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IN THE
COURT OF APPEALS OF INDIANA

DAURRELL FIGGS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-1010-CR-597
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0909-FB-180

July 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Daurrell Figgs ("Figgs") appeals his convictions for aggravated battery,[1] a Class B felony, and two counts of robbery while armed with a deadly weapon,[2] each as a Class B felony. On appeal, he raises the following restated issues:

I. Whether the trial court erred when it refused to allow Figgs to cross-examine one of the victims regarding matters that Figgs contended showed bias pursuant to Indiana Evidence Rule 616; and

II. Whether there was sufficient evidence to sustain Figgs's convictions.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 1, 2009, Jessica Simon ("Simon") went to visit her sister, Genell Soulier ("Soulier").[3] That evening, various individuals were visiting Soulier's upstairs neighbor, Brian Overbay ("Brian"), including his brother, Donald Overbay ("Donald"), and Figgs. Figgs asked to borrow Brian's cell phone, and Donald followed Figgs to the front lawn of the duplex in order to keep an eye on Brian's phone.

Simon arrived at Soulier's house shortly before 10:00 p.m. and noticed a group of men standing outside her sister's duplex. As Simon approached the building, Figgs, whom Simon had never met or seen before, started a conversation with her and asked "[Y]ou got a man?" *Tr*. at 117. Simon, said, "Yes I do . . . I'm married," and kept walking toward the duplex. *Id*.

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[1] *See* Ind. Code § 35-42-2-1.5.

[2] *See* Ind. Code § 35-42-5-1.

[3] In the record before us, Genell's last name is spelled as both Solier and Soulier. Although Genell testified, she did not spell her last name. We use the spelling listed in the charging information—Soulier.

Simon and her sister talked for a few minutes, and Simon asked if she had a cigarette. When Soulier said she did not, Simon and Soulier decided to drive to a nearby store. When they returned, the two remained in the car smoking a cigarette. Figgs approached the passenger side of the car and asked for a cigarette. Soulier told him that they were smoking the last one, so Figgs walked away. About one minute later, Figgs and a second man entered the back seat of Simon's car. Hearing a police siren, Figgs ordered Simon to drive away because "he had a warrant out for his arrest." *Appellee's Br*. at 3. Simon obeyed Figgs's command and drove away. Donald ran after the car and pounded on the trunk in an unsuccessful attempt to retrieve Brian's cell phone from Figgs.

Figgs ordered Simon to turn left and stop the car. Showing the sisters that he had a semi-automatic handgun, Figgs said, "you know what the f*ck this is," and demanded that Simon and Soulier give him their purses. *Tr*. at 123. When Simon opened her wallet to show Figgs that she had no money, Figgs hit her on the side of the face with the butt of his gun; this caused Simon's glasses to fall off her face and into her purse. Figgs then grabbed Simon's purse, exited the vehicle, and opened the front-passenger door where Soulier was seated. Figgs pulled on Soulier's purse, and as he pulled on her purse, he pulled Soulier out of the car. Figgs then pointed his gun in Soulier's face and told her that he would shoot her if she did not sit down. Although Soulier sat down, Simon walked to the back of the car and begged Figgs to return her glasses. Figgs pointed his gun at Simon and asked her, "what makes you think I won't f*cking shoot you?" *Id*. at 128. Figgs then shot Simon in the stomach. As Figgs fled on foot, Simon drove herself

and Soulier to a nearby fire station where they sought assistance.

Simon and Soulier subsequently identified Figgs from photographic arrays as the man who had robbed them and had shot Simon. Donald also identified Figgs from a photographic array as one of the two people he saw jump into Simon's car. On September 23, 2009, the State charged Figgs with one count of Class B felony aggravated battery for shooting Simon, two counts of Class B robbery for stealing the purses, and one count of Class C felony battery. Figgs's first jury trial ended in a mistrial when Simon testified on cross-examination as follows: "[H]e took the purse, he f*cking took the purse and f*cking shot me. You know you f*cking shot me you piece of f*cking sh*t, this is f*cking bullsh*t." *Id*. at 8, 106.

