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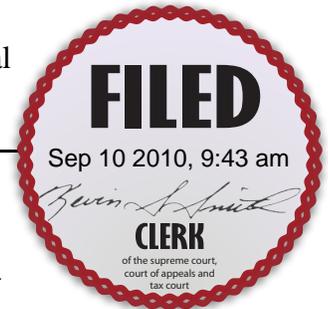
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**IN THE
COURT OF APPEALS OF INDIANA**

DAVID L. HOWARD,
Appellant/Defendant,

vs.

STATE OF INDIANA,
Appellee/Plaintiff.

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No. 46A03-0907-CR-299

APPEAL FROM THE LaPORTE SUPERIOR COURT
The Honorable Kathleen B. Lang, Judge
Cause No. 46D01-0511-MR-148

September 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant David L. Howard appeals following his conviction and sixty-five-year sentence with five years suspended to probation for Murder,¹ a felony. Howard contends that the State produced insufficient evidence to support his conviction and challenges the appropriateness of his sentence in light of the nature of the offense and his character. We affirm.

FACTS AND PROCEDURAL HISTORY

At around 6:30 p.m. on October 31, 2005, Howard called Jeremy Bowers and requested a ride after his vehicle broke down in rural LaPorte County. Bowers borrowed five dollars from his mother for gas and left his residence. At approximately 7:30 p.m., Lisa Howard (“Lisa”) heard what sounded like a “firecracker” outside of her home. Tr. p. 63. Moments later, Lisa noticed a vehicle pull into her driveway and observed the passenger drag a body from the driver’s side of the vehicle and leave it on the ground nearby. Continuing to watch, Lisa saw the passenger remove clothing from the body and drop it around the side of the house. After dropping the clothing, the passenger ran back to the vehicle, sat there for a minute or so, and then exited again to drag the body further. Lisa notified police.

Minutes later, Officers Shawn Hutchison, Shane Washluske, and Nick Krause of the Michigan City Police Department responded to the crime scene. The officers saw a vehicle in the driveway and a man in front of that vehicle. Officers walked towards the front of the vehicle and discovered a dead body, later identified as Bowers. During initial questioning, the man identified himself as Howard and handed police a red bandana and a

¹ Ind. Code § 35-42-1-1(2005).

box of shotgun shells from his own pocket. Police also noticed that Howard had blood and human tissue all over his clothes.

Additional officers processed the crime scene for evidence and were able to observe and recover a shotgun, shotgun shell casing, blood trails, drag marks, and the victim's clothes. During the course of the investigation, police obtained a warrant to search Howard's residence, where they uncovered an additional box of ammunition and two shotgun shells.

On November 1, 2005, the State charged Howard with murder, a felony. On July 6, 2007, Howard was found guilty following a jury trial. On September 13, 2007, Howard was sentenced to sixty-five years in the Indiana Department of Correction with five years suspended to probation. This appeal follows.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

On appeal, Howard challenges the sufficiency of the evidence to support his conviction for murder. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. If we are confronted with conflicting evidence, we consider the evidence most favorable to the trial court's verdict. *Drane*, 867 N.E.2d at 146. We must affirm if the probative evidence and reasonable inferences drawn from that evidence could have allowed a reasonable trier of fact to find the

defendant guilty beyond a reasonable doubt. *See id.* at 147. It is well-settled that a conviction for murder may be sustained on circumstantial evidence alone. *Smoot v. State*, 708 N.E.2d 1, 3 (Ind. 1999). Even when the verdict rests on circumstantial evidence, we need not find the circumstantial evidence adequate to negate every reasonable hypothesis of innocence but only that the inferences that may reasonably be drawn from the evidence are sufficient to enable the trier of fact to find guilt beyond a reasonable doubt. *Robinson v. State*, 730 N.E.2d 185, 194 (Ind. Ct. App. 2000), *trans. denied*.

In order to convict Howard, the State had to prove beyond a reasonable doubt that Howard knowingly or intentionally killed Bowers. *See* Ind. Code § 35-42-1-1. In challenging his conviction, Howard contends that the evidence presented by the State is insufficient to support his conviction because there was no witness to the actual shooting and he continually denied his involvement in the crime. We cannot agree.

