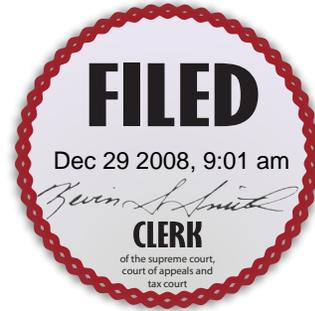


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANTWAIN HINES,)
)
 Appellant-Defendant,)
)
 vs.) No. 02A03-0804-CR-204
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0702-MR-2

December 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a jury trial, Antwain Hines was convicted of two counts of Felony Murder¹ and adjudicated a Habitual Offender.² The trial court sentenced him to an aggregate term of 160 years in prison. On appeal, Hines presents the following restated issues for review:

1. Did the State present sufficient evidence to support the convictions, which were based on accomplice liability?
2. Is Hines's sentence appropriate?

We affirm.

On February 19, 2007, Keneisha Eley and her sixteen-year-old sister, Shaquela Hunter, visited Derious Fuqua and Percy Riley at Percy's cousin's apartment in Fort Wayne. Derious was Shaquela's boyfriend, and Keneisha was interested in Percy. Over the course of the evening, Hines, Theodore Johnson, and Jonathan Rhodes joined the group. Johnson, who had previously dated Keneisha, had a .38 caliber revolver in his pocket. A .44 caliber handgun that was owned by Percy's cousin, who was not present, sat on the dining room table.

During the initial part of the evening, the group drank alcohol and smoked marijuana while listening to music and playing video games. The mood changed when Johnson pulled out his gun and talked about playing Russian roulette. Johnson eventually pointed the gun at Keneisha's head, which scared her and made her cry. He then punched her in the nose. While things seemed to temporarily cool down after this, Keneisha remained worried that something was going to happen. She confronted Hines on the stairs and asked him if she was

¹ Ind. Code Ann. § 35-42-1-1 (West, PREMISE through 2008 2nd Regular Sess.).

² Ind. Code Ann. § 35-50-2-8 (West, PREMISE through 2008 2nd Regular Sess.).

going to die. Hines initially refused to answer, but then told her he did not know. Keneisha informed her sister that she thought Hines and Johnson were up to something and indicated that they did not like Derious. In turn, Shaquela asked Hines and Johnson why they were there if they did not like Derious.

Shortly thereafter, Johnson announced that they (Johnson, Hines, and Rhodes) were about to leave, but that he needed to use the restroom first. As Johnson walked past, Hines looked at Johnson and “[t]hr[e]w his head back.” *Transcript* at 55. In response, Johnson tapped the pocket that held his gun. Keneisha followed Johnson to the bathroom, where the two argued. In the meantime, Rhodes stood up and pointed a .45 caliber handgun at Derious and Percy, who were each seated on a couch. Rhodes ordered the men to empty their pockets and remove their clothes, which they did while pleading with Rhodes. Now armed with the .44 caliber handgun from the dining room table, Hines approached Johnson and Keneisha in the bathroom and told Johnson, “Bro, it’s going down.” *Id.* at 58. At that point, Keneisha could hear Rhodes in the living room yelling, “Shut the fuck up. Where all the shit at.” *Id.* at 59. Johnson pointed his gun at Keneisha so that she would get out of his way and then he gave her the car keys and warned her to wait in the car. Johnson returned to the living room with Rhodes.

As Keneisha left the bathroom, she saw Hines “rambling through the closet” looking for something. *Id.* at 59. Hines angrily said, “this ain’t all the shit, where all the shit at.” *Id.* at 60. Hines then took the car keys from Keneisha and said if it was up to him she would die too. Johnson yelled back to Hines and told him to give Keneisha the keys, which he did.

Hines directed her to get his cell phone in the living room, and she complied because she was scared. As she was doing so, Rhodes and Hines continued to yell at Percy and Derious, “Where all the shit at, shut the fuck up, quit crying.” *Id.* at 61. Percy and Derious pleaded with the men not to hurt them and indicated that they would “take [them] to the rest.” *Id.* at 103. Rhodes kept threatening Percy and/or Derious that he was going to “blow his head off.” *Id.* at 104.

Keneisha prepared to leave, and she pleaded with Hines to let her sister go. Hines refused, indicating once again that if it was up to him Keneisha would die too. Keneisha then fled from the scene. As she was running, she heard multiple gunshots. Shaquela also managed to escape prior to the shots being fired. Inside the apartment, Derious and Percy were shot multiple times. Rhodes and Johnson apparently were the shooters. Soon after the shootings, police found Percy dead from four gunshot wounds, one of which entered his brain and one passed through his heart. Derious, who suffered five gunshot wounds, died later that morning at the hospital from the gunshot wound to his head.

