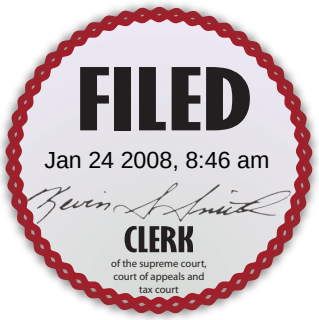

ATTORNEY FOR APPELLANT:

STEVEN E. RIPSTRA
Ripstra Law Office
Jasper, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JOHN MICHAEL NAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 31A01-0704-CR-157
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HARRISON SUPERIOR COURT
The Honorable Roger D. Davis, Judge
Cause No. 31D01-0406-MR-482

January 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

John Naylor appeals from his convictions for Felony Murder; Attempted Murder; Conspiracy to Commit Burglary, as a Class B felony; Assisting a Criminal, as a Class C felony; and Auto Theft, as a Class D felony, following a jury trial. He presents the following issues for our review:

1. Whether the trial court abused its discretion when it found him competent to stand trial and sentencing.

2. Whether the trial court abused its discretion when it admitted into evidence statements Naylor made to police officers.

3. Whether the trial court abused its discretion when it admitted into evidence certain photographs.

4. Whether the State presented sufficient evidence to support his convictions.

5. Whether the trial court abused its discretion when it sentenced him.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 12, 2004, Linda Pittman was driving her van and her mother, Myrtle Satterfield, was riding as a passenger. As Linda pulled into the driveway of the residence in Mauckport she shared with her husband, Hobert Pittman, Albert Pittman, Hobert's son and Linda's stepson, began shooting at her van. Then Albert got into a Ford Explorer that belonged to Hobert and began to back up towards Linda's van. Albert stopped, and he and a passenger got out and both started shooting at Linda's van. Linda "played dead" until Albert and his passenger got back into the Explorer and drove away. Transcript at

3274. Linda sustained several gunshot wounds to her face and body, and Satterfield ultimately died of her gunshot wounds.

Linda then drove to a nearby tavern and stopped two men in a vehicle, Darrell Mosier and Matthew Stanley, and asked them for help. Mosier observed blood on Linda's face and arm, and he saw that Satterfield was "slumped over" in the backseat. Id. at 1935. Linda told Mosier and Stanley that her stepson, Albert, had shot them and that he and "a friend of his" had fled the scene in Hobert's red Ford Explorer. Id. at 2001. Just then, Linda, Mosier, and Stanley saw the Explorer driving towards them, and Linda yelled, "That's them!" Id. at 2003. Albert did not stop, but drove away. Stanley got out of Mosier's vehicle to assist Linda, and Mosier called 911 and began following Albert and the other man, later identified as Naylor, in the Explorer. Mosier eventually caught up to the Explorer after it had stopped under a bridge, and he saw Albert and Naylor removing items from the Explorer and putting them into Naylor's car, which had been parked there.

Albert and Naylor then drove away in Naylor's car, and Mosier stayed with them. At one point, Naylor pulled his car up next to Mosier's vehicle at a red stoplight, and Mosier got a good look at both men before they drove away. Mosier then drove back to the scene where he had left Stanley with Linda, and she was receiving medical attention. Mosier and Stanley gave statements to the police, who subsequently discovered Hobert's dead body at his residence. Hobert had been killed prior to the attack on Linda and Satterfield.

In the course of the ensuing investigation, police learned that Albert and Naylor had been seen together the day before the shootings and that they had gone to Florida together afterwards. Police in Daytona Beach, Florida, ultimately arrested Albert and Naylor. As Florida police brought Naylor into the police station, Detective Tammy Pera heard Naylor say that he "didn't want to talk" and that he was "facing the death penalty." Id. at 3150, 3158. Later, while in jail in Indiana, Naylor told Corrections Officer Brian Winninger, "I'm guilty of killing those two people. I need to talk to someone over the situation. I'm guilty and about to go crazy over what I've done. Can I please talk to you about it?" Id. at 3330. But while Naylor considered entering a guilty plea, he ultimately pleaded not guilty and faced a jury trial.

