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COURT OF APPEALS OF INDIANA

DARCEL GRAHAM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0910-CR-989
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0812-MR-273628

April 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Darcel Graham appeals his conviction for Murder,[1] a felony, challenging the sufficiency of the evidence. Specifically, Graham argues that his conviction must be set aside because no one saw him shoot the victim and the State failed to demonstrate that he had "a gun or blood on his clothing right after" he and several other individuals broke into the victim's residence. Appellant's Br. p. 1. Finding the evidence sufficient, we affirm the judgment of the trial court.

FACTS

On June 25, 2008, Steven Scott was found dead in a hallway in his Marion County residence. An investigation revealed that Scott had been shot five times with a .38 caliber firearm the previous evening.

On the day of the shooting, Graham, Cory Conner, and John Wilson devised a plan to rob Scott and steal marijuana from him. The three left Graham's residence and picked up Alexandria Clegg. At some point, Clegg tried to call Scott in an attempt to "lure" him out of the house. Tr. p. 143-44, 256, 259-60. When the phone went unanswered, Graham and the others proceeded to Scott's residence. After noticing that Scott's vehicle was there, Graham remarked that "[w]e're here; we might as well do it." Id. at 264. When Graham and two others walked up to the house, Graham kicked in the front door. As they entered, someone heard Scott say, "I will f***ing kill you." Id. at 140, 268. Graham and Conner ran to the basement and Conner heard a gunshot. Conner

[1] Ind. Code § 35-42-1-1.

and Graham then ran upstairs, and Graham proceeded to the back of the house. Conner ran outside and heard three or four more shots from the house.

Conner got into his vehicle, drove toward Scott's house, and noticed that Graham was running toward him. When Graham entered the vehicle, he was "infuriated" that no one had taken anything from Scott's house. Id. at 279-80. As the group was leaving, Graham concealed a gun in his pants and insisted that they all dispose of their clothing.

At some point during the investigation, Graham was identified through fingerprints and DNA found on a hair pick that was obtained from Scott's residence. The police then interviewed Staci Cash, the mother of Graham's child. Although Graham wanted Cash to tell the police that he was with her on the night of Scott's murder, she refused and told the investigators that they were not together that evening. Approximately six months later, Graham told his girlfriend, Jordan Camacho, that he had killed Scott.

The State charged Graham with murder, felony murder, attempted robbery, a class A felony, and conspiracy to commit burglary, a class A felony. Following a jury trial on September 2, 2009, Graham was found guilty on all counts. Thereafter, the trial court reduced the attempted robbery and conspiracy to commit burglary convictions to a class B felony. The trial court also vacated the felony murder conviction in light of double jeopardy concerns. Thereafter, Graham was sentenced to: a) fifty-five years for murder; b) ten years for attempted robbery, to run consecutively to the murder sentence; and c) ten years on the conspiracy charge, to run concurrently with the attempted robbery

sentence. Thus, Graham was sentenced to an aggregate term of sixty-five years of incarceration. Graham now appeals the murder conviction.

DISCUSSION AND DECISION

Graham argues that his conviction for murder must be set aside because the State failed to present sufficient evidence that he knowingly or intentionally killed Scott. When reviewing a challenge to the sufficiency of the evidence, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must 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. at 126 (quoting Tobar v. State, 740 N.E.2d 109, 111-12 (Ind. 2000)).

We also note that circumstantial evidence will support a 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, 500 (Ind. 2009). Moreover, while a defendant's mere presence at the scene of a crime cannot sustain a conviction, presence, when combined with other facts and circumstances, such as the defendant's course of conduct before, during, and after the offense, may raise a reasonable inference of guilt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000). Finally, we note that a confession—

once properly admitted—is direct evidence of guilt of the criminal activity admitted. Willoughby v. State, 552 N.E.2d 462, 467 (Ind. 1990).

To convict Graham of murder, the State was required to prove that he knowingly or intentionally killed Scott. I. C. § 35-42-1-1. In this case, the evidence established that when Graham and the others arrived at Scott's and noticed that he was at home, Graham stated that they "might as well do it." Tr. p. 263-64, 318. Conner and Graham were the only two in the basement, and Conner heard a gunshot. Id. at 273-74, 291-92, 321-33. Conner then heard more gunshots after seeing Graham run upstairs toward the back of the house. Id. at 274-76, 322, 324. Conner saw Graham conceal a gun immediately after the shooting as they fled the scene. Id. at 292. Moreover, Graham was the last person to leave Scott's house and he subsequently told his girlfriend that he had killed Scott. Id. at 393, 399.

Although Graham testified that he did not shoot Scott, the jury was free to reject that testimony and his explanation of the incident. Wash v. State, 456 N.E.2d 1009, 1011 (Ind. 1983) (recognizing that a trier of fact is entitled to entirely reject a defendant's version of the events). In essence, Graham's arguments amount to a request to reweigh the evidence, which we cannot do. Thus, when considering the evidence most favorable to the verdict, we conclude that the evidence was sufficient to support Graham's conviction for murder.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.