

SUPREME COURT OF INDIANA

Bruno v. State

774 N.E.2d 880 (Ind. 2002) · No. 18S00-0009-CR-523 · Decided September 11, 2002

SUMMARY

The Indiana Supreme Court affirmed Michael Bruno's convictions for murder and criminal recklessness arising from a shooting into an occupied residence. The court held that sufficient evidence supported the convictions and found no fundamental error concerning the verdict forms. It remanded for resentencing because consecutive sentences for criminal recklessness exceeded the statutory limitation and the murder and conspiracy convictions should have been merged based on a single overt act.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Sullivan, Justice; Shepard, C.J.; Dickson, J.; Boehm, J.; Sullivan, J.; Rucker, J.
JURISDICTION	Indiana
DECIDED	September 11, 2002
DOCKET	18S00-0009-CR-523
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from criminal convictions and sentences. The defendant challenged the sufficiency of the evidence, the verdict forms, and the legality of consecutive sentences and cumulative convictions.
STANDARD OF REVIEW	For sufficiency of the evidence, the court neither reweighs the evidence nor assesses witness credibility; it considers the evidence most favorable to the verdict and reasonable inferences and affirms if probative evidence could permit a reasonable jury to find guilt beyond a reasonable doubt. Unpreserved instructional or verdict-form claims are reviewed only for fundamental error, requiring prejudice so severe that a fair trial was impossible.
PRECEDENTIAL VALUE	Published Indiana Supreme Court opinion; precedential.
PARTIES	Michael Bruno v. State of Indiana

TOPICS

sentencing

criminal procedure

appellate procedure

standard of review

double jeopardy

PRACTICE AREAS

criminal law

criminal procedure

sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether sufficient evidence supported Bruno's convictions for murder and criminal recklessness, including under an accomplice-liability theory.
2. Whether the verdict forms for voluntary manslaughter and reckless homicide were confusing and constituted fundamental error despite the absence of a trial objection.
3. Whether consecutive sentences for the three criminal-recklessness convictions exceeded Indiana's statutory limitation on consecutive terms.
4. Whether imposing convictions and sentences for both murder and conspiracy to commit murder was impermissible because the convictions rested on a single overt act.

HOLDINGS

1. The evidence was sufficient to support Bruno's convictions for murder and criminal recklessness because the evidence showed that he and others knowingly fired weapons into an occupied residence, and Bruno admitted firing into the residence.
2. The allegedly confusing headings on the voluntary-manslaughter and reckless-homicide verdict forms did not constitute fundamental error.
3. The aggregate consecutive terms for Bruno's three Class C felony criminal-recklessness convictions could not exceed ten years, the presumptive sentence for a Class B felony, because criminal recklessness was not designated as a crime of violence.
4. The trial court should have merged Bruno's murder conviction and conspiracy-to-commit-murder conviction because both convictions rested on a single overt act.

KEY QUOTATIONS

“In reviewing a sufficiency of the evidence claim, this Court neither reweighs the evidence nor assesses the credibility of the witnesses.” (882)

“The failure to object at trial results in waiver of the issue on appeal.” (883)

“Therefore, consecutive sentences for criminal recklessness, a class B felony, may not exceed ten years.” (884)

FACTUAL BACKGROUND

On October 30, 1999, Bruno and companions obtained weapons, went to a fraternity party at an occupied residence, and fired into the house. One person was killed and three others were injured. Bruno testified that he fired a gun into the residence, and the record included evidence of a victim's gunshot wound.

PROCEDURAL HISTORY

A jury convicted Bruno of three counts of criminal recklessness, murder, and conspiracy to commit murder. The trial court imposed an aggregate seventy-eight-year sentence, including consecutive sentences for the criminal-recklessness convictions and concurrent sentences for murder and conspiracy. The Indiana Supreme Court affirmed the challenged convictions but remanded for resentencing because the consecutive criminal-recklessness sentences exceeded the statutory limitation and the murder and conspiracy convictions rested on a single overt act.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court for resentencing consistent with the opinion, including compliance with the ten-year statutory limit on consecutive criminal-recklessness terms and merger of the murder and conspiracy-to-commit-murder convictions insofar as they rested on a single overt act.

