

Case Summary

Jeremy Knoy (“Knoy”) appeals his conviction and sentence for Murder, a felony.¹ We affirm.

Issues

Knoy presents two issues for review:

- I. Whether he was entitled to have the jury instructed upon Reckless Homicide; and
- II. Whether his sixty-year sentence is inappropriate.

Facts and Procedural History

On December 29, 2008, Knoy invited his best friend, Derek Liphard (“Liphard”), to Knoy’s home in Lafayette to watch a movie and drink alcohol. In the afternoon, the men purchased a bottle of whiskey and a twelve-pack of beer. After drinking some of the alcohol, at around 5:30 p.m., they went to the home of Liphard’s parents to move a pool table. They returned to Knoy’s apartment around 6:00 p.m. and continued to drink alcohol.

At approximately 8:30 p.m., Lee Robin (“Robin”), Knoy’s next-door neighbor, knocked at Knoy’s door with hopes of being invited to share a drink. After Robin had knocked several times, Knoy answered the door. Knoy was splattered with red dots, prompting Robin to ask Knoy what was happening. Knoy responded, “I think I just killed Derek.” (Tr. 31.) Robin continued to press Knoy for an explanation. Knoy reiterated that he thought he had just killed Derek, and added that “he would have gotten away with it” if

¹ Ind. Code § 35-42-1-1.

Robin had not showed up. (Tr. 32.) Knoy made a motion, as if swinging an axe. Robin convinced Knoy to call 9-1-1.

Lafayette police officers responded and found Liphard's lifeless body in Knoy's bedroom. A knife blade was located in Liphard's abdomen. The grip from the knife was located in Knoy's sink. Liphard had also suffered multiple blows to his head, apparently from a baseball bat. Knoy claimed that he could not recall stabbing Liphard, but did recall hitting him with the baseball bat ten times. (St. Ex. 3.) Knoy could not provide a reason for his actions, but stated that he had not killed Liphard intentionally. (St. Ex. 3.)

Knoy was subsequently tried on a charge of Murder. Knoy testified in his own defense, recalling a shadow boxing incident and a shoving match between himself and Liphard. According to Knoy, he was able to recall that Liphard had twice slapped him and had used a derogatory term to describe his girlfriend. Knoy testified that he was responsible for Liphard's death, but believed he was guilty of Voluntary Manslaughter rather than Murder. The jury was instructed on Murder and Voluntary Manslaughter; however, the trial court refused Knoy's proffered instruction on Reckless Homicide.

Knoy was convicted as charged, and sentenced to sixty years imprisonment. This appeal ensued.

Discussion and Decision

I. Reckless Homicide Instruction

In Wright v. State, 658 N.E.2d 563 (Ind. 1995), our Indiana Supreme Court set forth the proper analysis to determine when a trial court should, upon request, instruct the jury on a

lesser included offense of the crime charged. The analysis contains three steps: (1) a determination of whether the lesser included offense is inherently included in the crime charged; if not, (2) a determination of whether the lesser included offense is factually included in the crime charged; and, if either, (3) a determination of whether a serious evidentiary dispute existed whereby the jury could conclude the lesser offense was committed but not the greater. Id. at 566-67. If the third step is reached and answered in the affirmative, the requested instruction should be given. Horan v. State, 682 N.E.2d 502, 506 (Ind. 1997).

Accordingly, where the judge determines that a lesser included offense is inherent in the charged crime, he or she must then determine whether the evidence in the case supports such an instruction. Fields v. State, 679 N.E.2d 1315, 1321 (Ind. 1997). An offense is an inherently included offense if (1) the alleged lesser included offense may be established by proof of the same material elements or less than all the material elements defining the crime charged, or (2) the only feature distinguishing the alleged lesser included offense from the crime charged is that a lesser culpability is required to establish the commission of the lesser offense. Horan, 682 N.E.2d at 506.

Reckless Homicide is the reckless killing of another. Ind. Code § 35-42-1-5. Murder is the intentional or knowing killing of another. Ind. Code § 35-42-1-1. Reckless Homicide requires a reckless mens rea, while Murder requires a knowing or intentional mens rea. Lyttle v. State, 709 N.E.2d 1, 2 (Ind. 1999). The only difference between the two is the mens rea element. Id. Reckless Homicide is an inherently included offense of murder. Fields, 679

N.E.2d at 1322.