The State charged Naylor with felony murder (Satterfield), murder (Hobert), attempted murder (Linda), conspiracy to commit burglary, burglary, theft, auto theft, and assisting a criminal.[1] A jury found him guilty of felony murder, attempted murder, conspiracy to commit burglary, auto theft, and assisting a criminal, and the trial court entered judgment accordingly. At sentencing, the trial court found that the aggravators outweighed the mitigators and sentenced Naylor to an aggregate term of 120 ½ years. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Competency

Naylor first contends that the trial court abused its discretion when it deemed him competent to stand trial and sentencing. Our Supreme Court set out our standard of

[1] Police found that several items had been stolen from the Pittmans' home, including weapons used in the shootings and Hobert's Ford Explorer.

review in Brewer v. State, 646 N.E.2d 1382, 1384-85 (Ind. 1995):

> The trial and conviction of one without adequate competence is a denial of federal due process and a denial of a state statutory right as well. A hearing to determine whether the accused is competent to stand trial is required where the trial court is confronted with evidence that creates a reasonable or bona fide doubt as to the competence of the accused. The standard for deciding such competency is whether or not the defendant currently possesses the ability to consult rationally with counsel and factually comprehend the proceedings against him or her. This test is sometimes stated as requiring that the defendant have sufficient present ability to consult counsel with a reasonable degree of rational understanding and to have a rational as well as factual understanding of the proceedings brought against him or her.
>
> The trial court as trier of fact is vested with discretion to determine if reasonable grounds exist for believing a defendant is competent to stand trial, and on appeal a determination by the trial court of the issue is viewed from a deferential perspective. Where the evidence is in conflict, we will normally only reverse this decision if it was clearly erroneous, unsupported by the facts and circumstances before the court and the reasonable conclusions that can be drawn therefrom.

(Citations omitted).

Here, on August 24, 2004, Naylor moved for a psychiatric examination to determine his competence to stand trial, and the trial court granted that motion. As a result, Naylor underwent psychological evaluations with Dr. Denise Epperson, M.D., and Dr. Leonard Miller, Ph.D. Dr. Epperson concluded that Naylor was "competent to stand trial, assist his attorney, understand the charges against him and assist his attorney to formulate his defense." Joint Exhibit 1. Dr. Miller also concluded that Naylor was able to assist his attorney and "demonstrated the ability to appreciate the nature, extent, and consequences of the charges against him." Joint Exhibit 2. Dr. Miller agreed that Naylor was competent to stand trial.

Still, Naylor filed a motion requesting a third psychological evaluation be conducted, and the trial court granted that motion. Dr. Richard Lawlor, J.D., Ph.D., examined Naylor and concluded that he was able to understand the charges against him and assist in his defense, and that he appreciated the difference between right and wrong. Dr. Lawlor further observed:

> While I do think that [Naylor] has psychiatric problems, his problems do not fall in the psychotic disorder dimension, and thus there is no gross and demonstrable disorder of perception that is present. I do think [Naylor] has potential for further decompensation in his psychiatric functioning. His defense mechanisms and coping mechanisms are fragile, and I do think the stresses of incarceration could lead him to regress and become even more seriously ill at some point.

Joint Exhibit 3.