After the shootings, Hines ran on foot to the home of Heaven Fowlkes, with whom he shared a son, and discarded the .44 caliber handgun on the way. Hines was crying, pacing back and forth, and looking out the front and back doors. After he indicated that there had been a multiple killing, Hines opened the front door, whistled, and then let Rhodes inside. Rhodes had money falling out of his pockets. Rhodes and Hines split up the money. They also spoke with Johnson on the phone and met up with him a short time later.

On February 26, 2007, the State charged Hines with two counts of felony murder, two

counts of class A felony robbery, and one count of class B felony unlawful possession of a handgun by a serious violent felon. The State also alleged Hines was a habitual offender. A jury found Hines guilty on both counts of felony murder and both counts of robbery and adjudicated him a habitual offender, while the State dismissed the handgun count. The trial court entered judgments on the felony murder convictions and subsequently sentenced Hines to consecutive sixty-five-year terms of imprisonment for the two convictions and enhanced one of them by thirty years for being a habitual offender.³ Thus, Hines received an aggregate sentence of 160 years. Hines now appeals.

1.

Hines initially challenges the sufficiency of the evidence. In this regard, he contends the evidence is insufficient to establish that he acted in concert with Johnson and Rhodes. He acknowledges that he was armed and searching through a closet prior to the shootings, but claims there was no evidence that he used the handgun to threaten or rob Percy or Derious.

When considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). This review “respects ‘the jury’s exclusive province to weigh conflicting evidence.’” *Id.* at 126 (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). Considering only the probative evidence and reasonable inferences supporting the judgment,

³ The trial court found Hines’s “tremendous criminal history” in his twenty-two years of life to be aggravating. *Sentencing Transcript* at 15. The record reveals Hines has spent the vast majority of his adult life in prison, as he has four prior felony convictions (two class C felony robberies, one class B felony robbery, and one class C felony carrying a handgun without a license). In fact, Hines had been out of prison and on probation for less than a month at the time of the current offenses. His juvenile history was also extensive with adjudications for robbery, resisting law enforcement, and burglary.

we must affirm “if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.” *McHenry v. State*, 820 N.E.2d at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

An accomplice is criminally responsible for all acts committed by a confederate that are a probable and natural consequence of their concerted action. *McGee v. State*, 699 N.E.2d 264 (Ind. 1998). *See also* Ind. Code Ann. § 35-41-2-4 (West, PREMISE through 2008 2nd Regular Sess.) (“[a] person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense”). “The accomplice need not participate in each and every element of the crime in order to be convicted of it.” *McGee v. State*, 699 N.E.2d at 265. In determining whether a person aided another in the commission of a crime, we have 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 (Ind. 2003).

All of these factors weigh against Hines and support the jury’s conclusion that he was an accomplice to the felony murders. Hines came to the apartment with Johnson, his long-time friend, and Rhodes. Instead of opposing the robbery when it began, he immediately armed himself, alerted Johnson, and then ransacked the closets of the apartment looking for something. When he did not find all of what he was looking for, Hines angrily demanded to know where the rest of it was. Hines remained armed, as he and Rhodes yelled at Percy and

Derious, “Where all the shit at, shut the fuck up, quit crying.” *Transcript* at 61. While Hines did not shoot the victims, the record reveals that he was present when Rhodes and Johnson did so. He then fled the scene, disposing of evidence along the way, and met up with Rhodes, and later Johnson, to split the proceeds of the robberies. The jury had ample evidence to conclude Hines was an accomplice to Johnson and Rhodes in committing the felony murders.

2.

Hines also asserts that his 160-year sentence is inappropriate in light of the nature of the offense and his character.

We have the constitutional authority to revise a sentence if, after consideration of the trial court’s decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be “extremely” deferential to a trial court’s sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Thus, “we exercise with great restraint our responsibility to review and revise sentences.” *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*.

We emphasize that it is Hines’s burden to persuade us that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867. *See also Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (“revision of a sentence under Indiana Appellate Rule 7(B)

requires the appellant to demonstrate that his sentence is inappropriate in light of *both* the nature of his offenses and his character”) (emphasis in original). Hines has wholly failed in this regard. His entire “argument” on this issue follows:

The Presentence Investigation Report (PSI) is in a separate folder identified as Appellant’s Appendix and “Not for public access / confidential”.

Hines claims his 160 year executed sentence was inappropriate.

Appellant’s Brief at 5. We find the issue waived for failure to provide any argument, let alone a cogent one. *See* Ind. Appellate Rule 46(A)(8)(a).

Judgment affirmed.

MAY, J., and BRADFORD, J., concur