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IN THE
COURT OF APPEALS OF INDIANA

STEVE BALLARD,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A02-1001-CR-63
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0609-MR-175974

August 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Steve Ballard appeals his two convictions of murder after a jury trial as well as the 110-year sentence imposed thereon. Ballard raises three issues which we restate as: 1) whether the trial court erred in admitting his confession into evidence; 2) whether the trial court erred in denying his motion to sever the offenses; and 3) whether his sentence is inappropriate. Concluding Ballard's confession was voluntary; the two murders were a series of acts connected together; and the 110-year sentence was appropriate given the nature of the offenses and the character of the offender, we affirm.

Facts and Procedural History

The facts most favorable to the verdict reveal that in late August or early September 2006, Thomas Schoolfield stabbed 42-year-old Ballard in the neck. The injury was severe enough to require several stitches. In the early morning hours of September 14, 2006, Ballard went to wheelchair-bound Schoolfield's house on the west side of Indianapolis and stabbed him to death. Ballard placed the clothes he was wearing as well as the knife he apparently used to kill Schoolfield in a bag. He then woke his mother, Clair Ballard, with whom he lived, and told her he had killed "Wheelchair Tom." Transcript at 125. Ballard asked his mother to dispose of the bag. Clair got out of bed, drove to a nearby bridge, and threw the bag into the White River. She returned home and went to bed.

A few hours later, Ballard woke his mother again. Holding an ax with blood on it, Ballard told his mother, "I've just killed this dude. If you don't believe me, you can look in the bedroom." Id. at 129. Clair looked and saw an African-American man, William

Coleman, lying on Ballard's bed with "part of his head missing." Id. at 130. Ballard explained he had killed Coleman because Coleman overheard Ballard and Clair discussing Schoolfield's murder.

Ballard asked a friend who lived in a tent in Clair's backyard to help him take the body out of the house. The two men loaded the body into Clair's van and then dumped the body in an isolated area near Mann Road and I-465 on the southwest side of Indianapolis. When Ballard returned home, Clair told him he needed to clean up the mess in his bedroom because his seven- and eight-year-old children would be waking up soon for school. Ballard ignored Clair and continued to drink alcohol with the friend who helped him dispose of Coleman's dead body.

At 5:00 a.m., Clair started cleaning up the mess in Ballard's bedroom. She took Ballard's mattress outside and burned it in the backyard. Clair also wiped blood off the bedroom walls so the children would not notice anything. After the children left for school, Clair pulled the carpet out of the bedroom. She also removed all items with blood on them and dropped them in various dumpsters throughout the city.

Both dead bodies were discovered that day. Schoolfield's body was discovered in his house, and Coleman's body was discovered by a deer hunter. That evening, Ballard told Michelle Palmer, a neighbor, he "killed the guy who cut his neck." Id. at 95. Ballard also told his niece, Amber Ballard, he "sliced and diced . . . a guy in a wheelchair . . . and . . . a black man." Id. at 112-14. Amber went to Clair's house and saw that the carpet in Ballard's room was rolled up and there was blood on the wall. Both Amber and Clair contacted the police department.

Police officers picked up Ballard at his mother's house at approximately 2:00 a.m. the following morning. At the time, Ballard smelled like alcohol. The police officers took Ballard to the police station and left him in an interview room, where he fell asleep. Around 10:00 the following morning, police officers began questioning Ballard. Ballard was thoroughly advised of his Miranda rights, and told the officers he had an eighth-grade education and could read and write. During the interview, Ballard did not appear to be intoxicated. He was lucid, coherent, and able to respond to questions in an appropriate manner and to give details of events.

Ballard initially denied killing Schoolfield and Coleman. He explained he took the carpet out of his bedroom and burned his mattress because there were fleas and lice in his bedroom, and his daughter is allergic to fleas. After the officers told Ballard his mother had already told the officers Ballard killed Schoolfield and Coleman, and that she could go to jail, Ballard explained he had killed the two men in self-defense, and in defense of his mother and children. According to Ballard, Coleman came at him in the bedroom with a knife and trapped him against the closet door. Ballard further explained he reached in the closet and grabbed a double-headed ax he just happened to keep there, and hit Coleman in the head with it. Ballard gave the officer the precise location where he dumped Coleman's body. Ballard explained he was familiar with the area because his grandparents had lived there when he was a child.

Ballard was charged with two counts of murder in September 2006. In November 2007, Ballard's counsel argued Ballard was not competent to stand trial. On November 30, 2007, following a hearing, the trial court found Ballard was not competent and

ordered him placed with the Department of Mental Health. Ballard was found to be competent in November 2009.