CASES CITED

- Ledo v. State, 741 N.E.2d 1235, 1237-38 (Ind. 2001)
- Garland v. State, 719 N.E.2d 1236, 1238 (Ind. 1999)
- Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999)
- Brown v. State, 720 N.E.2d 1157, 1158 (Ind. 1999)
- Vitek v. State, 750 N.E.2d 346, 352 (Ind. 2001)
- Fox v. State, 497 N.E.2d 221, 227 (Ind. 1986)
- Kelly v. State, 719 N.E.2d 391, 396 (Ind. 1999)
- Wright v. State, 690 N.E.2d 1098, 1106 (Ind. 1997)
- Mitchell v. State, 726 N.E.2d 1228, 1235 (Ind. 2000)
- Conner v. State, 711 N.E.2d 1238, 1246 (Ind. 1999)
- McCarthy v. State, 751 N.E.2d 753, 756 (Ind. Ct. App. 2001)
- Ellis v. State, 736 N.E.2d 731, 737 (Ind. 2000)
- Maxwell v. State, 731 N.E.2d 459, 464 (Ind. Ct. App. 2000)

OPINION

SULLIVAN, J.

774 N.E.2d 880 (2002) Michael BRUNO, Appellant (Defendant below), v. STATE of Indiana, Appellee (Plaintiff below). No. 18S00-0009-CR-523. Supreme Court of Indiana. September 11, 2002. *881 Darnail Lyles Gary, IN, Attorney for Appellant. Steve Carter, Attorney General of

Indiana, Christopher L. Lafuse, Deputy Attorney General, Indianapolis, IN, Attorneys for Appellee. *882 SULLIVAN, Justice.

Defendant Michael Bruno was convicted of criminal recklessness, murder, and conspiracy to commit murder for his actions as part of a group that opened fire on an occupied residence. Contrary to his claim, we find sufficient evidence of record to support the convictions challenged.

We agree with Defendant that certain errors were made in connection with his sentence, a point the State concedes. Background The facts most favorable to the judgment indicate that on October 30, 1999, Defendant and his companions shot into an occupied residence where a fraternity party was under way, killing one person and injuring three others.[1] A jury found Defendant guilty of three counts of Criminal Recklessness, a Class C felony;[2] Murder;[3] and Conspiracy to Commit Murder, a Class A felony.[4] Defendant was sentenced to a total of 78 years in prison.

Discussion A Defendant contends that the evidence was not sufficient to support his convictions for criminal recklessness and murder. In reviewing a sufficiency of the evidence claim, this Court neither reweighs the evidence nor assesses the credibility of the witnesses. *Ledo v. State*, 741 N.E.2d 1235, 1237 (Ind.2001); *Garland v. State*, 719 N.E.2d 1236, 1238 (Ind.1999), reh'g denied.

We look to the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Sanders v. State*, 704 N.E.2d 119, 123 (Ind. 1999). We will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Brown v. State*, 720 N.E.2d 1157, 1158 (Ind.1999). Defendant was charged in the alternative with having committed murder or being an accomplice in the commission of murder.

Murder is defined as "knowingly or intentionally kill[ing] another human being." Ind.Code § 35-42-1-1(1). "A person who recklessly, knowingly, or intentionally... inflicts serious bodily injury on another person... commits criminal recklessness." Ind.Code § 35-42-2-2(c). Indiana Code § 35-41-2-4 provides that "a person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense...."

See *Ledo*, 741 N.E.2d at 1238 (one who intentionally aids, induces, or causes another person to commit murder is also guilty of murder). It is not necessary that a defendant participate in every element of a crime to be convicted of that crime under a theory of accomplice liability. See *Vitek v. State*, 750 N.E.2d 346, 352 (Ind.2001); *Fox v. State*, 497 N.E.2d 221, 227 (Ind.1986).

In determining whether there was sufficient evidence for purposes of accomplice liability, we consider such factors as: (1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose commission of crime; and (4) course of conduct before, during, and after occurrence of crime. See *Kelly v. State*, 719 N.E.2d 391, 396 (Ind.1999); *Wright*, 690 N.E.2d at 1106.

We find that there was sufficient evidence that Defendant committed murder *883 or aided or induced another in his group to commit murder. The State presented evidence that Defendant and his friends obtained weapons and assembled near the party. Witnesses stated that defendant and three others went to the back of the house and fired their weapons into the house, knowing that it was occupied.

