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# IN THE COURT OF APPEALS OF INDIANA

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| TINA WHITING, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 38A05-1008-CR-505 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE JAY CIRCUIT COURT
The Honorable Brian D. Hutchinson, Judge
Cause No. 38C01-0809-MR-1

**June 30, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Following a jury trial, Tina Whiting was convicted of Felony Murder[1] and subsequently sentenced to fifty-five years imprisonment. On appeal, Whiting presents four issues for our review:

1. Did the trial court abuse its discretion when it denied her request to strike a juror for cause?

2. Did the trial court abuse its discretion when it permitted a witness to give an opinion as to the credibility of a statement made by Whiting?

3. Is the evidence sufficient to sustain Whiting's conviction?

4. Did the trial court abuse its discretion in sentencing Whiting, and is imposition of the advisory sentence inappropriate in light of the nature of the offense and the character of the offender?

We affirm.

The facts most favorable to the conviction follow. On September 7, 2008, Whiting, Roderick Berry, Addison Pijnappels, her husband Tom Smith, and Michael Heffern gathered at Whiting's apartment to watch a football game. Over the course of the evening, the five individuals "[d]rank heavily" and used prescription pills. *Transcript* at 38. When the pills ran out, Whiting indicated that she could get more pills (including Oxycontin and Methadone) from Shawn Buckner. Heffern devised a plan to lure Buckner to Whiting's apartment where they would beat him up and take from him the pills they believed he would have with him. All five individuals, including Whiting, agreed to participate.

The details of the plan were that Whiting and Pijnappels would lure Buckner to

[1] Ind. Code Ann. § 35-42-1-1 (West, Westlaw current through 2011 Pub. Laws approved & effective through 6/28/2011).

Whiting's apartment with promises of sex. There, the three men would be hiding in Whiting's daughter's bedroom and jump Buckner when one of the women used a code phrase about needing more beer. Whiting and Pijnappels left Whiting's apartment and eventually located Buckner at his uncle's home, told him they were interested in a three-way sex act, and Buckner agreed and went along with them to Whiting's apartment. Once inside Whiting's apartment, Whiting lured Buckner to her bedroom and then Pijnappels used the code phrase, prompting the three men to come out of the room they were in and begin beating Buckner by punching him in the face, kicking him in the ribs, and stomping on his head. Buckner unsuccessfully tried to defend himself and flee from the men. As he struggled with them, the men continued to hit and kick Buckner all over his body. Buckner eventually made it to the kitchen where he was knocked to the floor. The men repeatedly kicked Buckner until he stopped moving. When Buckner started calling out for Whiting, the men began kicking and beating him again.

At some point, Heffern attempted to strike Buckner in the head with a statue but the others yelled for him not to do so and Heffern was able to strike only a glancing blow to Buckner's head. Whiting was in the living room, in close proximity to where the men were beating Buckner, and egged the men on by yelling that she knew he had pills. The men removed Buckner's shoes and pants in search of the pills, but no pills were found and only twenty dollars was taken from Buckner. Buckner was on the floor, moaning and moving from side to side. To muffle the sounds being made by Buckner, Smith tried to put a small beanbag-type object in Buckner's mouth, but it kept falling out. The men also attempted to strangle Buckner with a blanket that Whiting provided for them. At some point, Whiting

retrieved a knife from her bedroom at Heffern's request. Heffern did not take the knife Whiting brought to him.

After severely beating Buckner, the group decided to move him from the apartment. Using the blanket provided by Whiting, they wrapped Buckner up and placed him in the back of Berry's car. The original plan was to take Buckner to a bar and leave him outside. While driving, Berry became upset by Buckner's moaning and began "freaking out", so he turned the radio volume up. *Id*. at 64. Berry and Smith yelled for Buckner to be quiet and then Heffern punched Buckner more than ten times with "pretty fierce punches." *Id*. at 134. The original plan to leave Buckner behind a bar changed dramatically as the men drove around with Buckner in the back of the vehicle. Eventually, Berry turned down a gravel road leading into a cornfield. The men took Buckner out of the vehicle and carried him into the cornfield, where they stabbed Buckner multiple times in the torso and slit his throat with a filet knife they had taken from Whiting's home.[2] The men then returned to Whiting's apartment and cleaned up Buckner's blood and disposed of various items that could link them to the crime. Smith put the knife in a bowl that contained a cleaning agent.