Figgs's second jury trial took place on September 14-15, 2010. Figgs's defense counsel argued that he should be allowed to cross-examine Simon about two circumstances of his first trial—(1) Simon's outburst that had caused the mistrial and (2) the circumstances of her having brought a "miniature box cutter" into the courthouse. *Id*. at 3, 9. Figgs's counsel argued that such cross-examination was necessary to attack Simon's credibility by highlighting any bias or prejudice that Simon may have had against Figgs. *Id*. at 106. The prosecutor, who also prosecuted Figgs during the first trial, represented to the trial court that Simon had given the prosecutor the box cutter voluntarily before the first trial had even begun, and that he had taken it from her fearing that she intended to use it on herself. *Id*. at 5-6. The trial court refused to allow the proposed cross-examination, finding that the matter was not indicative of bias on Simon's part and was not relevant to her testimony. *Id*. at 108-09.

Simon and Soulier identified Figgs in open court as the man who had robbed them and had shot Simon. Donald also identified Figgs in open court as one of the men he saw jumping into Simon's car. Following the second trial, the jury found Figgs guilty of one count of aggravated battery as a Class B felony and two counts of robbery while armed with a deadly weapon, each as a Class B felony, but found Figgs not guilty of battery as a Class C felony. Figgs was committed to the Department of Correction for a total executed sentence of thirty-five years. Figgs now appeals.

DISCUSSION AND DECISION

I. Bias under Evidence Rule 616

A defendant's Sixth Amendment right of confrontation requires that the defendant be afforded an opportunity to conduct effective cross-examination of State witnesses to test their believability. *Kirk v. State*, 797 N.E.2d 837, 840 (Ind. Ct. App. 2008), *trans. denied*. Further, Indiana Evidence Rule 616 provides that, "for the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible." As this Court has recognized, evidence of bias, prejudice, or ulterior motives, on the part of a witness, is relevant at trial because it may discredit the witness or affect the weight of the witness's testimony. *Kirk*, 797 N.E.2d at 840.

Figgs contends that the trial court erred when, during the second trial, it refused to allow Figgs to cross-examine Simon regarding her actions at the first trial. Specifically, he contends that he was precluded from revealing Simon's bias pursuant to Indiana Evidence Rule 616. Figgs maintains that evidence of both Simon's derogatory

statements and her possession of a box cutter during the first trial were admissible to show her "obvious hostility and rage towards" Figgs that "may have altered her testimony and her firm identification of him as a shooter." *Appellant's Br.* at 6.

Our case law instructs that the fact that a witness has a special motive to exaggerate or falsify testimony is material. *Denton v. State*, 455 N.E.2d 905, 909 (Ind. 1983); *McKinley v. State*, 465 N.E.2d 742, 746 (Ind. Ct. App. 1984). That being said, even under Evidence Rule 616, the admissibility of evidence is considered in conjunction with Indiana Evidence Rule 403's required balancing of probative value against the danger of unfair prejudice. *Ingram v. State*, 715 N.E.2d 405, 407 (Ind. 1999).

Prior to the second trial, defense counsel alerted the court that he intended to question Simon regarding her actions at the first trial, i.e., that "she carried a knife into the courthouse and that she made the outburst." *Tr*. at 4. State's counsel responded that the box cutter was irrelevant because Simon had voluntarily given the box cutter to State's counsel prior to the commencement of the first trial. *Id*. at 5-6. Additionally, the State offered that the evidence of the box cutter and Simon's outburst:

> has nothing to do with the facts in this case and in fact the prejudicial effect would so outweigh the probative value because I don't see how you tie it to what happened on September 1st, 2009 and whether or not this Defendant is guilty. That has nothing to do with it.

Id. at 6-7.

