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**IN THE  
COURT OF APPEALS OF INDIANA**

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TERRELL BRYANT NELSON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A05-1008-CR-472

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Diane Ross Boswell, Judge  
Cause No. 45G03-0902-FB-17

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May 11, 2011

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Terrell Bryant Nelson appeals his conviction for Class B felony robbery and his accompanying fifteen-year sentence. He argues that the evidence is insufficient to support his conviction based on accomplice liability. He also argues that his sentence is inappropriate given his role as an accomplice and should be revised to ten years. Finding the evidence sufficient and that Nelson has failed to persuade us that his aggregate sentence is inappropriate, we affirm.

## **Facts and Procedural History**

The facts most favorable to the verdicts reveal that on February 15, 2009, Nelson borrowed a red Chevrolet Cavalier from his mother and drove himself and longtime friend Arthur Lewis from Indianapolis to Gary, Indiana. The next day, Nelson used the Cavalier to drop off Lewis and Darnell Russell at Antoine Howard's Gary home. Russell and Howard were stepbrothers. According to previous conversations between the stepbrothers, Russell knew that Howard might have a large amount of cash on hand to pay his upcoming property tax bill.

When Russell and Lewis entered Howard's house, they watched a recorded football game while Howard was in the back of his house cleaning. When Howard emerged from the back about thirty minutes later, his stepbrother Russell asked him where the money was while Lewis pointed a gun at him. Russell then swung at Howard, but Howard blocked it and slammed Russell over a table. At this point, Lewis stuck his gun in Howard's back and instructed him to sit down. Howard sat down while Russell searched for the money. At some point during the search, Lewis suggested to Russell

that they should tie Howard up. Howard interpreted this to mean that Lewis and Russell were going to tie him up and shoot him. Therefore, when Russell went to the front porch to find something to tie Howard up with, Howard made a run for it. Lewis shot at Howard but missed. Russell and Lewis each pointed guns at Howard, at which point he sat back down on the couch. Lewis grabbed Howard's fur coat, an X-Box 360, a camcorder, and a phone and put them in a black garbage bag. Russell then called Nelson, who arrived at Howard's house within a "couple minutes." Tr. p. 771. Russell and Lewis exited the house carrying a black bag, and Lewis was wearing Howard's fur coat. Russell and Lewis entered Nelson's Cavalier, and Nelson pulled away. What the trio did not know, however, was that Howard had also left and was following them in his own car. Howard called 911 to report the robbery and their direction of travel.

Nelson drove normally until several marked Gary Police Department cars intercepted him and attempted to use their lights and sirens to order him to stop. At this point, Nelson led the police on a blocks-long chase through red lights at speeds reaching up to one hundred miles per hour. Nelson's flight ended when police cars forced him to turn onto a dead-end street in a residential area. Despite coming to a dead end, Nelson, Russell, and Lewis did not surrender to the police. Instead, they emerged from the Cavalier armed with guns. Nelson and Russell aimed their guns at the police, who then opened fire. The trio ran. After running a short distance, Nelson flung himself to the ground and threw his revolver a few feet away. Russell and Lewis ran into a wooded area near Duneland Village Apartments with the police hot on their trail. Lewis, who

was still wearing Howard's fur coat, was eventually apprehended. Russell did not fare as well; he was shot and killed when he aimed his gun at a police officer.

The State charged Nelson, the driver of the Cavalier, with Class B felony robbery, Class B felony criminal confinement, Class C felony carrying a handgun without a license, Class D felony resisting law enforcement, Class A misdemeanor resisting law enforcement, Class A misdemeanor possession of marijuana, and felony murder. The State also alleged that he was a habitual offender. After an approximately nine-day jury trial, the jury found Nelson guilty of Class B felony robbery, Class B felony criminal confinement, and Class D felony and Class A misdemeanor resisting law enforcement and not guilty of felony murder and carrying a handgun without a license. The State dismissed the marijuana charge during trial. Nelson then admitted to the habitual offender allegation.