Meanwhile, Whiting and Pijnapple drove to Fort Recovery, Ohio to purchase more beer and cigarettes with the twenty dollars that was taken from Buckner. When they returned to Whiting's apartment, the men were in the process of cleaning up and Whiting and

[2] This was not the same knife that Whiting retrieved from her bedroom and brought to Heffern while the men were beating Buckner.

Pijnapple joined in the clean-up effort. The group placed anything that could have come into contact with Buckner in a trash bag that Smith and Berry later burned in a cornfield. Heffern burned some items on the grill at Whiting's apartment. After they finished cleaning up, the group drank the beer Whiting and Pijnapple had purchased with Buckner's money and then the men told Whiting and Pijnapple that they had killed Buckner.

On Tuesday afternoon following the Sunday night/early Monday morning murder of Buckner, Smith and Berry, along with Pijnapple, moved Buckner's body from the cornfield and buried it in a shallow grave behind a barn that belonged to a friend. Berry had told his friend that they were burying a dog. They attempted to disguise the burial site.

Also on that day, Jerry Binegan, Buckner's uncle, contacted Whiting in an attempt to locate Buckner. Whiting told him that she had last seen Buckner at 1:00 a.m. and that she thought he was going home when he left her apartment. To mislead anyone looking for Buckner, Whiting subsequently placed a note on Buckner's door indicating that she was looking for and was worried about him.

Also on the day after the crime, Christy Rowles, Whiting's neighbor, questioned Whiting about the loud music that had been playing nearly all night in Whiting's apartment. Whiting broke down and told Christy what had happened the night before with Buckner. Christy did not contact the police at that time because she did not believe the story Whiting had told her.

Buckner's uncle filed a missing persons report and the police began investigating his disappearance. The officers first went to Whiting's apartment, the last place Buckner was known to have been. The officers discovered a blood stain on the carpet and blood splatter

on various items in the kitchen. After speaking with Whiting, the case quickly turned into a murder investigation. Shortly thereafter, police discovered the shallow grave containing Buckner's body.

Dr. Paul Mellen, a forensic pathologist who performed the autopsy on Buckner, noted that Buckner had suffered blunt force trauma to the head and twenty stab wounds to his torso. Dr. Mellen also noted a large knife wound across Buckner's neck. Dr. Mellen opined that Buckner could have survived all injuries but the cut to his neck. Dr. Mellen also believed that the stab wounds to Buckner's torso were inflicted before his throat was slit.

On September 11, 2008, the State charged Whiting with felony murder and class B felony robbery.[3] Whiting filed a motion for change of judge on September 30, 2008, which was subsequently denied on October 14, 2008. Whiting pursued an interlocutory appeal from the denial of her change-of-judge motion. In a memorandum decision entered on August 26, 2009, this court affirmed the trial court's denial of Whiting's change-of-judge motion. *See Smith v. State*, 38A05-0812-CR-720, (Ind. Ct. App. Aug. 26, 2009).[4] On December 15, 2008, Whiting filed a notice of insanity defense as well as a notice of her intention to assert abandonment as a defense. On December 7, 2009, Dr. Moredock filed a report with the court in which he found that Whiting was not insane at the time of the crime. A four-day jury trial for Whiting and her co-defendant, Pijnappels, commenced on July 12, 2010.