Knoy argues that the jury, if properly instructed, could have found that he recklessly killed Liphard, but did not do so knowingly or intentionally. The trial court found that there was no serious evidentiary dispute as to the distinguishing element. Where such a factual finding is made on the existence or lack of a serious evidentiary dispute, we review the trial court's decision for an abuse of discretion. Champlain v. State, 681 N.E.2d 696, 700 (Ind. 1997).

In Horan, the appellant appealed the denial of a Reckless Homicide instruction. The facts of the case were that Horan repeatedly kicked and punched the victim, even returning at a later time to hit and kick the victim again. Id. at 505-06. Our Indiana Supreme Court found that the denial of a Reckless Homicide instruction was proper because the conduct of the defendant was so extreme and the beatings so severe that “the jury could not conclude that the lesser offense was committed but not the greater.” Id. at 508. The Court determined that Horan could not have engaged in this conduct without an awareness that the conduct could result in death. Id.

Subsequently, in Lyttle, the appellant also claimed that the trial court had erroneously refused to give a Reckless Homicide instruction. The Court noted that there was “overwhelming” evidence that the defendant had repeatedly struck his victim with a bat. Lyttle, 709 N.E.2d at 3. Consistent with Horan, the Lyttle Court determined that the defendant could not have engaged in the conduct of repeatedly striking his victim with a bat without an awareness that the conduct could result in death. Id. As the jury could not have

found Lyttle guilty of the lesser included offense without also finding him guilty of the greater, the trial court did not abuse its discretion by denying the requested reckless homicide instruction. Id.

In this case, the evidence showed that Knoy stabbed Liphard in the upper right abdomen with such force that the knife blade broke off in Liphard's body. Knoy then used a baseball bat to strike Liphard's head at least ten times. As in Horan and Lyttle, the extreme and protracted nature of the conduct is such that Knoy could not have been without an awareness that his conduct could result in Liphard's death.² The trial court did not abuse its discretion by finding no serious evidentiary dispute; the Reckless Homicide instruction was properly refused.

II. Sentencing

Upon conviction of Murder, Knoy faced a sentencing range of forty-five years to sixty-five years, with the advisory sentence being fifty-five years. See Ind. Code § 35-50-2-3. Knoy was sentenced to sixty years imprisonment, five years above the advisory sentence.

Under Indiana Appellate Rule 7(B), this "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." In performing our review, we assess "the culpability of the defendant, the severity

² To the extent that Knoy suggests that his voluntary intoxication is relevant to his mens rea, this argument is unavailing. See Sanchez v. State, 749 N.E.2d 509, 517 (Ind. 2001) (finding that "the voluntarily intoxicated offender [is] at risk for the consequences of his actions, even if it is claimed that the capacity has been obliterated to achieve the otherwise requisite mental state for a specific crime.")

of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008). A defendant ““must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.”” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

The nature of the offense was particularly brutal. Knoy stabbed Liphard with such force that the knife blade broke off inside Liphard’s body. According to expert testimony, the stab wound was not necessarily fatal, had Knoy sought prompt medical assistance for Liphard. Instead, Knoy beat Liphard in the head repeatedly as Liphard lay on the floor. Knoy struck Liphard at least ten times with a baseball bat, until Liphard’s left ear was destroyed, the left side of his skull was smashed, and some of his brain tissue was splattered. Liphard died in a defensive position, curled up in a fetal position with an arm over his head. Although Knoy later claimed to have some memory of conflict, during the initial investigation of Liphard’s death, Knoy could not provide any reason for his actions. We must agree with the State that this was a senseless crime of “sheer savagery.” Appellee’s Brief at 13.

As to the character of the offender, Knoy has had a known alcohol abuse problem and had two prior convictions for Operating While Intoxicated. However, he continued to use alcohol. On the day of the murder, he smoked marijuana and then drank alcohol until he was intoxicated. Knoy failed to summon help for Liphard, the person whom he had regarded as his best friend. Instead of expressing remorse for his senseless conduct, Knoy was concerned

about having his crime revealed. Knoy advised his neighbor that he would have gotten away with killing Liphard had the neighbor not showed up unannounced.

In sum, there is nothing in the nature of the offense or the character of the offender to persuade us that the sixty-year sentence is inappropriate.

Conclusion

Knoy has demonstrated no abuse of the trial court's discretion in the instruction of the jury. Additionally, he has not shown that his sentence is inappropriate.

Affirmed.

NAJAM, J., and DARDEN, J., concur.