At the sentencing hearing, the trial court vacated Nelson's conviction for Class B felony criminal confinement because "there was not enough – any substantial act toward the confinement that didn't relate to the robbery." *Id.* at 1287. The court also vacated Nelson's conviction for Class A misdemeanor resisting law enforcement because there was "one act of resisting," not two. *Id.* at 1288. The trial court found no mitigators but the following aggravators: (1) Nelson has a history of delinquent and adult criminal behavior (two juvenile adjudications for burglary and auto theft and three felony convictions for theft, robbery, and burglary); (2) Nelson's juvenile and adult activity is similar to his convictions in the present case; and (3) Nelson has violated his probation. The court then found:

[T]he nature and the character of this defendant, he is age 33, he has no education, no stable work history, and the Court feels that the likelihood of him turning his life around at this point without some significant assistance is not great, and that he will need the education and training that is available to him in a penal institution to be able to return to society as a productive citizen.

*Id.* at 1289. Accordingly, the court sentenced Nelson to fifteen years for Class B felony robbery and two years for Class D felony resisting law enforcement, to be served consecutively. The court then enhanced Nelson's Class D felony by four and a half years for his habitual offender adjudication. Thus, Nelson's aggregate sentence is twenty-one and a half years. Nelson now appeals.

### **Discussion and Decision**

Nelson raises two issues. First, he contends that the evidence is insufficient to support his robbery conviction based on accomplice liability. Second, he contends that his sentence is inappropriate in light of his role as an accomplice.

#### **I. Sufficiency of the Evidence**

Nelson contends that the evidence is insufficient to support his robbery conviction based on accomplice liability because he was merely an "innocent driver." Appellant's Br. p. 6. Nelson does not challenge his resisting law enforcement conviction.

In reviewing a sufficiency of the evidence claim, we do not reweigh the evidence or assess the credibility of the witnesses. *Treadway v. State*, 924 N.E.2d 621, 639 (Ind. 2010). Rather, we look to the evidence and reasonable inferences drawn therefrom that support the verdicts, and we will affirm the convictions if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Id.*

In order to convict Nelson of Class B felony robbery, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally, while armed with a deadly weapon, took property from Howard or Howard's presence by using or threatening the use of force on Howard. *See* Appellant's App. p. 35 (charging information); *see also* Ind. Code § 35-42-5-1. To convict Nelson as an accomplice, the State was required to prove beyond a reasonable doubt that Nelson knowingly or intentionally aided, induced, or caused another person to commit robbery. *See* Ind. Code § 35-41-2-4.

Accomplice liability is not a separate offense; rather, it is merely a separate basis of liability for the offense charged. *Sanquenetti v. State*, 727 N.E.2d 437, 441 (Ind. 2000); *Suggs v. State*, 883 N.E.2d 1188, 1192 (Ind. Ct. App. 2008). Thus, one may be charged as a principal yet convicted on proof that he aided another in the commission of a crime. *Wise v. State*, 719 N.E.2d 1192, 1198 (Ind. 1999); *see also Vandivier v. State*, 822 N.E.2d 1047, 1054 (Ind. Ct. App. 2005) (noting that a person who aids another in committing a crime is just as guilty as the actual perpetrator), *trans. denied*. In addition, to be convicted as an accomplice, the defendant does not have to participate in every element of the crime. *Bruno v. State*, 774 N.E.2d 880, 882 (Ind. 2002), *reh'g denied*. While mere presence at the scene of the crime is insufficient to establish accomplice liability, presence may be considered along with the defendant's relation to the one engaged in the crime, failure to oppose commission of the crime, and the defendant's actions before, during, and after the commission of the crime. *Hyche v. State*, 934 N.E.2d

1176, 1180 (Ind. Ct. App. 2010), *trans. denied*; *Alvies v. State*, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009).

Here, the record shows that Nelson had known Lewis for about fifteen years. The day before the robbery, Nelson borrowed his mother's Cavalier so that he and Lewis could travel from Indianapolis to Gary. Nelson also used the Cavalier to take Lewis and Russell to Howard's house. After Lewis and Russell robbed Howard, Russell called Nelson, who arrived at Howard's house within minutes. Notably, Russell and Lewis entered Nelson's Cavalier carrying property that they did not bring with them to Howard's house, and Lewis was wearing a fur coat.