Then, immediately before trial in January 2007, Dr. Epperson reevaluated Naylor. Her opinion at that time was as follows:

> Mr. Naylor appears to have a fairly well organized delusional disorder at this time. This will most likely progress and include paranoid material. While it is true that individuals that are mentally ill can be competent to stand trial, his current delusions are interfering with his ability to assist his attorney. He has a form of the disorder that can be fairly difficult to treat but most likely [will] progress to involve more paranoid material. Looking back, his sleep problems, impulse control problems, narcissism and anxiety are also comorbid with this diagnosis. A history of drug use can both provoke this disorder or intensify it in genetically susceptible individuals.
>
> Individuals in the community can go for periods of time without medication but usually decompensate during periods of extreme stress. The confusing nature of this condition is that due to the fact that these individuals are intelligent, the individual often looks more high functioning than they are. I do feel that this individual needs treatment and another evaluation after the treatment to be able to adequately assist in his defense. While he has the intellect to define the parts of his trial, his psychosis is causing him to misrepresent the reality of the situation.

Joint Exhibit 4.

During a hearing, Dr. Epperson testified that it was "possible" that Naylor could be competent to stand trial in one week's time if she put him on medication immediately. Transcript at 1682. In particular, she stated that his condition could "clear" in three to five days on medication. Id. On January 29, 2007, after treating Naylor with medication for several days, Dr. Epperson testified as follows:

> Q: Okay. And now, so then I take it from your comments that what you're saying to me is that it's quite possible for a person to be mentally ill, have these delusions, but still yet be on medication and . . . be in touch enough with reality to be able to adequately assist his attorneys.
>
> A: Yes. The difficulty the other day was the fact that the delusional system was prohibiting him from entertaining all the options as far as any . . . differences of what could possibly happen in outcomes with the trial. And he was not entertaining any reality about what possibly could happen. At this point he was able to tell me that he realizes what the outcomes of this trial could be. And he's no longer in denial about actually there being a trial and what the possible outcomes could be.
>
> Q: Okay. So you saw a difference in him then. Is that what you're telling me?
>
> A: That's right.
>
> Q: Okay. . . .So now Dr. Epperson, do you have any doubts in your mind about it?
>
> A: No, I do not.
>
> Q: Okay. . . .
>
> A: I would qualify that he is mentally ill.
>
> * * *
>
> Q: Okay. But that's not gonna interfere with him being able to . . . the other day you told me that he had probably normal intelligence and . . .
>
> A: Yes.

Q: And he's able to understand what the role of the jury and the judge and the lawyers and every . . .

A: That's right.

Q: He understands all that.

A: Yes.

Q: Okay. But now the difference between last week and this week is that he was having, he was affected by the, you in your opinion, he was affected by the delusions to such an extent that he couldn't really appreciate the reality of his situation.

A: That's right.

* * *

Q [by Defense Counsel]: Dr. Epperson, I believe you've already covered this area. But you're positive that he is in a place now where he can assist his attorneys in making life-changing decisions. Is that what you're saying?

A: Yes. He is competent. Again, . . . you would hear me say [that] . . . he is mentally ill. I mean, that, that is going to make your job more difficult than it would be with someone that did not have mental illness. But strictly speaking, he's competent to understand what's being said, entertain his options, assist you. He's intelligent enough to be able to [know] what's going on and understand. It's just with him being mentally ill, you're going to be dealing with some inappropriate behavior, responses and that sort of thing. So I did have to qualify that because I can't say that he's going to be totally appropriate all the time.

Id. at 1831-37 (emphasis added).

At the conclusion of that testimony, Naylor's counsel stated:

The ultimate issue of fact here is whether John Michael Naylor is able to assist his attorneys during trial. I believe that Dr. Epperson answered that question in the affirmative. Any colloquy with the defendant would only exacerbate the situation in that he would repeat the delusions that he has expressed to me. But he is also, it's really strange. . . . He's also lucid enough to be able to talk to me about legal issues. So I would not have any

> further evidence. I think a hearing on the motion would be superfluous at this time.

Id. at 1841. And with that, the trial court initiated the jury trial proceedings.