During *voir dire*, Juror Wright, a member of the jury pool, stated that she did not believe she could be fair because she was acquainted with several people involved in the

[3] The State later amended the robbery charge to a class A felony.
[4] The case was a consolidated interlocutory appeal brought by all five individuals involved.

case. Juror Wright also indicated that she was the type of person who tended to form quick and strong opinions and that it was difficult to change her mind. Despite Juror Wright's responses, the court did not remove her from the jury panel for cause and Whiting did not exercise one of her several remaining peremptory challenges to excuse Juror Wright. Juror Wright therefore served on the jury.

At the conclusion of the evidence, the jury found Whiting and Pijnappels guilty as charged. The trial court determined that the robbery conviction merged with the felony murder conviction, and therefore entered a judgment of conviction on only the felony murder offense. On August 13, 2010, the trial court sentenced Whiting to the advisory sentence of fifty-five years imprisonment.[5] Whiting now appeals.

1.

Whiting argues that she was denied her right to a fair and impartial jury when the trial court declined her requests[6] to strike Juror Wright for cause. The State argues Whiting waived her claim of error because she did not exercise a peremptory strike to excuse Juror Wright from the jury panel.

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[5] Ind. Code Ann. § 35-50-2-3 (West, Westlaw current through 2011 Pub. Laws approved & effective through 6/28/2011) ("A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years").

[6] The transcript does not reflect as Whiting claims that she twice moved to have Juror Wright stricken from the jury panel for cause at certain times during the proceedings. Whiting maintains that the requests were made during bench conferences that were not recorded. On March 7, 2011, Whiting filed a Motion to Certify Statement of the Evidence pursuant to Ind. Appellate Rule 31. Attached thereto was a Verified Statement of the Evidence from Whiting's trial attorney attesting that she made two requests that Juror Wright be stricken for cause and that the trial court denied both requests. The first request was before Juror Wright was questioned as part of the jury panel and the second request came after Juror Wright had a private conversation with the judge about her concerns with serving on the jury. In its certified statement of the evidence, the court stated that there were no challenges for cause at the sidebar conferences and that the only request to strike Juror Wright for cause was made upon completion of questioning of the particular panel of which she was a part.

Article 1, section 13 of the Indiana Constitution guarantees criminal defendants the right to trial by an impartial jury. The purpose of *voir dire* is to determine whether potential jurors can render a fair and impartial verdict in accordance with the law and evidence. *Gregory v. State*, 885 N.E.2d 697 (Ind. Ct. App. 2008), *trans. denied.* Such examination is used to discover whether a potential juror has any opinion, belief, or bias that would affect or control his determination of the issues to be tried, providing a basis to exercise the right of challenge either peremptory or for cause. *Id.* Whether a trial court should excuse a particular juror for cause rests within its sound discretion, and we will reverse the trial court only when its decision is illogical or arbitrary. *Ward v. State*, 908 N.E.2d 595 (Ind. 2009), *opinion on reh'g*.

During *voir dire*, Juror Wright indicated that she knew Whiting, Whiting's grandmother, the victim's family, and all of the attorneys for the parties and that she recognized the State's lead investigator. When prospective jurors were asked if they were people who tended to form quick and strong opinions based on initial information and if it is difficult to change their minds, Juror Wright indicted that she was that type of person. Later in the jury selection process, the trial court invited Juror Wright to the bench for a private conversation, the record of which was inaudible. After this conversation, the State questioned Juror Wright about whether she could provide a fair trial and she answered, "No, I can not." *Transcript* at 128.

On appeal, Whiting argues Juror Wright's "relationships with so many of the people involved in the trial kept her from properly and impartially withstanding any personal biases she might have as a result of those relationships." *Appellant's Brief* at 11. Whiting also

emphasizes Juror Wright's response that she believed she could not be fair. We note that after she indicated that she could not be fair, Juror Wright indicated that she understood the concept of beyond a reasonable doubt and that it was the State's burden to prove every element of the crime to that high standard. We further note that the trial court had a private conversation with Juror Wright about her concerns with serving on the jury. In its Order on Motion to Certify Statement of Evidence, the court found that the concerns expressed about Juror White's service were more suited for use of a peremptory strike, not a strike for cause.

