

Case Summary

Dametrick Gray appeals his conviction for Class B felony robbery. We affirm.

Issues

Gray raises two issues, which we restate as:

- I. whether the trial court properly admitted certain statements into evidence; and
- II. whether there is sufficient evidence to support his conviction.

Facts

On March 22, 2008, Monyettia Brown was working as an assistant manager at a restaurant in Fort Wayne with two other employees, Tiffany Shannon and Adam Schwalm. The restaurant had drive-through and walk-up windows; customers were not permitted inside. There was only one door for employees that slammed shut and locked, requiring employees to knock or ring a doorbell to get inside. Between 3:00 and 3:30 that afternoon, Shannon went out to her truck for approximately ten minutes and then came back inside the restaurant. Before the door slammed shut, Brown saw a hand reach inside, and two men walked in. One of the men was wearing a red bandana around his mouth and nose and the other was wearing a blue bandana. The man with the red bandana, who was armed with a gun, grabbed Brown, took her into the office, and demanded money from the safe. The other man ushered Shannon and Schwalm toward the front of the restaurant and took money from the cash register. After Brown retrieved money from the safe, the men fled on foot.

At around that same time, Demarcus Fitts, whose house was behind the restaurant, noticed someone running through his yard from his basement window. Seconds later, Fitts heard sirens and went outside where he discovered a red bandana in his yard. Fitts had cleaned up his yard the day before and had not seen the bandana there.

Brown could not physically identify the man in the red bandana but recognized his voice as the same man who had argued with Shannon the day before at the walk-up window. In August 2008, Officer Kenneth Clement of the Fort Wayne Police Department received an anonymous tip from the crime stoppers hotline indicating that Shannon and her boyfriend were involved in the robbery. Officer Clement then questioned Shannon, who stated that, several days after the robbery, her boyfriend, Gray, admitted to her that he committed the robbery. At that point, DNA from the bandana was compared to Gray's DNA, and a match was confirmed.

On April 28, 2010, the State charged Gray with Class B felony robbery. During the jury trial, evidence of the anonymous tip and Shannon's statement was admitted. Although Brown and Schwalm testified at trial, the State could not procure Shannon's attendance. A jury found Gray guilty as charged. He now appeals.

Analysis

I. Hearsay

Gray argues that the anonymous tip and Shannon's statement were improperly admitted into evidence because they were inadmissible hearsay. The admission of evidence is within the trial court's sound discretion, and the decision whether to admit evidence will not be reversed absent a showing of manifest abuse of that discretion.

resulting in the denial of a fair trial. Dixon v. State, 869 N.E.2d 516, 519 (Ind. Ct. App. 2007). An abuse of discretion is a decision that is clearly against the logic and effect of the facts and circumstances before the trial court. Id.

Gray argues that the statements were hearsay because they did not fall within Indiana Evidence Rule 801(d)(2)(E), which excludes from the definition of hearsay statements by co-conspirators during the course and in furtherance of the conspiracy. Hearsay is a statement, other than one made by the declarant while testifying at trial, offered to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). “When the admissibility of an out-of-court statement received by a police officer during the course of an investigation is challenged as hearsay, the court must first determine whether the testimony describes an out-of-court statement asserting a fact susceptible of being true or false.” Dixon, 869 N.E.2d at 519. “If so, the court must then consider the evidentiary purpose for the proffered statement.” Id. “If the evidentiary purpose is to prove the fact asserted, the statement is inadmissible as hearsay.” Id. On the other hand, if the statement is offered for a purpose other than to prove the truth of the matter asserted, the court should consider whether the fact to be proved is relevant to some issue in the case and whether the danger of unfair prejudice that may result from its admission outweighs its probative value. Id.

Here, both statements asserted a fact susceptible of being true or false. It is clear, however, that the evidentiary purpose of those statements was to show the course of Officer Clement’s investigation, which until that point had not yielded an identifiable suspect. The context in which these statements were offered was to show how Officer

Clement came to consider Gray a suspect. Officer Clement also explained that, because of a backlog with the Indiana State Police, he could not send the bandana for a DNA examination without having someone to compare it to. Although the statements were prejudicial to Gray, we cannot say that the danger of unfair prejudice outweighed the probative value. The context of the statements was clear to the jury and the veracity of the tip and Shannon's statement was not bolstered by Officer Clement's testimony. Moreover, the DNA analysis and Brown's testimony clearly linked Gray to the offense. Gray has not established that the trial court abused its discretion by admitting these statements into evidence.

II. Sufficiency of the Evidence

Gray also argues there is insufficient evidence to support his conviction. The standard of review for claims of insufficient evidence is well settled. We do not reweigh the evidence or judge the credibility of the witnesses, and we respect the jury's exclusive province to weigh conflicting evidence. Jackson v. State, 925 N.E.2d 369, 375 (Ind. 2010). We consider only the probative evidence and reasonable inferences supporting the verdict and affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id. Circumstantial evidence alone may be sufficient to sustain a conviction. Camm v. State, 908 N.E.2d 215, 229 (Ind. 2009).

Gray argues that the only evidence used to connect him to the crime other than the anonymous tip and Shannon's statement to police was the DNA analysis of the red bandana. He points out that the bandana contained the DNA evidence of two or three

other unaccounted-for individuals. Even without considering the anonymous tip and Shannon's statements, as they were not offered as evidence of Gray's guilt, there is sufficient circumstantial evidence to support his conviction.

First, Brown testified that she recognized the voice of the robber as the same person Shannon had been arguing with at the walk-up window the day before. She also testified that, immediately before the robbery, Shannon went outside for approximately ten minutes and when she returned, the robbers prevented the door from shutting and came in behind her. Brown also testified that the robber wearing the red bandana took her right to the office where the safe was and that, if someone had not been there before, "you wouldn't know where anything was." Tr. p. 159. Brown also testified that the bandana recovered in Fitts's yard appeared to be identical in color, style, pattern, and size to the one the robber was wearing. Fitts testified that he saw someone run through his yard, heard sirens, and then found the bandana, which had not been there the day before. Finally, DNA recovered from this bandana matched Gray's DNA.

Gray's theory that someone else committed the robbery while wearing the bandana was presented to the jury. We will not reweigh the evidence or judge witness credibility. There is sufficient evidence to support Gray's robbery conviction.

Conclusion

Gray has not established that the trial court abused its discretion by admitting the statements into evidence and has not established there is insufficient evidence to support his conviction. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.