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**IN THE
COURT OF APPEALS OF INDIANA**

CARLOS M. DRANE,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0912-CR-1251
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-0810-MR-230141

December 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Carlos M. Drane (“Drane”) appeals his conviction for the murder of Courtney Gates (“Gates”). On appeal, Drane raises the following issues:

- I. Whether the trial court abused its discretion by instructing the jury on accomplice liability; and
- II. Whether there was sufficient evidence to support Drane’s conviction for murder.

We affirm.

FACTS AND PROCEDURAL HISTORY

Drane began selling the drug, ecstasy, to Gates in October 2007. In September 2008, however, Gates had a plan to sell ecstasy to Drane. Gates, who lived in Indianapolis with his older brother, Dejuan Colbert (“Colbert”), drove to Gary, Indiana on September 25, 2008, and returned that night with 1000 ecstasy pills, 700 of which he intended to sell to Drane.

On the morning of September 26, 2008, Gates, Colbert, and their friend, Troy Charles (“Charles”), were gathered at Colbert’s apartment when Drane called Gates to arrange a meeting. Gates borrowed his brother’s car and agreed to drive with Charles, who needed a ride to a nearby store. Before the two men left to meet Drane, Colbert gave Charles his Glock 27 handgun, and Charles placed it under the passenger seat. Gates drove to an apartment complex on the northwest side of Indianapolis, parked, and exited the car carrying a plastic bag containing 700 ecstasy pills. Charles stayed in the car.

As Gates approached the apartment building, he was greeted by Drane and two other men; all the men, including Gates, seemed to know each other. *Tr.* at 143. The four men went inside the apartment building and stood in the entryway where Charles

could still see them through the glass in the door. After a few minutes, Charles saw the men engage in a struggle, heard a gunshot, and saw the glass in the door shatter. *Id.* at 144-45. Charles saw Gates run out of the building, with Drane following after him shooting at Gates with a semi-automatic handgun. *Id.* at 145.

After Gates ran past the passenger side of the car, Charles grabbed the handgun from under the seat, jumped out of the car, and saw Drane and the two other suspects get into a white, four-door Ford Taurus and drive away. *Id.* at 147. Charles shot at the Taurus four times as it was leaving the parking lot.

Meanwhile, Gates ran one street over and collapsed. When Charles found him, he was bleeding and unable to speak. Gates was pronounced dead at the scene. An autopsy revealed that Gates had been shot three times from behind. One bullet entered Gates's upper left arm, exiting through the front and reentering his forearm before re-exiting. The trajectory suggested that the bullet hit Gates's bent arm as he was running. A second bullet entered the back of his upper right thigh and exited the front striking his right testicle. The third bullet entered the back of Gates's head and exited through his chin and in the process, severed his carotid artery and jugular vein, punctured his larynx, fractured his mandible, and dislocated his cervical spine.

The State charged Drane with one count of murder and one count of carrying a handgun without a license. At trial, the State presented two proposed jury instructions pertaining to accomplice liability. Drane objected to both. The trial court did not give the proposed instructions, but instead, gave "the Court's standard instruction on aiding and abetting." *Id.* at 612. The jury convicted Drane on both counts. Drane now appeals

his murder conviction. Additional facts will be added as necessary.

DISCUSSION AND DECISION

I. Accomplice Liability Instruction

Drane first contends that the trial court abused its discretion when, over Drane's objection, it gave Final Instruction No. 9, which instructed the jury on accomplice liability. The purpose of jury instructions is to inform the jury of the law applicable to the facts of the particular case. *Cowan v. State*, 783 N.E.2d 1270, 1276 (Ind. Ct. App. 2003), *trans. denied*. "The manner of instructing a jury lies largely within the discretion of the trial court, and we will reverse only for abuse of discretion." *Henson v. State*, 786 N.E.2d 274, 277 (Ind. 2003) (citing *Benefiel v. State*, 716 N.E.2d 906, 914 (Ind. 1999), *cert. denied*, 531 U.S. 830 (2000)). To constitute an abuse of discretion, the instruction given must be erroneous, and the instructions taken as a whole must misstate the law or otherwise mislead the jury. *Benefiel*, 716 N.E.2d at 914.

When evaluating the jury instructions on appeal, we look to whether the tendered instructions correctly state the law, *whether there is evidence in the record to support giving the instruction*, and whether the substance of the proffered instruction is covered by other instructions. *Treadway v. State*, 924 N.E.2d 621, 636 (Ind. 2010); *Chambers v. State*, 734 N.E.2d 578, 580 (Ind. 2000) (emphasis added). We will reverse a conviction only if the appellant demonstrates that the instruction error prejudices his substantial rights. *Treadway*, 924 N.E.2d at 636.

Drane specifically contends that the evidence did not support the giving of an accomplice instruction because the State failed to identify the principal for whom Drane

allegedly was acting as an accomplice. Accomplice liability is not established as a separate crime, but merely a separate basis of liability for the crime charged. *Hampton v. State*, 719 N.E.2d 803, 807 (Ind. 1999) (citing Ind. Code § 35-41-2-4). Indiana law provides that a person “who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person: (1) has not been prosecuted for the offense; (2) has not been convicted of the offense; or (3) has been acquitted of the offense.” I.C. § 35-41-2-4.

