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IN THE
COURT OF APPEALS OF INDIANA

BOYCE COLLIER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0903-CR-137
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0804-FB-087567

September 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Boyce Collier appeals after he was convicted of two counts of Operating a Vehicle with a Metabolite of Marijuana in the Blood,[1] Causing Death, a class B felony, and found to be a Habitual Offender.[2] Collier argues that the trial court erred by admitting the results of a blood test administered after the fatal car accident, contending that he did not knowingly and voluntarily consent to the blood draw. He also argues that the aggregate sixty-year sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character. Finding that the trial court properly admitted the blood test results into evidence and finding that the sixty-year sentence is not inappropriate, we affirm.

FACTS

Shortly before 5:00 p.m. on April 19, 2008, Collier was driving westbound on 38th Street in Indianapolis. He was driving at eighty to ninety miles per hour on a section of roadway with a forty-five miles per hour speed limit. As Collier approached a red light, Sherman and Teresa Goens were stopped in their vehicle that was traveling eastbound on 38th Street. The Goenses intended to turn left onto Clarendon Road, and when they received a green arrow, giving them the right of way, they proceeded into the intersection and began making the turn. Collier, without attempting to brake or evade the Goenses' vehicle, drove into the intersection and struck the Goenses at full speed at a nearly ninety-degree angle in the middle of the intersection. The front of Collier's vehicle completely penetrated the passenger compartment of the other vehicle.

[1] Ind. Code § 9-30-5-5(b)(2).

[2] Ind. Code § 35-50-2-8.

Upon impact, Sherman was ejected from the vehicle, flew through the air, struck the pavement, and proceeded down the sidewalk for approximately fifty feet until he reached a light pole. The crash forced Teresa from the front passenger's seat into the driver's seat of her vehicle, and after the cars came to a rest approximately 150 feet west of the intersection, she was trapped in the vehicle, hanging out of it. After the accident, Collier sat in his vehicle and was dazed but conscious, surrounded by several open and closed beer cans.

Sherman died at the scene of the accident from the injuries caused by the force of the accident. Specifically, both of his lungs were punctured, his heart was torn open, his spinal column was displaced, his aorta was severed, his internal organs were pushed into his chest cavity, and he suffered extensive skull fractures. Teresa was extracted from her vehicle, which had caught on fire, but died within an hour of arriving at the hospital. She suffered a dislocation of her skull from her cervical spine, a torn spinal column, a tear of her aorta, a fractured right arm, two fractured legs, a near amputation of both feet, a fractured pelvis, two punctured lungs, and abdominal organs being pushed into her chest cavity.

Collier was transported to Wishard Hospital by ambulance and was attended to by paramedic Jennifer Gona. Gona evaluated Collier and found that he was awake, alert, and oriented to time, place, and circumstance. Collier answered all of her questions, denied any loss of consciousness, and had suffered no head injuries. While in the ambulance, Collier placed several telephone calls to family and friends to notify them that he would not be attending a party that night. Collier had suffered multiple lacerations and abrasions on his

left hand and had lost the tip of his left middle finger. He also complained of a broken tooth and back pain.

Upon arriving at Wishard at 5:24 p.m., Collier was treated by registered nurse Erin Tobias, who found Collier to be oriented to time, place, and circumstance. At 5:42 p.m., hospital personnel drew Collier's blood for diagnostic purposes and found that his blood alcohol content was .109 grams per 100 milliliters.

At 6:00 p.m., Officer Michael Wilson arrived at Wishard and spoke with Collier. Officer Wilson observed a slight slur to Collier's speech and noticed that he had red, bloodshot eyes. Collier was lucid and oriented to time and place and indicated that he understood the Miranda[3] warnings. Collier admitted to drinking alcohol, and a portable breath test indicated the presence of alcohol at a level of .085. Officer Wilson then advised Collier regarding Indiana's implied consent law, and Collier consented to a blood draw. Nurse Tobias drew Collier's blood at 6:29 p.m., and at 6:30 p.m., Tobias administered fentanyl, a narcotic pain medication, to Collier.

The results of the 6:29 p.m. blood draw revealed that Collier's blood alcohol content had fallen to .09 grams per 100 milliliters. From this information, an expert witness for the State later calculated that Collier's blood alcohol content at the time of the accident was .113 grams per 100 milliliters. This blood test also revealed that Collier's blood contained sixteen to eighteen nanograms per milliliter of marijuana metabolite, which is more than a trace amount.

[3] Miranda v. Arizona, 384 U.S. 436 (1966).

On April 22, 2008, the State charged Collier with two counts of class C felony operating a vehicle while intoxicated, causing death, two counts of class C felony operating a vehicle with a blood alcohol content greater than .08, causing death, and two counts of class C felony reckless homicide. The State later added two counts of class B felony operating a vehicle with a metabolite of marijuana in the blood, causing death, and a habitual offender allegation.

On June 12, 2008, Collier filed a motion to suppress his statement to Officer Wilson and the blood test results on the basis that he had not knowingly and voluntarily consented to the blood draw. Specifically, Collier contended that he was unable to consent because of his medical condition. Following a hearing, the trial court denied Collier's motion. Collier's jury trial began on January 26, 2009, and the blood test results were admitted over Collier's continuing objection.[4] On January 29, 2009, the jury found Collier guilty as charged and then determined that he was a habitual offender.