Before trial, Ballard filed motions to sever the two counts and to suppress his confession. The trial court denied both motions. At trial, the trial court admitted Ballard's confession into evidence over Ballard's objection. Also at trial, forensic pathologist Dr. Stephen Radentz testified Schoolfield had fifteen stab wounds, and Coleman had chopping injuries to his head that were classic ax injuries. The evidence further revealed Coleman's DNA was found in Ballard's bedroom and Clair's van. Ballard's neighbor, Michelle; his niece, Amber; and his mother, Clair, all testified against Ballard. Ballard's mother also testified she was charged with two counts of obstruction of justice for cleaning up after the murder and throwing away items associated with the murders. A jury convicted Ballard of both counts.

At the sentencing hearing, Ballard's mother testified Ballard suffered from a bi-polar disorder and depression, and had a borderline personality disorder. Clair further explained at the time of the murders, Ballard was not taking his medication because it made him feel like a zombie. The trial court sentenced Ballard to fifty years for the murder of Thomas Schoolfield, and sixty years for the murder of William Coleman, sentences to run consecutively, for a total sentence of 110 years. Ballard appeals his convictions and sentence.

Discussion and Decision

I. Admission of Evidence

Ballard first argues the trial court erred in admitting his confession into evidence at trial over his objection. Specifically, he claims his confession was not voluntary because he is mentally ill and the police officers used coercive tactics.

When the defendant challenges the admissibility of his confession, the State must prove beyond a reasonable doubt that the confession was given voluntarily. Luckhart v. State, 736 N.E.2d 227, 229 (Ind. 2000). A confession is voluntary if, in light of the totality of the circumstances, the confession is the product of a rational intellect, and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant's free will. Ringo v. State, 736 N.E.2d 1209, 1212 (Ind. 2000). The critical inquiry is whether the defendant's statements were induced by violence, threats, promises, or other improper influence. Id. at 1212-13. A defendant's mental state is not enough to render a confession inadmissible in the absence of coercive police activity. Faris v. State, 901 N.E.2d 1123, 1127 (Ind. Ct. App. 2009), trans. denied.

As to Ballard's claim his confession was not voluntary because he is mentally ill, we note that during the police interview, Ballard was lucid, coherent, and able to respond to questions in an appropriate manner and to give details of events. For example, Ballard initially explained he took the carpet out of his room and burned his mattress because he had fleas in his bedroom, and his daughter was allergic to them. He also described in detail the location where he dumped Coleman's body and was able to explain why he had chosen that spot. Ballard was familiar with this area because his grandparents had lived there when he was a small child.

In addition, there is simply no evidence of coercive police activity. The police officers told Ballard his mother told them Ballard had killed Schoolfield and Coleman. The officers told Ballard his mother could go to jail. In fact, Clair was convicted of two counts of obstructing justice. The officers's statements to Ballard about the possible consequences she was facing for her role cleaning up after the murders were not threats or other improper influences. The trial court did not err in admitting the statements into evidence.

II. Motion to Sever the Offenses

Ballard also argues the trial court erred in denying his motion to sever the two offenses. Specifically, he contends "[i]n the combined trial of both counts of murder it was impossible for the jury to distinguish the facts of each case from the other so as to avoid drawing an inference of guilt in one case from conduct in the other." Appellant's Brief at 13.

Two statutory provisions are at issue here: Indiana Code sections 35-34-1-9(a) and 35-34-1-11(a):

> Two (2) or more offenses may be joined in the same indictment or information, with each offense stated in a separate court, when the offenses:
>
> (1) are of the same or similar character, even if not part of a single scheme or plan; or
> (2) are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

Ind. Code sec. 35-34-1-9(a).

> Whenever two (2) or more offenses have been joined for trial in the same indictment or information solely on the ground they are of the same or similar character, the defendant shall have a right to a severance of the offenses. In all other cases the court, upon motion of the defendant or the

> prosecutor, shall grant a severance of offenses whenever the court determines that severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense considering:
>
> (1) the number of offenses charged;
> (2) the complexity of the evidence to be offered; and
> (3) whether the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.

Ind. Code sec. 35-34-1-11(a).

Indiana appellate courts have required severance of offenses as a matter of right under subsection 11(a) only when the offenses are joined solely because they are of the same or similar character. Ben-Yisrayl v. State, 690 N.E.2d 1141, 1145 (Ind. 1997), cert. denied, 525 U.S. 1108 (1999). However, when the offenses are joined under subsection 9(a)(2), the trial court must grant a severance only if it determines that it is appropriate to promote a fair understanding of the defendant's guilt or innocence based on subsections 11(a)(1) through (3). Id.

