

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.



ATTORNEY FOR APPELLANT:

JOHN PINNOW
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MONIKA PREKOPA TALBOT
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JAMES PHILLIPS,)

Appellant-Defendant,)

vs.)

No. 49A02-1008-CR-907

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Robert Altice, Judge

Cause No. 49G02-1001-MR-653

March 23, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a jury trial, James Phillips was convicted of Murder,¹ a felony. Phillips waived his right to a trial by jury on a second charge of Possession of a Firearm by a Serious Violent Felon,² a class B felony, of which the trial court found Phillips guilty. The trial court subsequently sentenced Phillips to consecutive terms of fifty-five years and six years, respectively. On appeal, Phillips presents one issue for our review: Is the evidence sufficient to sustain his convictions?

We affirm.

On October 8, 2009, several neighbors living on Roy Road near Franklin Road, in Marion County, noticed two vehicles in the street, one parked behind the other. The vehicle in the front was a Ford F-150 pickup truck and the vehicle behind it was a blue SUV. The engines of both vehicles were running. The neighbors heard six or seven gunshots. After the gunshots rang out, some of the neighbors saw a thin black man wearing black clothing, including a hoodie, get out of the passenger side of the SUV and, in a “crouched position”, run and get into the truck on the driver’s side. *Transcript* at 119. The individual rapidly drove away heading west on Roy Road and then south on Franklin Road. One neighbor, Brian Harris, who is 6’4”, described the individual as shorter than he and told the police the man looked like he was in his mid-twenties. Another neighbor, Darra Ferguson, told police that the individual was 5’9” to 5’10” tall, but noted that her perspective was skewed because the individual she saw was crouching down. A few minutes after the shots were heard and

¹ Ind. Code Ann. § 35-42-1-1 (West, Westlaw through 2010 2nd Regular Sess.).

² Ind. Code Ann. § 35-47-4-5 (West, Westlaw through 2010 2nd Regular Sess.).

when no one got out of the SUV, Ferguson called 911.

At approximately 7:24 p.m., Indianapolis Metropolitan Police Officer Brian Lambert responded to a dispatch of shots being fired in the area. Officer Lambert arrived within a minute of the dispatch and saw a dark-colored Chevy Tahoe SUV parked with its engine running, on the north side of the street. Detective Juan Hale and Lieutenant Belle McAtee also responded to the dispatch. As the officers approached the vehicle, they saw that the driver, later identified as Lawane Chaney, was slumped over and had gunshot wounds to his head. There was a white substance, later determined to be cocaine, and a cigarette lighter in Chaney's lap, and there was a substantial amount of blood, a cell phone, and shell casings on the floor board of the SUV. Chaney had a faint pulse and was transported to the hospital where he later died as a result of his injuries. The autopsy disclosed that Chaney suffered nine gunshot wounds, many of them to his head.

Hospital staff discovered that Chaney had a large amount of cash, \$2859, in the pocket of his pants. After Chaney was removed from the SUV, police discovered a plastic glove that had fallen off of Chaney's lap and a box of plastic gloves in the back seat. The police also discovered a bag containing approximately four grams of cocaine, an amount more than what is considered normal for personal use. During their investigation, police officers spoke with several of Chaney's acquaintances and learned that some people had planned to rob Chaney and that "as much as \$6,000 was owed to Lawane Chaney at the time that the [sic] died." *Transcript* at 407.

Phillips had purchased a Ford F-150 at Car Biz on August 31, 2009. During the purchase process, Phillips provided Car Biz with his cell phone number of 317-728-1114.

On September 23, 2009, when Car Biz was unable to provide the title within twenty-one business days as specified by its own policy, Phillips signed a letter demanding that Car Biz provide him with either the title or a full refund within ten business days. Because Car Biz was unable to produce the title within the specified time period, Phillips returned the truck on October 10, 2009, two days after the shooting of Chaney. When the truck was cleaned and the bed of the truck was sprayed with a water hose, a shell casing to a bullet was discovered.

On October 12 and 14, 2009, police received anonymous phone calls directing the police to the possible location of the truck matching the description of the suspect truck seen leaving the scene of the shooting. Eventually, officers located the truck Phillips had returned to Car Biz. The police collected the shell casing found when the truck was cleaned by Car Biz. Ballistics testing revealed that the shell casing had been fired out of the same weapon as the casings found at the crime scene. The weapon that fired the shots was never recovered.

Further investigation revealed that several calls were exchanged between Phillips's cell phone (i.e., the same number Phillips provided to Car Biz) and Chaney's cell phone between 6:41 p.m. and 7:08 p.m. on October 8, 2009. The call originating from Phillips's cell phone at 7:04 p.m. was routed through a cellular telephone tower between Arlington and Shadeland Avenue close to 30th Street. A call originating from Chaney's cell phone at 7:08 p.m. was routed through a tower at 6455 East Street. Chaney did not make any further calls after this one on his cell phone. Phillips received a call at 7:18 p.m. that was routed through a tower at 16th Street and Post Road, which was in the vicinity of Roy Road where the shooting occurred. Police also learned that Phillips was still using the same cell phone on October 2, 5, and 6, 2009. When police spoke with Phillips's parents, they both indicated

that they knew Chaney. Phillips was arrested in January 2010. A buccal swab was obtained from Phillips and testing determined that Phillips's DNA matched a partial DNA sample obtained from the exterior door handle of Chaney's SUV.