Our Supreme Court has held "'a claim of error arising from denial of a challenge for cause is waived unless the appellant used any remaining peremptory challenges to remove the challenged juror or jurors.'" *Hatter v. Pierce Mfg., Inc.*, 934 N.E.2d 1160, 1166 (Ind. Ct. App. 2010) (quoting *Merritt v. Evansville-Vanderburgh Sch. Corp.*, 765 N.E.2d 1232, 1235 (Ind. 2002)). This is known as the exhaustion rule.

> To preserve review of any error, the appellant bears the burden of "demonstrating that at the time she challenged the jurors for cause, she had exhausted her peremptory challenges." [*Merritt v. Evansville-Vanderburgh Sch. Corp.*, 765 N.E.2d at 1235]. (emphasis and quotation omitted). "Eventual use of all peremptory challenges is therefore not enough to satisfy the exhaustion requirement." *Id.* The rationale for the exhaustion rule is: "Where a trial court may have erred in denying a party's challenge for cause, and the party can cure such error by peremptorily removing the apparently biased venireperson, the party should do so in order to ensure a fair trial and an efficient resolution of the case." *Id.* (quotation and alteration omitted).

*Id*.

Here, when the trial court denied the request to strike Juror Wright for cause, Whiting had six peremptory challenges at her disposal.[7] At the end of *voir dire*, Whiting had used

[7] Pursuant to Ind. Jury Rule 18(a)(2), Whiting was entitled to ten peremptory strikes for regular jurors.

only five of them on regular jurors. Because Whiting had peremptory challenges remaining when the trial court declined the request to strike Juror Wright for cause, Whiting has waived her claim of error from the trial court's denial of her request.

2.

Whiting argues that the trial court erred when it permitted a witness to discuss the credibility of a statement she had previously made to the witness. We begin by noting that the admission or exclusion of evidence lies within the sound discretion of the trial court and the trial court's decision is afforded great deference on appeal. *Whiteside v. State*, 853 N .E.2d 1021 (Ind. Ct. App. 2006). We will reverse the trial court's ruling on the admissibility of evidence only for an abuse of discretion. *Id.* A claim of error in the admission or exclusion of evidence will not prevail, however, "unless a substantial right of the party is affected." Ind. Evidence Rule 103(a). Whether an appellant's substantial rights are affected is determined by examining the "probable impact of that evidence upon the jury." *Pruitt v. State*, 834 N.E.2d 90, 117 (Ind. 2005).

During trial, Christy Rowles, Whiting's neighbor, testified that on the day following the incident she went to Whiting's apartment to pay her share of the water bill when Whiting told her about what had occurred the night before and even showed her a blood stain on her

apartment floor. In response to the State's questioning, Rowles explained that she did not contact the police about the crime Whiting told her about because she did not think Whiting was telling her the truth. The attorney for co-defendant Pijnappels objected to Rowles's testimony on the basis that Rowles could not give an opinion as to the truth of what Whiting told her. The court overruled the objection finding that Rowles was merely giving her opinion and that such was permissible. Counsel for Whiting never raised an objection and did not join in Pijnappels's objection to Rowles's testimony. Whiting has therefore waived the alleged error for appeal. *See Konopasek v. State*, 946 N.E.2d 23 (Ind. 2011) (failure to object to the admission of evidence at trial normally results in waiver and precludes appellate review unless its admission constitutes fundamental error).

Waiver notwithstanding, Whiting's argument is unavailing. Whiting argues that pursuant to Ind. Evidence Rule 704(b), Rowles's testimony was inadmissible. That rule provides: "Witnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions." Whiting asserts that in her testimony, Rowles was giving an opinion as to the truth of Whiting's statement to her. Indeed, it is improper for one witness to offer an opinion as to the credibility of another witness. The problem with Whiting's argument in this case is that Whiting was not a witness and Rowles's testimony was not a comment on Whiting's credibility. Rather, it is clear that the State was eliciting from Rowles her explanation as to why she did not immediately report what Whiting had told her to the police. Rowles's testimony does not fall within the parameters of Evid. R. 704(b) as it is not

vouching testimony, but was only testimony explaining Rowles's actions. There is no error in the admission of Rowles's testimony.