Despite these damaging facts, Nelson argues that the fact that he drove away from Howard's house in a law-abiding manner means that he was merely an "innocent driver" and similar to defendants in those cases where ordinary driving and behavior were found insufficient to prove accomplice liability. *See Lipscomb v. State*, 254 Ind. 642, 261 N.E.2d 860, 861 (1970) ("There is no evidence in the record that [defendant] was in any position to hear the conversation between the service station attendant and [defendant's companion] at the time the robbery took place. There is no evidence that any weapon was ever displayed by [the companion] or any action which would have made it obvious to [defendant] that [his companion] was robbing the attendant. There is no evidence that [defendant] left the station in any haste or made any attempt to hide his identity. The mere presence of [defendant] seated in his car at the station while [his companion] robbed the attendant inside the station office is insufficient in itself to prove participation."); *Pace v. State*, 248 Ind. 146, 224 N.E.2d 312, 314 (1967) ("While [defendant] was driving

the car, nothing was said nor did he act in any manner to indicate his approval or countenance of [his companion's robbery of a hitchhiker in the car]. While there is evidence from which a jury might reasonably infer that he knew the crime was being committed, his situation was not one which would demonstrate a duty to oppose it. We do not intend to draw any hard and fast rules in this area of the law. Each case must be reviewed on its facts . . . ." (citation omitted)); *Conard v. State*, 175 Ind. App. 43, 369 N.E.2d 1090, 1093 (1977) (noting that the driver of the car was "not in position to observe the in-store actions of the robbers, and their casual stroll out of the grocery store carrying a sack of groceries gave no indication of the robbery just completed. The two robbers entered the car, and [defendant] drove away unhurriedly. His presence at the scene is not sufficient to convict. His act of driving the 'getaway' car . . . is not sufficient to support a reasonable inference that he had knowledge of, and participated in, the commission of the robbery.").

Nelson's attempt to liken his case to *Lipscomb*, *Pace*, and *Conard* overlooks the salient fact that his driving was law abiding only until Gary Police Department cars intercepted him and ordered him to stop with their sirens and lights. At this point, Nelson led the officers on a high-speed chase, reaching speeds of up to one hundred miles per hour. Nelson's flight ended only because police cars forced him down a dead-end street. Nelson and his companions did not surrender, though. Instead, Nelson and Russell emerged from the Cavalier pointing their guns at the police, at which point the officers opened fire. The trio took off. Nelson ran a short distance before flinging himself to the ground and throwing his revolver a few feet away.

Nelson's companionship with Lewis and Russell, the fact that he responded quickly to their request to be picked up from Howard's house, the fact that Lewis and Russell brought items to Nelson's Cavalier that they did not bring with them to Howard's house, and Nelson's flight and armed resistance to the police readily distinguish his case from those he cites on appeal. From this evidence, a reasonable inference can be drawn that Nelson had knowledge of and aided or induced the robbery. The evidence is sufficient to support Nelson's Class B felony robbery conviction based on accomplice liability.

## **II. Inappropriate Sentence**

In the event we do not reverse his Class B felony robbery conviction, Nelson contends that his fifteen-year sentence for robbery is inappropriate given his role as an accomplice. He therefore asks us to revise his robbery sentence to the advisory term of ten years, which means that his aggregate sentence would be sixteen and a half years instead of twenty-one and a half years.

Our rules authorize revision of a sentence "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." Ind. Appellate Rule 7(B). "[A] defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review." *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

The principal role of Rule 7(B) review "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case."

*Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We “should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Id.* Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case. *Id.* at 1224.

We thus look to the nature of the offenses as a whole and not just to the robbery conviction. It is true that Nelson’s role in the robbery was that of an accomplice. But in that role as an accomplice, Nelson led the police on a high-speed chase through the streets of Gary and threatened them with a gun in a residential area. These actions show that Nelson was willing to place both the public and the police in danger.

As Nelson concedes on appeal, his character does not warrant a downward revision to his sentence. *See* Appellant’s Br. p. 9 (“Because of Nelson’s criminal history, he acknowledges that the character of the offender prong would trigger a sentence greater than the six (6) year minimum term.”). That is, Nelson has three felony convictions for theft, robbery, and burglary, one misdemeanor conviction for resisting law enforcement, and juvenile delinquency adjudications for burglary and auto theft. Nelson has also violated his probation. As the trial court pointed out, Nelson’s prior adjudications and convictions are for offenses similar to those in the present case. This shows that despite the intervention of the criminal justice system and the availability of probation, Nelson continues to commit the same type of crime with an increasing level of severity. Nelson

has failed to persuade us that his aggregate sentence of twenty-one and a half years is inappropriate.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.