In his brief, Defendant argues that "the state presented absolutely no evidence of probative value tending to show that the Defendant or the Defendant's accomplices actually shot any of the victims." This is readily contradicted by Defendant's own testimony at trial that he shot into the house. Defendant also challenges the sufficiency of the evidence relating to his conviction for criminal recklessness with respect to one victim.

We find that the evidence was sufficient. Defendant admitted to firing a gun into the residence. There was also more than enough evidence of the victim's injuries: a witness heard the victim state "I'm shot," and observed blood on the victim's leg, and medical records from Ball Memorial Hospital indicate that on the night in question, the victim was admitted with a gunshot wound to the right leg.

B Defendant contends that the court erred in refusing to submit verdict forms for voluntary manslaughter and reckless homicide. The record reflects that the trial court submitted four verdict forms to the jury for count five. One form was for murder and one form was for a "not guilty" verdict. There was also a form for voluntary manslaughter and another for reckless homicide.

Defendant argues that the verdict forms were confusing because the heading on the forms for voluntary manslaughter and reckless homicide each read: "Count 5 Murder." Defendant did not object to the verdict forms at trial.

The failure to object at trial results in waiver of the issue on appeal. See *Mitchell v. State*, 726 N.E.2d 1228, 1235 (Ind.2000), reh'g. denied. We will review an issue that was waived at trial if we find fundamental error.

The defendant, however, must prove that the error was so prejudicial as to make a fair trial impossible. See *Conner v. State*, 711 N.E.2d 1238, 1246 (Ind.1999), cert. denied, 503 U.S. 946, 112 S. Ct. 1501, 117 L. Ed. 2d 640 (2000).

Here, we find no fundamental error. The trial court instructed the jury on voluntary manslaughter and reckless homicide. The jury was given verdict forms for both offenses along with the verdict form for murder. The jury returned a signed verdict form for murder. There is no question that the jury found that Defendant was guilty of murder. C Defendant contends that his sentence was improper.

The trial court imposed a total sentence of 78 years. The court imposed consecutive sentences of six years each for the three criminal recklessness counts. The trial court also imposed a sentence of 40 years for conspiracy to commit murder and 60 years for murder.

The trial court ordered the sentences on the conspiracy and murder counts to be served concurrent to each other, but consecutive to the criminal reckless counts. Defendant has two complaints with his sentence. First, he argues that the imposition of consecutive sentences for criminal recklessness is erroneous. He also argues that the imposition of sentences for both murder and conspiracy to commit murder violates double jeopardy.

A trial court has the discretion to impose sentences consecutively if aggravating circumstances warrant. See Ind.Code § 35-38-1-7.1. This discretion is limited by Ind.Code § 35-50-1-2(c), which states: Except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment... shall not exceed the presumptive sentence for a felony which is one class felony higher than the most serious of the felonies for which the person has been convicted.

The statute specifically defines certain crimes as "crimes of violence." Ind.Code § 35-50-1-2(a). Criminal recklessness is not designated as a crime of violence and is therefore subject to the limitation of § 35-50-1-2(a). *McCarthy v. State*, 751 N.E.2d 753, 756 (Ind.Ct.App.2001) (quoting *Ellis v. State*, 736 N.E.2d 731, 737 (Ind. 2000)); *Maxwell v. State*, 731 N.E.2d 459, 464 (Ind.Ct.App.2000).

Defendant's convictions for criminal recklessness were class C felonies. The presumptive sentence for a class B felony is ten years. Therefore, consecutive sentences for criminal recklessness, a class B felony, may not exceed ten years.

The State concedes this point, and correctly points out that the trial court may order Defendant's sentences for criminal recklessness to be served consecutively with his sentence for Murder. *McCarthy*, 751 N.E.2d at 756.

The State also concedes that the trial court should have merged Defendant's murder conviction and his conviction for conspiracy to commit murder as the two convictions rest on a single overt act. We accept the State's concession. Conclusion We affirm Defendant's convictions for murder and criminal recklessness, but remand to the trial court for resentencing in accordance with this opinion.

SHEPARD, C.J., and DICKSON, BOEHM, and RUCKER, JJ., concur. NOTES [1] For a complete recitation of the facts, see the companion case of *Artie Thomas v. State*, 774 N.E.2d 33, 35 (Ind., 2002) [2] Ind.Code § 35-42-2-2 (1998).

[3] Id. § 35-42-1-1. [4] Id. § 35-42-1-1 and § 35-41-1-1.