3.

Whiting argues that the evidence is insufficient to sustain her conviction. Specifically, Whiting argues that her participation in the crime did not extend to murder because the killing was not a continuation of the robbery. Whiting maintains that she had separated herself from the crime before Buckner was killed. That is, according to Whiting, the robbery was complete when the $20 was taken from Buckner and Whiting and Pijnapples left the scene to drive to Ohio to purchase beer. Whiting asserts that Buckner's murder was a spontaneous act of Berry, Smith, and Heffern that was not done "while committing . . . robbery". *See* I.C. § 35-42-1-1(2).

Our standard of review when considering a challenge to the sufficiency of the evidence is well settled.

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

*Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009).

Felony murder is committed when a defendant kills a person while committing or attempting to commit certain felonies, including robbery. *See* I.C. § 35-42-1-1(2). Here, the evidence is clear that Whiting did not inflict the fatal wound on Buckner. The State's theory

was therefore based on her role in aiding and abetting the crime.[8] It is well established that a person who aids another in committing a crime is just as guilty as the actual perpetrator. *Vandivier v. State,* 822 N.E.2d 1047 (Ind. Ct. App. 2005), *trans. denied.* To be convicted as an accomplice, it is not necessary for a defendant to have participated in every element of the crime. *Bruno v. State,* 774 N.E.2d 880 (Ind. 2002), *reh'g denied.* Our Supreme Court has addressed the theory of accomplice liability, stating:

> An accomplice is criminally liable for acts done by the accomplice's confederates that were a probable and natural consequence of their common plan, even though the acts may not have been originally conceived or intended in the plan. *See Edgecomb v. State*, 673 N.E.2d 1185, 1193 (Ind. 1996) (quoting *Johnson v. State,* 490 N.E.2d 333, 334 (Ind. 1986)), *reh'g denied*. The court considers the following factors when determining whether a defendant aided another in the commission of a crime: (1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose the commission of the crime; and (4) the course of conduct before, during, and after the occurrence of the crime. *See Wright v. State,* 690 N.E.2d 1098, 1106 (Ind. 1997).

*Kelly v. State*, 719 N.E.2d 391, 396 (Ind. 1999).

Here, the evidence presented by the State clearly demonstrated that Whiting's participation in the underlying beating and robbery contributed to Buckner's death. As recounted above, Whiting was a companion of the three men who actually participated in the murder of Buckner. Whiting initiated the underlying robbery offense by devising a plan with her companions to lure Buckner to her home with promises of a sex act at which time her companions would beat and rob Buckner of pills the group thought he would have on him. Whiting was intimately involved with the planning of the robbery and for her part, searched out Buckner and lured him to her home where she knew the men would be lying in wait to

[8] The jury was instructed on accomplice liability.

attack Buckner upon utterance of a code phrase. Once the code phrase was used, the men attacked Buckner and savagely beat him, all the while, Whiting egged them on by shouting that she knew he had pills on him. Whiting supplied her companions with a blanket that was used in an attempt to strangle Buckner. The only action Whiting took to oppose the attack on Buckner occurred when Heffern went to strike Buckner on the head with a heavy statue, at which time, Whiting, together with the others, yelled for him not to do so.

After Buckner had been severely beaten, the group decided to move him from the apartment. Upon request, Whiting provided the men with a blanket and the men wrapped Buckner up, carried him to a car, and drove away. Whiting and Pijnappels drove to Ohio to purchase more beer with the $20 taken from Buckner. The men took Buckner to a cornfield and stabbed him twenty times and slit his throat with a knife they took from Whiting's home. The men returned to Whiting's apartment and began cleaning up the apartment and disposing of items that would link them to the crime. When Whiting returned, she joined in the clean-up effort. The group then drank the beer Whiting had purchased with the money taken from Buckner and the men explained what they had done to Buckner.

