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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY BEDOLLA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1003-CR-368
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Judge
Cause No. 49G02-0903-MR-34210

January 20, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Anthony Bedolla appeals his conviction for murder. We affirm.

Issue

Bedolla raises two issues, which we restate as:

I. whether the denial of Bedolla's request to attend the depositions of two witnesses violated his confrontation rights or his right to assist in his defense; and

II. whether the evidence is sufficient to sustain his conviction.

Facts

In the early morning hours of March 8, 2009, Jose Reyes and his girlfriend, Sarai Solano, were at the El Rey De Copas club in Indianapolis. Solano had worked as a paid confidential informant for the police in other cases. Solano saw Erick Espinoza arguing with Bedolla in the club and saw Bedolla push Espinoza. Solano had known Bedolla for about a month, and she knew what Espinoza looked like. Near the 3:00 a.m. closing time, Reyes and Solano were leaving the club and walking toward their vehicle when Solano saw Espinoza walking through the parking lot. She also saw Bedolla in the parking lot with a gun and heard Bedolla shouting at Espinoza that Espinoza owed money to him. Bedolla then shot Espinoza. With Espinoza lying on the ground, Bedolla threw money at Espinoza's feet and said that he did not need the money.

Reyes also knew Bedolla. Reyes saw Bedolla in the parking lot with a gun and saw him shoot the gun, but he could not see what Bedolla was shooting at. Reyes heard three shots and saw Bedolla get in his vehicle and leave after the shooting.

Espinoza died from his wounds, and police officers recovered money near Espinoza's body. When the police arrested Bedolla two weeks later at the El Rey De Copas club, he had cocaine in his possession. The State charged Bedolla with murder and possession of cocaine as a Class D felony. Bedolla filed a motion to attend Solano and Reyes's depositions. Bedolla argued that he should be allowed to attend based on his right of confrontation and because he could assist his attorney with Spanish translations. The trial court denied Bedolla's request but noted that, if Solano or Reyes failed to appear at the trial, their depositions would not be admissible. Solano and Reyes both testified at Bedolla's bench trial in February 2010. Gerardo Baca Ramirez testified that he followed Espinoza into the parking lot, saw Espinoza talking to a man, who was not Bedolla, saw the man pull out a gun, and heard shots. The trial court found Solano and Reyes more credible than Ramirez and found Bedolla guilty as charged. The trial court sentenced Bedolla to forty-five years in the Department of Correction. Bedolla now appeals his murder conviction.

Analysis

I. Attendance at Depositions

Bedolla argues that the trial court erred when it denied his motion to attend the depositions of Solano and Reyes. Bedolla appears to make two arguments: (1) that the trial court's denial of his motion violated his right of confrontation under the Sixth Amendment and Article 1, Section 13 of the Indiana Constitution; and (2) that the trial court's denial of his motion interfered with his right to assist in his defense.

The Sixth Amendment to the United States Constitution, made applicable to the States via the Fourteenth Amendment, provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. "A witness's testimony against a defendant is thus inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination." Pendergrass v. State, 913 N.E.2d 703, 705 (Ind. 2009) (citing Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354 (2004)), cert. denied. Similarly, Article 1, Section 13(a) of the Indiana Constitution provides: "In all criminal prosecutions, the accused shall have the right to . . . meet the witnesses face to face . . . ." Our supreme court has held that "Indiana's confrontation right contains both the right to cross-examination and the right to meet the witnesses face to face." Brady v. State, 575 N.E.2d 981, 988 (Ind. 1991).

Bedolla's confrontation rights under the Sixth Amendment and the Indiana Constitution were not violated by the trial court's denial of his request to attend the depositions. "Criminal defendants generally have no constitutional right to attend depositions." State v. Owings, 622 N.E.2d 948, 951 (Ind. 1993). "Application of this rule is obviously appropriate when the deponent gives live testimony at trial because the defendant will be allowed full exercise of the right to confrontation in front of the trier of fact."[1] Id. at 952. Although Bedolla was not allowed to attend the depositions, both

[1] However, a defendant's confrontation rights may be violated by the admission of a witness's deposition testimony where the defendant has never had the opportunity to confront and cross-examine the witness. Howard v. State, 853 N.E.2d 461, 470 (Ind. 2006).

Solano and Reyes appeared at trial, testified, and were subject to cross examination by Bedolla. Bedolla's confrontation rights were not violated.

Bedolla next argues that he was denied the opportunity to assist in his defense by the trial court's denial of his request to attend the depositions. According to Bedolla, he could have assisted his attorney with translations and customs. Our supreme court held in Owings that "[c]riminal defendants generally have no constitutional right to attend depositions." Owings, 622 N.E.2d at 951-52. Bedolla cites no authority for the proposition that he was entitled to attend the depositions as part of a right to assist in his defense.[2] In light of our supreme court's holding in Owings and his failure to cite contrary authority, we conclude that Bedolla's argument fails. Further, even if the trial court erred, Bedolla has not demonstrated that he was prejudiced. There was no evidence of actual translation issues during the depositions.

II. Sufficiency of the Evidence

Bedolla argues that the evidence is insufficient to sustain his conviction for murder. When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." Id. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. Id.

[2] Bedolla cites only cases regarding mental competency, but we do not find those cases germane.

According to Bedolla, there is reasonable doubt as to whether he was the person who shot Espinoza. Bedolla cites Solano's status as a paid confidential informant and her motive to obtain more money from the police. Although Bedolla concedes that we cannot reweigh the evidence or judge the credibility of the witnesses, he argues that we "should consider all of the evidence, including the inherent inconsistencies of the testimony that links Bedolla to [Espinoza's] death." Appellant's Br. p. 12.

Regardless of how Bedolla phrases his argument, he is merely requesting that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. The State presented evidence that Solano saw Bedolla shoot Espinoza and that Reyes saw Bedolla with the gun and then heard shots. Although there were inconsistencies between Solano, Reyes, and Ramirez's testimony, it was for the trial court to assess the witnesses' credibility. The trial court explained that it found Solano more credible than Ramirez. The evidence is sufficient to sustain Bedolla's conviction for murder.

Conclusion

The trial court's denial of Bedolla's request to attend Solano and Reyes's depositions did not violate Bedolla's confrontation rights or his right to assist in his defense. Further, the evidence is sufficient to sustain Bedolla's murder conviction. We affirm.

Affirmed.

BAKER, J., and VAIDIK, J., concur.