On appeal, Naylor contends that despite his counsel's agreement with Dr. Epperson's assessment that he was competent to stand trial, the evidence shows that he was not competent to stand trial. In particular, Naylor asserts that Dr. Epperson's opinion that he was competent was "qualified and equivocal." Brief of Appellant at 18. Naylor maintains that because he was mentally ill and delusional, the trial court should not have deemed him competent to stand trial. Naylor also contends that the trial court should have granted his motion to continue sentencing pending additional psychological evaluation. We cannot agree.

Again, we review the trial court's determination of competency for an abuse of discretion. Here, the record shows that the trial court carefully considered this issue at all critical stages of the proceedings. The trial court ordered three psychological evaluations prior to trial and considered Dr. Epperson's updated evaluation and testimony immediately prior to trial. The undisputed evidence showed that Naylor was mentally ill, but competent to stand trial. On appeal, Naylor has not demonstrated that the trial court abused its discretion when it ruled that he was competent to stand trial and sentencing.

Issue Two: Statements to Police Officers

Naylor next contends that the trial court abused its discretion when it admitted into evidence statements he made to two police officers while he was in custody. We review the trial court's ruling on the admission of evidence for an abuse of discretion. Espinoza v. State, 859 N.E.2d 375, 381 (Ind. Ct. App. 2006). We reverse only where the decision

is clearly against the logic and effect of the facts and circumstances. Id. Further, when a defendant challenges the admissibility of a confession the State must prove beyond a reasonable doubt that the confession was given voluntarily. Jackson v. State, 735 N.E.2d 1146, 1153 (Ind. 2000). On review, this court looks to the totality of the circumstances surrounding the confession. Id. Our focus is whether the confession was free and voluntary and not induced by any violence, threats, promises, or other improper influences. Id. When considering the admissibility of a confession on appeal, we will uphold the finding of the trial court if there is substantial evidence of probative value to support it. Id.

Naylor first challenges the admission of testimony given by Detective Tammy Pera. She was present at the Daytona Beach, Florida, police station when Naylor was taken into custody. At trial, Detective Pera testified in relevant part as follows:

> Q: Can you describe what you saw as [Naylor] entered [the homicide unit]?
>
> A: He entered into the back door, at which point in time we were gonna take him into an interview room to be interviewed, at which point in time he made a statement that he didn't want to talk . . . .

Transcript at 3150. Naylor's counsel objected, and the trial court heard Detective Pera's testimony outside the presence of the jury. Detective Pera continued and testified that Naylor had not been Mirandized at the time she heard his statements, but no one had posed any questions to Naylor at the time he made the challenged statements. In addition to stating that he did not want to talk to police officers, Naylor said that he wanted an attorney and that he was facing the death penalty. The trial court ruled that Detective Pera could testify only regarding Naylor's statement that he was facing the death penalty.

Officer Brian Winninger, a corrections officer, also testified to a statement Naylor made while in jail in Indiana and while represented by counsel. In particular, Officer Winninger testified that Naylor spontaneously told him, "I'm guilty of killing those two people. I need to talk to someone over the situation. I'm guilty and about to go crazy over what I've done. Can I please talk to you about it?" Transcript at 3330. After the State presented evidence that Naylor was not being questioned at the time of the statement and made the statement without any duress or coercion, the trial court permitted the testimony.

On appeal, Naylor contends that his statements to Detective Pera and Officer Winninger "were taken in violation of [his] guarantees to counsel and against self-incrimination under both the United States and Indiana Constitutions." Brief of Appellant at 25-26. But, again, none of the statements were made in response to any questioning by the officers. Instead, Naylor offered the statements spontaneously. Naylor does not allege any misconduct by the officers to cause the statements. "Absent police conduct causally related to [a] confession, there is simply no basis for concluding that any state actor has deprived a defendant of due process of law." Jackson, 735 N.E.2d at 1154. There is no evidence that the statements were not made knowingly and voluntarily. See id. The trial court did not abuse its discretion when it permitted the challenged testimony.[2]

[2] The trial court sustained Naylor's objection to Officer Pera's testimony that Naylor "didn't want to talk." Naylor's counsel agreed with the trial court that the jury had probably not heard that statement. Naylor did not request an admonishment, and he does not allege fundamental error on appeal.