Here, the two offenses were joined because Ballard told witnesses that he killed Coleman because Coleman overheard Ballard talking to his mother about killing Schoolfield. Because the first offense provided the motive for the second offense, the two offenses were based on a series of acts committed together. Ballard was therefore not entitled to severance as a matter of right.

Accordingly, pursuant to Indiana Code section 35-34-1-11(a), severance became a matter within the trial court's discretion, taking into account: 1) the number of offenses charged; 2) the complexity of the evidence to be offered; and 3) whether the trier of fact would be able to distinguish the evidence and apply the law intelligently as to each offense. See Waldon v. State, 829 N.E.2d 168, 174 (Ind. Ct. App. 2005), trans. denied.

A denial of severance will only be reversed upon a showing of clear error. Id. In order to show that the trial court abused its discretion, the defendant must also demonstrate in light of what actually occurred at trial that the denial of a separate trial subjected him to prejudice. Id.

Here, Ballard was charged with two counts of murder. The evidence for each charge was not complex. One victim was killed in his home with a knife, and the other victim was killed in Ballard's bedroom with an ax and dumped along the side of the road. Further, by frequently specifying to which count the evidence applied, the trial court took special care to enable the jury to distinguish the evidence and apply the law intelligently as to each offense. In addition, Ballard has failed to demonstrate in light of what actually happened at trial that the denial of a separate trial subjected him to prejudice. The evidence supporting each charge was overwhelming and there is little risk the jury convicted him of one count only because of evidence of the other. The trial court did not abuse its discretion in denying Ballard's motion to sever the offenses.

III. Sentence

The trial court sentenced Ballard to fifty years for the murder of Schoolfield and sixty years for the murder of Coleman, sentences to run consecutively, for a total sentence of 110 years. Ballard argues that this sentence was inappropriate in light of his character and the nature of the offenses.

Article 7, sections 4 and 6 of the Indiana Constitution authorizes independent appellate review of the appropriateness of a sentence. Childress v. State, 848 N.E.2d 1073, 1079-80 (Ind. 2006). This authority is implemented through Indiana Appellate

Rule 7(B), which provides 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 making this determination, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied.

Regarding the nature of the offenses, Ballard stabbed a wheelchair-bound Schoolfield fifteen times. Later that evening, Ballard struck Coleman in the head several times with an ax because Ballard believed Coleman had overheard Ballard and Clair discussing Schoolfield's murder. Coleman's murder occurred in Ballard's bedroom while his mother and two young children were sleeping in the same house.

With regard to the character of the offender, Ballard killed his first victim and then asked his mother to dispose of the weapons and bloody clothes. He enlisted his mother's help again when he killed Coleman that same night. He used his mother's van to dump Coleman's body in an isolated area, leaving Coleman's DNA in the back of the van. When he and a friend returned from dumping Coleman's body, Ballard refused to clean up the blood in his bedroom before his children got up for school. His mother had to clean up the bloody mess so that Ballard's children would not see it. Based upon the foregoing, Ballard's sentence is not inappropriate.

Nevertheless, Ballard contends evidence of his "mental impairment . . . suggests that consecutive sentencing with such lengthy terms was not fitting." Appellant's Br. at 17. However, Ballard has not established a nexus between his mental illness and the commission of the crimes. Rather, Ballard told his mother he killed Schoolfield because

Schoolfield had previously stabbed him in the neck. Ballard killed Coleman because Coleman overheard Ballard and his mother talking about Schoolfield's murder. We further agree with the State that Ballard behaved "rationally enough" when he asked his mother to dispose of his bloody clothes and knives, disposed of the bloody ax, removed Coleman's body from his bedroom, and dumped it in an isolated area Ballard was familiar with because his grandparents had lived in that area years ago.

As to the consecutive sentences, the Indiana Supreme Court has stated consecutive sentences reflect the significance of multiple victims. Pittman v. State, 885 N.E.2d 1246, 1259 (Ind. 2008). Specifically, when a defendant commits the same act against more than one victim, consecutive sentences "vindicate the fact that there were separate harms and separate acts against more than one person." Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003). We find no error in Ballard's sentence.

Conclusion

The trial court did not err in admitting Ballard's confession into evidence, in denying Ballard's motion to sever the offenses, or in imposing a 110-year sentence for two murders.

Affirmed.

MAY, J., and VAIDIK, J., concur.