On January 5, 2010, the State charged Phillips with Count I, murder, and Count II, possession of a firearm by a serious violent felon.³ A three-day jury trial commenced on July 12, 2010, and resulted in the jury finding Phillips guilty of murder. Phillips waived his right to trial by jury on Count II, and the court subsequently found him guilty of possession of a firearm by a serious violent felon. The trial court sentenced Phillips to consecutive terms of fifty-five years for murder and six years for the firearm conviction, for a total aggregate sentence of sixty-one years. Phillips now appeals his convictions.

Phillips argues that the evidence is insufficient to support his convictions for murder and possession of a firearm by a serious violent felon. The crux of his argument is that his convictions are based solely on circumstantial evidence and that such evidence is not sufficient to prove that he possessed a firearm and that he is the one who shot Chaney.

Our standard of review for challenges to the sufficiency of evidence is well settled:

When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). "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.*

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009). Circumstantial evidence is sufficient to sustain a conviction, including a murder conviction, if inferences may reasonably be drawn

that allowed the jury to find the defendant guilty beyond a reasonable doubt. *Pelley v. State*, 901 N.E.2d 494 (Ind. 2009), *reh'g denied*; *see also Jones v. State*, 783 N.E.2d 1132 (Ind. 2003).

The sole issue at trial was whether the evidence established beyond a reasonable doubt that Phillips possessed a firearm and that he used that firearm to kill Chaney. The jury found Phillips guilty of murder and the trial court found him guilty of possession of a firearm by a serious violent felon. In arguing that the State's evidence was lacking, Phillips discounts the DNA evidence the State introduced to link Phillips to Chaney's vehicle. As noted above, the State's evidence identifying Phillips as the murderer included a DNA profile obtained from the front exterior door handle of Chaney's vehicle that matched Phillips's DNA profile. Phillips notes that the DNA analyst was able to develop the profile at only five of fifteen locations and determined that the random match probability among African-Americans was 1 in 132,000. Phillips also argues that this evidence is not compelling in terms of putting him at the scene of the shooting because there was no evidence that ruled out that the DNA sample on the door handle of Chaney's vehicle had been there for a couple of days.

Phillips acknowledges that evidence linking a defendant to the murder weapon can be circumstantial evidence of guilt. *See McLean v. State*, 638 N.E.2d 1344 (Ind. Ct. App. 1994). Phillips nevertheless argues that the discovery of a shell casing in the Ford F-150 truck he returned to the car dealership two days after the murder and which happened to match the shell casings found at the crime scene required the jury to draw too many inferences in order to link him to the shooting. Phillips notes that the evidence did not establish that the shell

³ The State later amended the charging information to correct a technical defect.

casing found in his truck was fired at the scene of the crime and that there was a complete lack of evidence that he was ever in possession of the murder weapon. Phillips maintains that the jury was required to speculate that the shell casing found in the truck at the car dealership somehow put him at the scene of the murder.

Finally, Phillips argues that the State's evidence of cell phone records merely showed that he was linked to the victim in that someone using his same cell phone number exchanged several calls with Chaney just prior to the shooting and that he had the opportunity to commit the crime because he was in the vicinity when the crime occurred as evidenced by the location of cell phone towers used to transmit those phone calls.

Phillips's arguments are simply requests that we reweigh the evidence and judge the credibility of the witnesses. We cannot entertain Phillips's request on appeal. The State's DNA evidence showed that Phillips touched the exterior handle of the passenger side door of Chaney's vehicle. While this alone may not be sufficient evidence that Phillips committed the murder because Phillips could have left his DNA on the door handle at another time, it is not the only evidence linking Phillips to the murder of Chaney.

The State established that shortly before the murder, Phillips purchased a Ford F-150 truck. Further, several witnesses testified to seeing a Ford F-150 truck leave the scene moments after the shooting occurred. The State's evidence (i.e., the cell phone records) also disclosed that Phillips communicated with Chaney several times just before the murder. The State used this same evidence to establish that Phillips was in the vicinity at the time of the murder. The State presented compelling ballistics evidence that established that the shell casings on the floor of Chaney's vehicle and the shell casing found in the Ford F-150 truck

Phillips returned to a car dealership two days after the murder were fired from the same weapon.

It is irrelevant that no witness could positively identify Phillips as the shooter or that their descriptions of him were not completely accurate in terms of his height and build. The evidence showed that the shooter got out of Chaney's vehicle and ran to the Ford F-150 truck in a "crouched position" and then sped away. *Transcript* at 119. The evidence shows that Phillips communicated with Chaney just before the shooting, that Phillips was in the area at the time of the shooting, that Phillips's DNA was found on Chaney's SUV, and that the shell casings found in the victim's vehicle matched a shell casing found in Phillips's truck. The evidence, assessed in its entirety, is sufficient from which a rational trier of fact could find beyond a reasonable doubt that Phillips was guilty of murder.

If the evidence is sufficient to sustain Phillips conviction for murder, it is also sufficient to sustain Phillips's conviction for possession of a firearm by a serious violent felon. Although the murder weapon was never recovered, it is clear from the facts that Phillips possessed a firearm when he murdered Chaney by shooting him nine times and then discarded the weapon at a different location.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.