Issue Three: Photographs

Naylor next contends that the trial court abused its discretion when it admitted into evidence certain photographs depicting the victims. Our Supreme Court set out our standard of review in Helsley v. State, 809 N.E.2d 292, 296 (Ind. 2004):

> The admission of photographic evidence is within the sound discretion of the trial court, and this Court reviews the admission of photographic evidence only for abuse of discretion. Photographs, as with all relevant evidence, may only be excluded if their probative value is substantially outweighed by the danger of unfair prejudice. . . .
>
> Moreover, "[e]ven gory and revolting photographs may be admissible as long as they are relevant to some material issue or show scenes that a witness could describe orally." Gruesome and gory photographs with strong probative value are admissible where they help interpret the facts of the case for the jury. Autopsy photographs frequently pose unique problems where the pathologist has manipulated the corpse during the autopsy. They are generally inadmissible where the body is in an altered condition. Nevertheless, "there are situations where some alteration of the body is necessary to demonstrate the testimony being given." In [Corbett v. State, 764 N.E.2d 622 (Ind. 2002)], we held that it was not prejudicial error to admit several autopsy photographs showing the victim's body with the head wounds cleaned and with some hair shaved away.
>
> Evaluating whether an exhibit's probative value is substantially outweighed by the danger of unfair prejudice is a discretionary task best performed by the trial court.

(Some citations omitted).

Here, Naylor challenges the trial court's admission of five photographs over his objection, namely, Exhibits 32, 35, 36, 193 and 195. The first three depict Satterfield's injuries, and the other two depict Hobart's dead body at the crime scene. Naylor describes the photographs as follows:

> Exhibit 32 showing the bloody left side of Myrtle Satterfield's head, with three (3) gaping gunshot wounds below her ear; Exhibit 35 showing her nude body, lying face down on a slab, bloody, with gun shot wounds visible

> along the upper left side of her body and arm; and Exhibit 36 depicting the upper left side of her back, bloody, with gaping gunshot wounds on her shoulder[.]
>
> * * *
>
> [The other two photographs] admitted over objection depict Hobart Pittman's body on the ground, viewed from the front, with what appears to be a gaping scalp wound (Exhibit 193), and his body from the front, with blood and gunshot wounds covering his face and arms (Exhibit 195).

Brief of Appellant at 34-35. Naylor objected to the photographs on the grounds that they: (a) were not relevant or of any probative value to a contested issue in the case since the Defense was not contesting that the killings were murders; (b) were inflammatory; (c) depicted bodies at the crime scene after they had been moved; and (d) were gruesome.

On appeal, the State maintains that the photographs were properly admitted because they showed scenes "that a witness could describe orally" and because they helped interpret the facts of the case for the jury. See Helsley, 809 N.E.2d at 296. In particular, the State contends that the photographs of Satterfield "assisted the jury with testimony, showed the victim was deceased, showed the body was not altered by the examination, and helped the jury understand the extent of the injuries and blood loss." Brief of Appellee at 40. And the State contends that the photographs of Hobert "helped show the extent of Hobert's injuries, victim identification, and the bullet's path." Id.

In light of the record, and given our standard of review, we cannot say that the trial court abused its discretion when it admitted the challenged photographs. The testimony coincided with the photographic evidence to show the jurors the trajectories of the gunshots and to explain how the crime scene was processed. Naylor has not

demonstrated that the danger of unfair prejudice outweighed the photographs' probative value.