As to Howard's assertion that there was no witness to the actual shooting, we conclude that there was ample circumstantial evidence to establish that Howard knowingly or intentionally killed Bowers, regardless of whether there was a witness to the actual shooting. Bowers's mother testified that at around 6:30 p.m. on October 31, 2005, Howard called her home and asked for Bowers's help after his vehicle broke down, and that Bowers agreed to help and left shortly thereafter. At approximately 7:30 p.m., Lisa Howard heard a noise like a "firecracker." Tr. p. 63. A few moments later, she noticed a vehicle pull up to her driveway and saw the passenger drag a body out of the driver's side of the vehicle and drop it nearby. She further testified that she saw the

passenger return to the vehicle, grab some clothing from inside the vehicle, drop the clothing on the ground nearby, and return again to the vehicle for a minute or two before exiting the vehicle to drag the body further. Lisa later realized that the passenger was Howard, her cousin. Detectives responding to crime scene were able to recover a shotgun, a pile of the victim's clothes, a shotgun casing, a box of shotgun shells provided to them by Howard, and Howard's clothes which were covered with blood and human tissue. A detective also observed drag marks from the driver's side door on the ground, to where the victim was, and there was also a trail of blood from the driver's side door to where the victim was. Furthermore, an evidence technician processing the scene testified that the blood stains on the scene were consistent with Lisa's testimony that she saw Howard drag a body on the driveway.

The lead detective later obtained a warrant to search Howard's residence, from which detectives recovered two shotgun shells and a box of ammunition. The box of ammunition retrieved from Howard's residence was later determined to have the same lot number as the ammunition that Howard provided to police at the scene. The State's firearm expert testified that the shells found at the crime scene matched the shells recovered from Howard's residence, and that the markings on the shells were consistent with being fired from the shotgun recovered at the crime scene. Additionally, the State presented evidence linking Howard to the shotgun that was used to kill Bowers. DNA evidence also links Howard to Bowers. The evidence establishes that Bowers's DNA was on Howard's clothing, in the form of blood and tissue. This evidence and the

reasonable inferences drawn from this evidence support the conclusion that Howard knowingly or intentionally killed Bowers.

To the extent that Howard consistently denied any involvement in Bowers's death, we conclude that the evidence at trial was sufficient to prove otherwise. The jury was in a better position to weigh the evidence and assess the credibility of the witnesses, and we will not reevaluate its factual conclusions. The fact-finder bears the responsibility to determine whether the evidence presented by the State is sufficient to satisfy each element of the offense. Given the testimony, the surrounding circumstances, and Howard's conduct, we conclude that there was sufficient evidence to support Howard's conviction for murder.

II. Appropriateness of Sentence

Howard also alleges that his sentence for murder is inappropriate. This Court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied*. Moreover, the defendant bears the burden of persuading this Court that his sentence is inappropriate. *Patterson v. State*, 909 N.E.2d 1058, 1063 (quoting *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007)).

Howard claims that his sentence is inappropriate in light of the nature of his offense and his character. As for the nature of Howard's offense, he argues that there is nothing that sets this offense apart from any murder. Additionally, he claims that for practical purposes Bowers died instantly, as opposed to other murder victims who suffer torture and excruciatingly slow deaths. As for his character, Howard claims that he is not the worst offender. He claims that his lack of criminal history as well as his expression of condolences to Bowers's family reflect positively on his character.

With respect to the nature of Howard's offense, we recognize that all murders result in death, but the brutal nature of Howard's killing renders his offense particularly egregious. The record demonstrates that Bowers was shot at point-blank range in the face with a shotgun. The act of shooting someone in the face at point-blank range with a shotgun speaks for itself. Furthermore, the record indicates that Bowers was a thirty-three year old *disabled* man whose only fault in this instance was answering Howard's call for help. Bowers borrowed five dollars for gas from his mother, left the comforts of his home on a rainy night, and then proceeded to provide assistance to Howard. Rather than thanking Bowers for his kindness, Howard shot him in the face.

Moreover, we do not find Howard's argument that there is nothing that sets this offense apart from any other offense of murder to be particularly compelling. One officer responding to the crime scene testified that the victim's "jaw was completely missing and so was part of his face." Tr. p. 45. We believe that Howard's decision to shoot Bowers in the face with a shotgun from point-blank range demonstrates a complete disregard for Bowers's life and is inherently gruesome. Further, to the extent that Howard argues that

Bowers did not suffer, we note that the record reveals that Bowers was alive long enough to breathe after he was shot and was left on a rainy night without clothes in a yard to suffer and bleed to death.

With respect to Howard's character, we acknowledge that his criminal history is not extensive, including only two prior misdemeanor convictions. However, we find these prior convictions to reflect negatively on Howard's character as they show his disinclination to abide by the law. These prior convictions depict an individual who not only has failed to be deterred from committing future crimes, but has suddenly escalated to the most heinous crime of all, murder. Second, the record strongly shows that Howard tried to cover up his crime, repeatedly lied to police, and killed a disabled man who was actually helping Howard the night he killed him. In light of the evidence relating to the nature of Howard's offense and his character, we cannot say that his sentence is inappropriate.

The judgment of the trial court is affirmed.

DARDEN, J., and BROWN, J., concur.