evidence is sufficient to sustain the conviction.

II. Juvenile Record as Aggravator

Next, Love contends that the trial court abused its discretion by relying on Love's juvenile record as an aggravating factor because the record was "confusing and not properly documented." Appellant's Br. at 7. We review sentencing decisions for abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). One way in which a trial court may abuse its discretion in sentencing is by finding an aggravator or mitigator that is not supported by the record. Id.

Love concedes that the trial court could use his juvenile record as an aggravating circumstance. However, he claims that his juvenile record submitted to the trial court was incomplete and confusing. Despite this claim, Love does not explain how his record is incomplete or how the record does not support the trial court's conclusion that his juvenile record consists of delinquency adjudications for acts that would be theft and fleeing law enforcement if committed by an adult, attempted theft and fleeing law enforcement if

⁴ Officer Stitsworth testified that the stolen car was apprehended approximately ten blocks from the scene of the crime.

committed by an adult, and false reporting of information. Furthermore, the trial court asked counsel whether there were any objections to the interpretation of Love's juvenile record. No objections or corrections were lodged. Love has not demonstrated that the record fails to support his juvenile criminal history as an aggravator.

III. Appropriateness of Sentence

Finally, Love contends that his sentence is inappropriate. In Reid v. State, our supreme court reviewed the standard by which 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.

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

More recently, the court reiterated 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. "[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 factors that come to light in a given case.” Id. at 1224.

Love was convicted of a Class B felony, which has a sentencing range of six to twenty years, with ten years as the advisory. See Ind. Code § 35-50-2-5. The trial court sentenced Love to the advisory term of ten years.

As to the nature of the offense, Love, along with two others, held a stranger, Osysko, at gunpoint just outside of his home, demanding the contents of his pockets. Osysko handed over his cell phone, cash and keys. Determined to drive off in Osysko’s car, one of the perpetrators finally asked Osysko which key started the car after being unable to figure it out. Shortly thereafter, Love was found in the stolen car with the stolen phone in his pocket.

As to the character of the offender, Love was sixteen years old at the time of the crime.⁵ Despite his youth, Love is no stranger to dealing with the criminal system. At age thirteen, Love committed acts that would be theft, as a Class D felony, and fleeing law enforcement, as a Class A misdemeanor, if committed by an adult. Almost a year later, he was back in front of the juvenile court facing almost the exact same allegations.⁶ Just a little over a month after finishing the required programs for his last adjudication, Love committed an act that constituted false reporting or informing. Love was on electronic monitoring when he committed the current crime.

⁵ Love was tried as an adult because a juvenile court does not have jurisdiction over individuals sixteen or more years old that are alleged to have committed robbery while armed with a deadly weapon. See Ind. Code § 31-30-1-4(a)(6)(A).

⁶ Love admitted his commission of acts that would be attempted theft, as a Class D felony, and resisting law enforcement.

In light of the nature of the offense and the character of the offender, Love has not convinced this Court that his advisory sentence is inappropriate.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.