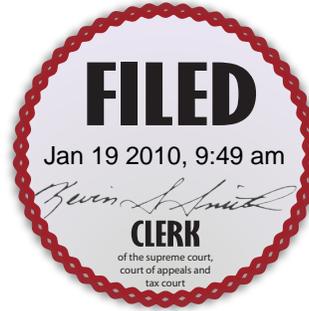


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANTHONY DAVIS,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-0904-CR-181
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0801-MR-3921

January 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Anthony Davis appeals his convictions of murder¹ and carrying a handgun without a license.² He asserts the evidence is insufficient to sustain his convictions. Finding the evidence sufficient, we affirm.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of December 29, 2008, an unknown assailant fired eleven shots at Derrick Jethroe as he left a nightclub. Jethroe was uninjured. Jethroe's sister picked him up and took him to the apartment where his wife, Sheka, lived. Davis met Jethroe at the apartment and they stayed the night. Jethroe and Davis left the apartment complex together early the next afternoon in a grey Mercury Cougar owned by Davis' roommate and driven by Davis.

At about 3 p.m., the Mercury Cougar returned to Sheka's apartment complex. Jeremy Crouch, who was at a nearby apartment, heard gunshots and saw Jethroe on the ground. A grey Cougar was parked close to the body, and Crouch saw a person in the driver's seat close the door and speed off in reverse. Crouch could not identify the driver. Jethroe died from a gunshot wound to the head.

Police obtained video surveillance footage from a nearby security camera. It showed a grey Mercury Cougar pulling into the apartment complex parking lot. Jethroe exited the vehicle and walked to the driver's side of the car. He was shot through the open driver's side door. More than a week later, Davis became a person of interest when the Cougar was impounded. Cell phone records showed Davis was in the vicinity of the

¹ Ind. Code § 35-42-1-1.

² Ind. Code § 35-47-2-1.

murder scene when the shooting occurred, and he was not near his grandmother's house where he claims to have spent the afternoon.

Davis was charged with murder and carrying a handgun without a license as a Class C felony. The felony handgun enhancement was dismissed, and Davis was found guilty of murder and carrying a handgun without a license as a Class A misdemeanor.

DISCUSSION AND DECISION

The evidence was sufficient to sustain Davis' convictions of murder and carrying a handgun without a license.

In reviewing the sufficiency of evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the role of the fact-finder, not ours, to assess the credibility of the witnesses and weigh the evidence to determine whether a conviction is warranted. *Id.* To preserve this structure, when we are confronted with conflicting evidence we must consider it most favorably to the trial court's ruling. *Id.* We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* To convict Davis of murder, the State was required to prove beyond a reasonable doubt that Davis "knowingly or intentionally killed" Jethroe. Ind. Code § 35-42-1-1.

Davis asserts the evidence is insufficient to sustain his conviction because there is no physical evidence linking him to Jethroe's death, and the circumstantial evidence does not show beyond a reasonable doubt that he committed the murder. He notes his relationship with Jethroe would have provided better opportunities to commit the murder

in a less public place. He suggests it is far more likely that Jethroe was killed by the person who had tried to shoot him the previous evening. Davis also claims he had no motive to kill Jethroe and was saddened by his death. We acknowledge these arguments, but decline Davis' invitation to reweigh the evidence. *See Drane*, 867 N.E.2d at 146.

The evidence presented to the jury and the inferences drawn therefrom support Davis' conviction. Davis was driving a grey Mercury Cougar with Jethroe as a passenger on the afternoon that Jethroe was killed. The surveillance video shows Jethroe was shot at close range by the driver of a grey Mercury Cougar. Cell phone records show Davis was not at this grandmother's house the afternoon that Jethroe was killed as he said, but was in the vicinity of the murder scene. There is no physical evidence linking Davis to Jethroe's murder, but circumstantial evidence alone may support a conviction. *Fought v. State*, 898 N.E.2d 447, 450 (Ind. Ct. App. 2008). The jury could reasonably have found Davis guilty beyond a reasonable doubt.

Affirmed.

CRONE, J., concurs.

BROWN, J., dissents with separate opinion.

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BROWN, Judge, dissenting

I respectfully, and after much consideration, dissent from the majority's conclusion that the evidence was sufficient to sustain Davis's convictions for murder and carrying a handgun without a license. No handgun was found; there was no evidence of blood spatter or of any blood whatsoever on the subject vehicle despite the shooting at close range (acknowledging that it was more than a week post-shooting until the Cougar was impounded); no evidence of any kind obtained from the subject vehicle; no physical evidence obtained from Davis himself; and no identification of Davis as the shooter. While fully recognizing that circumstantial evidence alone may support a conviction, *Fought v. State*, 898 N.E.2d 447, 450 (Ind. Ct. App. 2008), I do not believe that a reasonable jury could have found Davis guilty beyond a reasonable doubt.

For these reasons I respectfully dissent.