To be convicted of a crime under the theory of accomplice liability, it is not necessary that the defendant participate in every element of that crime. *Ransom v. State*, 850 N.E.2d 491, 496 (Ind. Ct. App. 2006). In determining whether a person aided or was an accomplice to another in the commission of a crime, our Supreme Court has long considered the following four factors: “(1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) a defendant’s conduct before, during, and after the occurrence of the crime.” *Garland v. State*, 788 N.E.2d 425, 431 (Ind. 2003).

Where the facts raise a reasonable inference that the crime was carried out through an accomplice, it is appropriate for the trial judge to give such an instruction. *Hampton*, 719 N.E.2d at 807. Here, Drane called to arrange to buy drugs from Gates. *Tr.* at 118. Gates arrived at the appointed location carrying a bag with 700 ecstasy pills. Drane and two other men were waiting for Gates when he arrived. *Id.* at 141-42. All of the men appeared to know each other. Gates and the three suspects went into the apartment entryway, and soon thereafter, a struggle ensued. Damage inside the entryway, including

the broken glass of the front door, revealed that shots were fired inside the building before Gates fled. *Id.* at 144, 287. It was unclear, however, who fired those shots and whether Gates was hit by a bullet before he ran out of the apartment. The evidence did reveal that Drane ran out of the apartment entryway after Gates and shot his semi-automatic handgun at Gates as Gates ran away. Drane and the other two suspects left the scene of the crime together in a white Ford Taurus. Based on the planning and cooperation of Drane and the other two suspects in meeting Gates for a drug buy, shooting him to death, and leaving together in the Taurus, the trial court did not err in instructing the jury on accomplice liability.

II. Sufficiency of the Evidence

Drane next contends that there was insufficient evidence to sustain his conviction for murder.¹ Specifically, he asserts that his guilt was not proven beyond a reasonable doubt. *Appellant's Br.* at 12.

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. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). 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. *Id.* "To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling." *Id.* Appellate courts affirm the conviction

¹ Drane makes no argument regarding the sufficiency of the evidence for his carrying a handgun without a license conviction.

unless no reasonable fact-finder could find the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.*

To convict Drane of murder, the State had to prove that he knowingly or intentionally killed Gates or that he knowingly or intentionally aided in the killing of Gates. Ind. Code § 35-42-1-1; Ind. Code § 35-41-2-4. On September 25, 2008, Gates went to Gary, Indiana to get 1000 ecstasy pills. *Tr.* at 47-49. The next morning, Drane called Gates to arrange a meeting to buy 700 ecstasy pills. *Id.* at 51, 59-60. Charles accompanied Gates to the scene and witnessed the incident. His testimony revealed that Gates, carrying thousands of dollars worth of ecstasy pills, met with Drane and two other men in connection with a drug deal arranged by Drane. *Id.* at 140-44. The four men went into an apartment entryway, and almost immediately, a struggle ensued. *Id.* at 144. Charles heard a gunshot and saw the glass in the doorway of the entrance shatter. *Id.* at 144-45. Gates then ran from the building followed by Drane. *Id.* at 145. Drane held a semi-automatic handgun and continued shooting at Gates. *Id.* Drane and the other two suspects left the scene together in a white Ford Taurus. Gates was shot three times, and his injuries were so severe that he was only able to run around the corner before he collapsed. Charles came upon Gates shortly thereafter and found him bleeding and unable to speak. Gates was pronounced dead at the scene. Of the 700 pills Gates brought to the complex, only 140 were recovered. *Id.* at 33. It is reasonable to infer that the

motive for the killing was to steal the ecstasy pills from Gates. This evidence was sufficient to prove that Drane knowingly or intentionally killed Gates.

Drane suggests that Charles's testimony was insufficient because he never testified that he observed any of the bullets from Drane's gun actually hit Gates. Additionally, Drane offers that while the coroner was clear that the bullet through the neck was the fatal shot, she was unable to determine in what order Gates sustained the three bullet wounds. Drane contends that while the evidence reveals that he had possession of a gun and that he fired that gun, there was insufficient evidence for the jury to determine that Drane's gun was the murder weapon. Drane raises these arguments in an attempt to deflect the blame to his two accomplices. The jurors, however, were given Final Instruction No. 9, which instructed them, in pertinent part, as follows:

A person is responsible for the actions of another person when, either before or during the commission of a crime, he knowingly aids, induces, or causes the other person to commit a crime, even if the other person:

1. Has not been prosecuted for the offense;
2. Has not been convicted of the offense; or
3. Has been acquitted of the offense[.]

To aid is to knowingly support, help, or assist in the commission of a crime.

In order to be held responsible for the action of another, a defendant need only have knowledge that he is helping in the commission of the charged crime. He does not have to personally participate in the crime nor does he have to be present when the crime is committed.

....

Appellant's App. at 343. The evidence was likewise sufficient to prove that, if Drane was not the principal who killed Gates, Drane acted as an accomplice in that killing.

We find that the State presented sufficient evidence to prove either that Drane knowingly or intentionally killed Gates or that Drane knowingly supported, helped, or assisted in the commission of Gates's murder.

Affirmed.

RILEY, J., and BAILEY, J., concur.