Over the next couple of days, Whiting engaged in actions intended to mislead anyone looking for Buckner. Whiting told Buckner's uncle that she had last seen him at 1:00 a.m. and she also placed a note on Buckner's door that was obviously intended to misdirect attention from her. Whiting did not contact the police, although when she was eventually questioned by police, she told them about what had occurred at her apartment with Buckner.

The evidence establishes that Whiting instigated and planned the robbery and beating of Buckner. Whiting was clearly an integral part of the plan and she carried out her part in

the scheme. Whiting did not oppose the beating of Buckner and actually aided in his demise by providing a blanket and knife. Although Whiting was not present when the fatal wound was inflicted on Buckner, she certainly knew that Buckner's death was a natural and probable consequence of the plan as she had tried to provide the men with a knife[9] before they drove away with Buckner, who was in no condition to resist the three men.

In terms of our review, the evidence clearly established Whiting's presence at the crime scene, at least the scene of the robbery, her companionship with those who committed the robbery and the murder, and her conduct before, during, and after the crimes demonstrated her knowledge of the crimes, her agreement to engage in the crimes, and her efforts to conceal the crimes. Whiting put in motion the series of events which ultimately ended in Buckner's death and therefore, we conclude that Whiting contributed mediately or immediately to the death. *Spencer v. State*, 660 N.E.2d 359 (Ind. Ct. App. 1996). We reject Whiting's argument that her trip to Ohio to purchase more beer with the money taken from Buckner while the three men took him to a cornfield and murdered him was a break in the chain of events so as to relieve Whiting of any culpability for the murder of Buckner. The evidence is sufficient to support Whiting's conviction for felony murder.

[9] The men did not use the knife Whiting retrieved for them. Rather, one of the men found a different knife at Whiting's apartment and it was this knife they used to stab Buckner and slit his throat.

4.

Whiting first argues that the trial court abused its discretion in failing to consider certain mitigating circumstances apparent from the record. We note that sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g by* 875 N.E.2d 218. With the exception of our authority to review sentences under Indiana Appellate Rule 7(B), as long as a defendant's sentence is within the statutory range, it is reviewed only for an abuse of discretion. *Id*. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences to be drawn therefrom. *Id*. Circumstances under which a trial court may be found to have abused its discretion include: (1) failing to enter a sentencing statement, (2) entering a sentencing statement that includes reasons not supported by the record, (3) entering a sentencing statement that omits reasons clearly supported by the record, or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Id*. Where a trial court has identified proper aggravating and mitigating circumstances, however, "[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse." *Id.* at 491.

The determination of mitigating circumstances is within the discretion of the trial court. *Rogers v. State*, 878 N.E.2d 269 (Ind. Ct. App. 2007), *trans. denied*. The trial court is not obligated to accept the defendant's argument as to what constitutes a mitigating factor, and a trial court is not required to give the same weight to proffered mitigating factors as does a defendant. *Id.* A trial court does not err in failing to find a mitigating factor where

that claim is highly disputable in nature, weight, or significance. *Id.* An allegation that a trial court abused its discretion by failing to identify or find a mitigating factor requires the defendant on appeal to establish that the mitigating evidence is significant and clearly supported by the record. *Id.*

During the sentencing hearing, Whiting advanced the following mitigating circumstances: (1) her abusive childhood; (2) her basically law-abiding life until the present offense; (3) she is unlikely to commit another crime; (4) undue hardship on her dependent child; (5) her remorse; and (6) her minimal involvement in the crime in that she did not participate in any physical violence toward the victim. In a detailed sentencing statement, the trial court noted that it considered Whiting's expression of remorse and her lack of criminal history as mitigating circumstances, although the court indicated that it gave both minimal weight. The court also explained that it discounted her claim that her incarceration would impose an undue hardship on her seventeen-year-old daughter. The court then detailed Whiting's role in the gruesome crime, thereby rejecting her claim that she was deserving of a lesser sentence because she did not physically strike Whiting or inflict the fatal wound.