Issue Four: Sufficiency of the Evidence

Naylor next contends that the State presented insufficient evidence to support his convictions for felony murder, attempted murder, and conspiracy to commit burglary. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Naylor characterizes the State's evidence as "weak" and "circumstantial." Brief of Appellant at 30. In particular, Naylor asserts:

> The only evidence supporting the Conspiracy, Burglary, Felony Murder and Attempted Murder charges is that Naylor and Albert Pittman were good friends, talked often, and were together in the days before the shootings. The two were later found together in Florida. At trial, for the first time in nearly three (3) years, Mosier, over objection, places Naylor in the red Explorer with the co-defendant. Mosier had failed to identify Naylor at co-defendant-Pittman's earlier trial, nor [did he] ever tell the police he recognized Naylor.[] At the earlier Albert Pittman trial, Mosier admits that when he was asked, "You were unable to identify the individuals in that vehicle? Is that correct?" He answered, "Yes."

Id. at 29 (footnote omitted).

We reject Naylor's characterization of the evidence as purely circumstantial. First, that Mosier initially did not identify the passenger in the Explorer but subsequently testified that Naylor was the passenger goes to Mosier's credibility. We will not reweigh

that evidence on appeal. Second, Officer Winninger's testimony that Naylor admitted to murdering Satterfield and Hobert clearly supports his convictions.

Further, the circumstantial evidence supports reasonable inferences to support Naylor's convictions. The State presented evidence that: there were two shooters; Mosier witnessed Albert and Naylor transfer items from the Explorer into Naylor's vehicle immediately after the crimes; police found guns and items that had been stolen from the Pittman home in Naylor's car in Florida; and a burglary had been committed at the Pittman home. Naylor's contentions on appeal amount to a request that we reweigh the evidence, which we will not do. The State presented sufficient evidence to support Naylor's convictions.

Issue Five: Sentence

Finally, Naylor contends that the trial court abused its discretion when it imposed an aggregate sentence totaling 120 ½ years. In particular, he maintains that the trial court improperly weighed aggravators and mitigators. We cannot agree.

The instant crimes occurred before the advisory sentencing scheme went into effect. As such, we apply the standard of review applicable under the old sentencing scheme. The determination of the appropriate sentence rests within the discretion of the trial court, and we will not reverse the trial court's determination absent a showing of manifest abuse of that discretion. Bacher v. State, 722 N.E.2d 799, 801 (Ind. 2000). The trial court's wide discretion extends to determining whether to increase the presumptive sentence, to impose consecutive sentences on multiple convictions, or both. Singer v. State, 674 N.E.2d 11, 13 (Ind. Ct. App. 1996). If the sentence imposed is authorized by

statute, we will not revise or set aside the sentence unless it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B); McCann v. State, 749 N.E.2d 1116, 1121 (Ind. 2001).

The trial court imposed enhanced, but not maximum, sentences for the felony murder, attempted murder, and conspiracy convictions, and the court imposed presumptive sentences for the remaining convictions. In support of those sentences, the trial court found the following aggravators: Satterfield's old age (80); Naylor's criminal history, including two felonies; and Naylor was on probation at the time of the instant offenses. The trial court found the following mitigators: Naylor's mental illness, and his show of remorse. The trial court concluded that the aggravators outweighed the mitigators and imposed consecutive sentences.

On appeal, Naylor insists that the trial court should have identified several proffered mitigators and should have given more weight to the mitigators that it did identify. But the trial court carefully acknowledged and rejected each of Naylor's proffered mitigators in its sentencing statement. And the trial court's reasoning is sound. A finding of mitigating circumstances lies within the trial court's discretion. Widener v. State, 659 N.E.2d 529, 533 (Ind. 1995). The trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001). And the sentencing court is not required to place the same value on a mitigating circumstance as does the defendant. Beason v. State, 690 N.E.2d 277, 283-84 (Ind. 1998).

Naylor has not demonstrated that the trial court abused its discretion when it identified and weighed the aggravators and mitigators. And we cannot say that the 120 ½ year sentence is inappropriate in light of the nature of the offenses and Naylor's character.

Affirmed.

BAILEY, J., and CRONE, J., concur.