The trial court, agreeing with the State, refused to allow Figgs to cross-examine Simon regarding her actions at the first trial and reasoned as follows:

> Limiting myself strictly to the 616 argument, I don't think, number one, I don't think this qualifies as evidence of bias or prejudice. Bias or prejudice

> is some other outside motive to lie in this case. It's perfectly clear that this woman doesn't like this man because she believes this man is the man that robbed and shot her. Which is perfectly understandable and that's what this trial is all about. That isn't outside, extraneous bias, that's what the trial is about and you have cross examined her about that and you're welcome to. But we're not going to drag in that she lost her temper or that she brought a knife to protect herself or anything else to the last trial. It all ended in a mistrial and we're here, this is another day and you're entitled to cross examine her in a proper fashion as I'm sure you will, I have no doubt that you will do. But the outburst is not relevant, it's what got us a mistrial before and it's not relevant to her testimony, does not have any ability of persuasiveness to show any outside bias other than she believes that he's the guy that robbed and shot her which is what she's going to say. So beyond that it all gets kind of circular.

Id. at 108-09.

Many victims of a crime feel hostility toward the perpetrator of that crime. Evidence Rule 616 addresses bias, prejudice, or interest of the witness for or against any party to the case stemming from some other motive apart from the presently alleged offense; here, the hostility Simon felt toward Figgs arose from the instant offense. As the victim of the crime, Simon's prejudice against Figgs was clear. Had the trial court allowed the cross-examination requested by Figgs, the evidence revealed would have had no probative value regarding Figgs's guilt or innocence. The trial court did not err in preventing Figgs from cross-examining Simon regarding her activities at the first trial.

II. Sufficiency of the Evidence

Figgs next contends that the State presented insufficient evidence that he was the one who shot and robbed Simon and robbed Soulier. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the conviction. *Rogers v. State*, 902 N.E.2d 871, 874-

75 (Ind. Ct. App. 2009). "It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction." *Id*. "To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We, therefore, "affirm the conviction unless 'no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.'" *Id*. (quoting *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)). "It is therefore not necessary that the evidence 'overcome every reasonable hypothesis of innocence.'" *Id*. at 147 (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). The evidence is sufficient if an inference may reasonably be drawn from it to support the conviction. *Id*. A victim's testimony, even if uncorroborated, is ordinarily sufficient to sustain a conviction. *Carter v. State*, 754 N.E.2d 877, 880 (Ind. 2001).

Figgs's sole argument regarding the sufficiency of the evidence is that the State failed to prove that it was he who committed the offenses. *Appellant's Br*. at 8-10. However, both of the victims, Simon and Soulier, identified Figgs from a photographic array and in open court as the man who had robbed them and had shot Simon. *Tr*. at 117-18, 145-46, 190-91, *State's Ex*s. 10, 13. These identifications were made after both sisters saw Figgs when he approached the passenger window to ask for a cigarette, when he got into the back seat of Simon's car, when Simon turned around to show Figgs that her wallet was empty, when Figgs pulled Soulier out of the car as he pulled on Soulier's purse, and when Simon confronted Figgs to plead for her glasses. *Id*. at 121, 122, 127, 128, 178, 179, 185-86. Additionally, Donald identified Figgs from a photographic array

and in open court as one of the two men who had jumped into Simon's car. *Id*. at 216-17, *State's Ex*. 14. This identification was made after Donald met Figgs in Brian's apartment, saw Figgs borrow Brian's cell phone, followed Figgs outside the duplex in order to keep his eye on the cell phone, and watched him jump into Simon's back seat. *Tr*. at 215, 217, 218. From this evidence the jury could have reasonably concluded that the three witnesses properly identified Figgs as the one who committed the crimes.

On appeal, Figgs cites to apparent inconsistencies in the police statements and trial testimony of Simon and Soulier. *Appellant's Br*. at 8-10. As our Supreme Court noted in *Stephenson v. State*, 742 N.E.2d 463 (Ind. 2001):

> [I]nconsistencies in the testimony of two or more witnesses go to the weight of the evidence and credibility of each individual witnesses' [sic] testimony, and such inconsistencies do not make the evidence "incredible" as a matter of law. Here, the jury was fully apprised of these inconsistencies and had the opportunity to make credibility determinations. "[J]udging the credibility of witnesses lies squarely within the province of the jury and we will not reassess its credibility determinations."

Stephenson, 742 N.E.2d at 497 (internal citations omitted). Figgs's argument regarding the sufficiency of the evidence is merely a request for this court to reweigh the evidence presented at trial and reassess the credibility of Simon and Soulier, something we cannot do on appeal. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005).

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.