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IN THE
COURT OF APPEALS OF INDIANA

JAMARCUS L. SIMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A04-0812-CR-708
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0806-FC-160

OCTOBER 1, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

A jury convicted Jamarcus Sims of battery[1] as a Class C felony, criminal recklessness[2] as a Class C felony, aggravated battery[3] as a Class B felony, and carrying a handgun without a license[4] as a Class C felony. The court merged the first three offenses into the aggravated battery conviction and sentenced Sims to fifteen years executed for that Class B felony. The trial court sentenced Sims to four years executed on the handgun offense and ordered the sentences to be served consecutively for an aggregate sentence of nineteen years executed.

On appeal Sims contends the evidence was insufficient to sustain the aggravated battery conviction and that the trial court erred in giving an instruction on accomplice liability. He also contends the court erred in ordering consecutive sentences.

Between 11:00 p.m. and midnight on June 8, 2008, Shaneise Ellis accompanied some of her friends to the Village Bowl in Fort Wayne where the bowling alley was staging a party. When Shaneise and her friends entered the bowling alley to join the party a number of people were outside in the parking lot

socializing.

Shaneise's cousin, Destany Martin, independently decided to go to the Village Bowl with some friends, including Liquida Walker, and they arrived between 12:30 p.m.

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[1] *See* Ind. Code § 35-42-2-1.

[2] *See* Ind. Code § 35-42-2-2.

[3] *See* Ind. Code § 35-42-2-1.5.

[4] *See* Ind. Code § § 35-47-2-1 and 35-47-2-23.

and 1:00 a.m. Martin and Walker elected to not pay the cover charge for the party and remained in the parking lot socializing with the group gathered there. Among those outside were Sims and another man identified only as "Two One". Martin and Walker knew Sims and began talking to him and his friends. At some point, "Two One" retrieved two handguns from a silver Ford Taurus and handed one of them to Sims. At one point one of the two men said, "I feel like shooting something." *Tr*. at 197, 226, 227. Martin and Walker both noticed that Sims was wearing a bandana around his face.

Around 2:00 a.m. the party inside the bowling alley ended and people began walking out to the parking lot. Shaneise began walking to her car, but then realized Martin was not following her. Martin had stopped to watch a fight that had broken out in front of the bowling alley. As Shaneise turned she heard gunshots and felt a blow to the back of her legs. She had been struck by a bullet that went through her right leg and lodged in her left leg. She managed to limp and crawl back to the bowling alley entrance.

At the same time, Justin Harper, an employee of the bowling alley, had gone outside the entrance because of the fight in order to prevent it from spilling back into the building. When the shots rang out, he was struck by a glancing blow in the shoulder from a ricocheting bullet. He ran inside and called 911.

Shaneise and Walker both reported that it sounded like more than one gun was being fired. Walker saw Sims firing his weapon in a direction away from the building. There were people in the area toward which Sims was firing.

When City of Fort Wayne Police Officer Trent Farrell arrived, he discovered a bullet hole in the front door of the bowling alley and a bullet fragment on one of the bowling lanes. He also followed the trail of blood left by Shaneise in the parking lot and found a spent bullet near where the trail originated. Forensic testing on the bullets determined that they were fired from different guns.

In instructing the jury the court gave an instruction on accomplice liability. That the instruction correctly stated the law and was not covered by other instructions has not been challenged. Sims' only contention is that the evidence was insufficient to support giving the instruction. We disagree.

There was evidence that Sims and "Two One" were seen together. "Two One" retrieved two handguns from a car and handed one of them to Sims. One of the two was heard to say "I feel like shooting something." Sims was seen firing one of the guns. It was established that two guns had been fired, probably in different directions.

It is well established that a party is entitled to an instruction on his theory of the case if it is within the issues and is supported by any evidence fairly tending to support it. *See, Lavengood v. Lavengood*, 225 Ind. 206, 73 N.E.2d 685, 687 (1947).

Here the battery charges against Sims asserted that he committed the offense while acting in concert with a black male, whose identity was unknown. The facts recited above support the inference that Sims and "Two One" acted together in the shootings. The instruction on accomplice liability was properly given.

Moreover, with the instruction on accomplice liability properly given it was clearly within the jury's province to determine that the two men acted in concert and Sims was guilty of the inflicted injury regardless of which of the two actually fired the shot that struck Shaneise in the legs. Accordingly, the evidence was sufficient to sustain the battery conviction.

Finally, Sims contends that the court erred in imposing consecutive sentences. Generally speaking, the trial court is granted sound discretion in determining what sentence should be imposed within the statutory parameters.[5]

In order to impose consecutive sentences the trial court must find at least one aggravating factor. *Marcum v. State*, 725 N.E.2d 852, 864 (Ind. 2000). In Sims' case the court found Sims' prior criminal history, which included another charge of carrying a handgun without a license, an aggravating factor. It also found the very random nature of the crime to be an aggravating circumstance. Sims has demonstrated no error in the imposition of consecutive sentences.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.

[5] Since aggravated battery is one of the defined "crimes of violence", the limitation of Indiana Code section 35-50-1-2(c) does not apply.