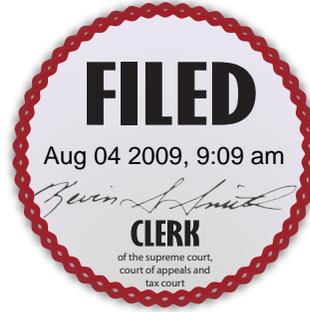


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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MILTON MEDSKER, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-0812-CR-1134  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Kurt Eisgruber, Judge  
Cause No. 49G06-0705-FB-081804

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**AUGUST 4, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**GARRARD, Senior Judge**

A jury convicted Milton Medsker of murder and he was sentenced to 55 years. On appeal he contends that the court erroneously applied Ind. Evidence Rule 704(b) to prevent certain testimony and deny him the ability to present a defense in contravention of the Sixth Amendment. He further contends the evidence was insufficient to sustain his conviction.

On January 18, 2006, Robert Wheat's body, partly covered in plastic, was found in an alley in the 900 block of Haugh Street in Indianapolis. Wheat died from a gunshot wound to the head. It appeared that he had been moved from somewhere else to the spot where he was found. A Crown Royal bag containing more than seven thousand dollars was found on Wheat's body.

The murder investigation went on for a number of months. Detective Marcus Kennedy, the lead investigator, eventually was led to interview as potential suspects or witnesses: Bonnie Cardwell, Joe Skorjanc, Susan Robbins, Ryan Baird, Naquita Baird, Josh Manuel, Mary Egan and Russell Andrus. The story emerged that Wheat, Skorjanc and Cardwell had been dealing large quantities of methamphetamine.

Wheat had been Robbins' boyfriend, and they remained friends. At some point she introduced Wheat to Cardwell, Skorjanc and Medsker. Sometime after the murder, Medsker and two friends visited Robbins at her home to help her pick up her car from a mechanic. In the car on the way back Medsker told Robbins that he had killed Wheat, that Skorjanc had him do it because of a planned robbery that went bad. Bonnie Cardwell, Skorjanc's sister, had set up the robbery. The plan was to take money from

Wheat, but Wheat would not “come up with the money for the pound of methamphetamines to give the money to Bonnie,” so Medsker shot him. Tr. at 67-68. He said that he only did what Skorjanc told him to do. Medsker insisted that it was supposed to be a robbery until Wheat would not give them the money. Medsker said he used Skorjanc’s gun. Robbins was devastated, and Medsker told her he was sorry.

Medsker admitted killing Wheat to several others. He told Ryan Baird that he had killed someone. Baird responded, “yeah, right,” because he did not believe Medsker. Tr. at 160. Medsker then said, “no, really, I killed a guy.” Tr. at 160. He then told Baird he had shot the victim in the head, wrapped him up and dropped him off in an alley near Haugh Street. He showed Baird a gun he was carrying. After Baird testified about whether he believed Medsker, the court allowed the defense to question Baird about his opinion as to whether Medsker was telling the truth and about Medsker’s reputation for truthfulness. In response Baird testified that Medsker liked to be the center of attention and had a reputation for making up stories. Baird said Medsker was known to lie and had a reputation for making up stories, but not about killing a man.

Niquita Baird testified that Medsker told her that he had killed somebody. He shot the victim in the head, wrapped the victim in plastic and dropped him off near Ninth and Haugh. On another occasion Medsker told her that he needed to “maintain being cool with [Bonnie Cardwell] so she doesn’t tell on me for killing that guy.” Tr. at 137. Russell Andrus, Josh Manuel and Mary Egan all testified to incriminating statements Medsker had made about the killing. Of these, Manuel testified on direct that he did not

take Medsker seriously. On cross examination Manuel said he did not go to the police when he heard Medsker's admission, and that Medsker had a reputation for making up stories. Medsker's admissions and his knowledge of the particulars of the murder led to his conviction.

Prior to trial, the court granted a motion *in limine* to preclude the defense from asking any witness whether he or she believed Medsker was telling the truth when he made certain statements. The court ruled, of course, that the defense could inquire as to Medsker's reputation for truthfulness pursuant Evid. R. 608(a).

Evid. R. 704(b) provides,

Witnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions.

During direct examination, witnesses Ryan Baird and Josh Manuel volunteered that when Medsker told them he had done the killing they did not believe him. Medsker argues that this testimony "opened the door" and he should have been permitted to question each of the other witnesses about whether they believed what Medsker told them.

The so-called doctrine of "opening the door" permits a party to question a witness in rebuttal where the witness' previous testimony has left a false or misleading impression with the trier of fact of the facts related by the witness. *Gilliam v. State*, 270 Ind. 71, 77, 383 N.E.2d 297, 301 (1978). It simply has no application to securing

testimony from other witnesses that they do or do not hold the same belief as that testified to by a particular witness.

The cross examination of Ryan Baird and Josh Manuel concerning their statements of non-belief was not an attempt to correct a misleading impression. It was intended to bolster their expressions and was permitted because of their direct testimony. It did not “open the door” to permit other witnesses to testify to their belief or disbelief.

Medsker next contends that Evid. R. 704(b) does not apply to the facts of this case. Initially, he asserts that testimony regarding a belief or disbelief is not opinion. It is a distinction without a difference. The belief of a witness that someone is being truthful, or not, is the opinion of that witness. Furthermore, it does not matter that the belief concerned a statement made by someone not on the witness stand. Evid. R. 704(b) precludes a witness from testifying to his, or her, opinion that a defendant was or was not telling the truth in an out-of-court conversation. *See Shepherd v. State*, 538 N.E.2d 242, 243 (Ind. 1989).

Medsker argues that he was prevented from presenting a defense in violation of his rights under the Sixth and Fourteenth Amendments. He claims that his defense was that he lied about the murder and Evid. R. 704(b) should give way so that he might present his defense. We disagree. The court’s ruling did not prevent presentation of his defense.

After Ryan Baird volunteered that he did not believe Medsker, the court allowed the defense to question Baird further about whether he believed Medsker was telling the

truth and about Medsker's reputation for truthfulness. The defense questioned Niquita Baird about Medsker's reputation for truthfulness, and Manuel testified that Medsker had a reputation for making up stories.

In sum, if Medsker's defense was that he was an inveterate liar and lied about killing Wheat, then he was allowed to present that defense. A Sixth Amendment issue is raised only when the trial court prohibits altogether cross-examination on a subject bearing upon the credibility of a crucial state witness; any lesser curtailment is reviewable only for an abuse of discretion. *Von Almen v. State*, 496 N.E.2d 55, 58 (Ind. 1986); *Smith v. State*, 270 Ind. 579, 388 N.E.2d 484 (1979). The court did not abuse its discretion by applying Evid. R. 704(b).

Finally, we consider Medsker's argument that the evidence was insufficient to support his conviction of murder. He points out that the only evidence presented was Wheat's body and Medsker's admissions. The evidence established that Wheat's body, partially wrapped in plastic, had been shot in the head and left in an alley in the 900 block of Haugh Street. Medsker's admissions to a number of people that he had done the killing and his knowledge of the details surrounding Wheat's death were sufficient to enable a reasonable jury to conclude guilt beyond a reasonable doubt.

Affirmed.

CRONE, J., and BROWN, J., concur.