At the February 17, 2009, sentencing hearing, the trial court merged the convictions into the two class B felony operating a vehicle with a metabolite of marijuana in the blood, causing death, convictions, and only entered judgment on those two counts. At the close of the hearing, the trial court found multiple aggravating factors: Collier's criminal history, his prior probation violations, his conduct while incarcerated within the Department of Correction and at the county jail, the fact that his offenses involved multiple victims, and the fact that Collier was on pretrial release for pending drug charges when he committed the

[4] The State did not introduce Collier's statement to Officer Wilson into evidence at trial.

present offenses. The trial court found two mitigators: hardship to Collier's dependents and his remorse. Finding that the aggravators significantly outweighed the mitigators, the trial court imposed consecutive twenty-year sentences for the two class B felony convictions, with a twenty-year enhancement for the habitual offender finding, for an aggregate executed sentence of sixty years. Collier now appeals.

DISCUSSION AND DECISION

I. Admission of Blood Test Results

Collier first argues that the trial court erroneously admitted the blood test results into evidence.[5] We review a trial court's decision to admit evidence for an abuse of discretion, which occurs if a trial court's decision is against the logic and effect of the facts and circumstances before the court. McVey v. State, 863 N.E.2d 434, 440 (Ind. Ct. App. 2007), trans. denied.

The drawing of blood for the purpose of administering a compulsory blood test is a search that implicates the Fourth Amendment to the United States Constitution. Schlesinger v. State, 811 N.E.2d 964, 966-67 (Ind. Ct. App. 2004). Therefore, to obtain a blood sample, law enforcement officers must have a warrant, probable cause, or consent. Id. at 967. A consent to a search must be knowingly and voluntarily given, and the State has the burden of proving that the consent was, in fact, knowing and voluntary. Id.; Hannoy, 789 N.E.2d at

[5] The results of the blood test administered by the hospital shortly after Collier was admitted were admissible because the blood was drawn for medical purposes. Hannoy v. State, 789 N.E.2d 977, 990 (Ind. Ct. App. 2003) (noting that the Fourth Amendment is not implicated if a blood draw is performed entirely at the hospital's instigation for diagnostic purposes). The second blood test was not merely cumulative, however, because it revealed the presence of marijuana metabolites in Collier's blood, while the first had merely measured Collier's blood alcohol content.

988. Consent cannot be conclusively presumed from a verbal expression of assent unless the court determines, from the totality of the circumstances, that the verbal assent reflected an uncoerced and unequivocal understanding. Hannoy, 789 N.E.2d at 988.

Here, paramedic Gona, nurse Tobias, and Officer Wilson testified that, following the accident, Collier was awake, alert, and oriented to time and place. He answered all questions coherently and correctly. He had suffered no head injuries and never lost consciousness. He received no narcotic pain medications until after the blood was drawn. Under these circumstances, we find that the trial court neither erred by finding that Collier's consent to the blood test was knowing and voluntary nor abused its discretion by admitting the results of the blood test into evidence.

II. Sentence

Collier also argues that the sixty-year sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character. In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The trial court imposed consecutive twenty-year sentences for each of Collier's two class B felony convictions, which is the maximum sentence permitted by law. Ind. Code § 35-50-2-5. The trial court enhanced Collier's sentence by twenty years for the habitual offender finding, which is greater than the minimum enhancement of ten years but less than the maximum enhancement of thirty years. I.C. § 35-50-2-8(h) (providing that a habitual

offender enhancement may not be less than the advisory sentence for the underlying offense and may neither exceed three times the advisory sentence for the underlying offense nor exceed thirty years imprisonment).

The nature of Collier's offenses is appalling. He drove on a local city street at 5:00 p.m. at eighty to ninety miles per hour. Collier was intoxicated from alcohol consumption and had marijuana metabolites in his blood. He blew through a red light, colliding with the Goenses' vehicle, which had the right of way as it proceeded through the intersection. Collier did not brake or attempt to avoid the other vehicle. He collided with the Goenses' vehicle with such force that Sherman was ejected from the car, flew through the air, and did not come to a stop until he was fifty feet away from the scene of the accident. The gruesome injuries suffered by the Goenses further reveals the massive force of the collision, as does the fact that Sherman died at the scene of the accident and Teresa died within an hour of being transported to the hospital.

As to Collier's character, he has prior convictions for class C felony forgery, class B felony burglary, class D felony theft, and class B felony dealing in cocaine. When he committed the instant offenses, he was on pretrial release from pending class D felony possession of cocaine and class A misdemeanor possession of marijuana charges. In 1993, Collier was on probation following his burglary conviction and repeatedly violated probation by testing positive for marijuana, ultimately leading to the revocation of his probation. While in the Department of Correction, Collier received twenty-two conduct reports, including rioting, possession of an unauthorized substance, and disorderly conduct. While in the

Marion County Jail during the pendency of the present charges and convictions, Collier received four incident reports, including assault and three jail rule violations.

Though Collier has a daughter and has expressed remorse for his actions herein, it is evident that he is a danger to himself and the community. He has little or no respect for his fellow citizens or the rule of law, and has not taken advantage of past opportunities afforded to him by the justice system. His actions herein and in the past establish that he follows his own rules rather than the rules of society and that he cares more for himself than for his family or fellow citizens. We find that the aggregate sixty-year sentence imposed by the trial court is not inappropriate in light of the nature of the offenses and Collier's character.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.