On appeal, Whiting asserts the trial court abused its discretion by failing to specifically find that the crime was the result of circumstances unlikely to recur, that Buckner bore some responsibility for the attack because of his attempted sexual assault on and intimidation of Whiting days before the attack, and that Whiting attempted to aid the victim. Whiting also asserts that the trial court abused its discretion in failing to consider in mitigation three psychological reports documenting her past history of psychological, physical, and sexual abuse.

We first note that Whiting did not present the psychological reports as evidence during the sentencing hearing for consideration by the court. A trial court "does not abuse its discretion in failing to consider a mitigating factor that was not raised at sentencing." *Anglemyer v. State*, 868 N.E.2d at 492. To the extent Whiting argues the trial court failed to consider the other mitigating circumstances, we disagree. In setting forth the sentence, the trial court adequately addressed each of the mitigating factors presented by Whiting during the sentencing hearing and such considerations adequately encompass the mitigating circumstances Whiting now claims should have been, but were not considered. The trial court did not abuse its discretion in identifying mitigating circumstances.

Whiting also argues that her sentence is inappropriate in light of the nature of the offense and her character. Whiting requests that we reduce her sentence to the minimum sentence of forty-five years.

We have the constitutional authority to revise a sentence if, after careful 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* Ind. Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482. Even if a trial court follows the appropriate procedure in arriving at its sentence, we maintain the constitutional power to revise a sentence we find inappropriate. *Hope v. State*, 834 N.E.2d 713 (Ind. Ct. App. 2005). 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). On appeal, Whiting bears the burden of persuading us that her sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

The nature of the offense was truly heinous and completely senseless. Whiting used promises of sex to lure Buckner to her apartment so that Whiting's companions could savagely beat him in an effort to rob him of prescription pills Whiting believed he would have with him. They did not find the prescription pills they were looking for, but found only twenty dollars on Buckner's person. Buckner was then dumped in a cornfield where the perpetrators stabbed him twenty times and slit his throat. The perpetrators, including Whiting, attempted to clean up and dispose of items linking them to the crime. The next day, three of the perpetrators moved Buckner's body to a shallow grave. Whiting lied to Buckner's family about his whereabouts and took steps in an effort to mislead anyone looking for Buckner. Whiting instigated the crime by proposing to lure Buckner to her apartment and initiated the events of the evening by hunting down Buckner and inviting him back to her place with promises of a "threesome." Whiting encouraged the beating of Buckner by yelling that she knew he had prescription pills with him and by supplying a blanket and a knife when requested by her companions. Whiting supplied the items even though Buckner had been severely beaten and could no longer defend himself. Whiting's role in this brutal and senseless crime was far from minimal. But for Whiting's role, Buckner would not have been a victim. For the above reasons, the nature of the offense is not deserving of a sentence less than the advisory.

As for the character of the offender, we recognize that Whiting has led a relatively law-abiding life until the present offense. Whiting, however, admitted that she was abusing prescription pain medicines and using marijuana. At the time of the instant offense, Whiting was abusing prescription medicines and the current offense was triggered by her and her

companions' desire for more prescription medicine to abuse. We do not dismiss the fact that Whiting had a difficult childhood and may well have psychological issues. There is nothing to suggest, however, that she could not appreciate the wrongfulness of her actions. That Whiting helped plan to rob someone she knew of prescription medicines by beating him up demonstrates a complete disregard for others and does not speak highly of her character. Further, as noted by the trial court, Whiting was the oldest of the group involved in the crime, being in her thirties. As reflected in the record, Whiting's character certainly does not demand much credit in terms of mitigation, or, for that matter, a sentence less than the advisory.

Based on the nature of the offense and the character of the offender, we cannot say that the advisory sentence of fifty-five years is inappropriate.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.