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ATTORNEY FOR APPELLANT:

CHRISTINE A. MAJEWSKI
Mishawaka, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

RYAN D. JOHANNINGSMEIER
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

DEWAYNE A. DUNN,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 20A05-1103-CR-160
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-1004-MR-4

December 22, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Dewayne A. Dunn ("Dunn") was convicted of murder in Elkhart Circuit Court. Dunn appeals and argues that the State presented insufficient evidence to support his conviction. We affirm.

Facts and Procedural History

In September 2008, Dunn lived in an apartment in Elkhart, Indiana with his girlfriend, Letha Sims ("Sims"). Their rental unit was located on the second floor of the apartment building, next door to another unit rented by Angel Torres ("Torres"). The units shared a common balcony, with an exterior staircase leading to the ground.

The facts most favorable to the verdict establish that on the evening of September 3, 2008, Damen Collins ("Collins") was riding his bike near the apartment building when he witnessed an altercation between Dunn and Sims taking place on the balcony. Specifically, he saw Dunn and Sims fighting and heard Sims screaming for help. Torres then came out of his apartment, but Dunn shoved him back inside. Dunn then knocked Sims halfway down the staircase, and when Sims tried to get away, Dunn grabbed her and dragged her back upstairs. At that point, Collins called the police and left the area. As he was leaving, Collins heard loud noises coming from the area of the fight, but he was unsure what they were.

The first police officer arrived on the scene eight minutes after receiving the dispatch. At that time, Torres was lying at the bottom of the staircase in a pool of blood. He was unresponsive and his breathing was very labored. A baseball bat was positioned underneath Torres's body, and Sims's son and Dunn were standing nearby. Dunn had a

cut under his knee, and he was very agitated and shouting that "he didn't do anything." Tr. p. 394.

After paramedics took Torres to the hospital for treatment, police conducted an extensive forensic examination of the area. Dunn's shoe print was found on the outside of Torres's apartment door, and the doorjamb was freshly splintered. There was also blood on the outside of the door, and crime scene investigators were able to determine that the blood was cast onto the door after the shoe print was made. Another of Dunn's shoeprints, in what was later determined to be Torres's blood, was found on the second step of the staircase. A pool of blood on the pavement at the bottom of the staircase contained Dunn's shoeprint, and Torres's blood was found on the sole of Dunn's shoe. Blood was also found on Dunn's shorts, and DNA testing revealed a mixture of a major and minor profile. Dunn was the source of the major profile, and no conclusions could be drawn from the minor profile. Torres's blood was found on the handle and middle portion of the baseball bat, and Torres's "cellular material" was found on the barrel of the bat. Tr. pp. 836-37.

Additionally, Torres's blood was found on the wall at the bottom of the staircase. Investigators were able to determine from the pattern of the bloodstains that they were caused by "impact spatter," which means that some degree of force was applied to a blood source, causing the blood to disperse. The source of the blood spatter would have been near ground level and within six feet of the wall. The blood spatter pattern was not consistent with someone walking, or even stomping, through blood that was already

pooled on the pavement, or with Torres simply falling down the stairs. Torres's blood was also spattered on a vehicle parked adjacent to the staircase and parallel to the bloodstained wall. There was "cast-off blood staining" on the concrete between the staircase and the vehicle, indicating that a bloody instrument of some kind had been "swung or flung[.]" Tr. p. 911.

When Torres arrived at the emergency room, physicians determined that he had suffered a traumatic head injury, including significant brain injury, bleeding within the brain, and skull fractures. Torres also had blood and air within his chest wall cavity, indicating a significant lung injury. Torres died after being removed from life support on September 5, 2008. An autopsy revealed that the cause of Torres's death was massive blunt trauma to the head. The degree of trauma was severe, similar to what would be expected in "a high speed . . . motor vehicle crash." Tr. p. 955. Torres had multiple skull fractures, and part of the skull was "crushed like gravel." Tr. p. 948. Torres also had a major hemorrhage in his brain, a bruised lung, and his liver was torn. All of Torres's ribs were broken, as well as his clavicle. These injuries were inconsistent with someone merely falling down the stairs.

The State charged Dunn with Torres's murder on April 20, 2010. A three-day jury trial commenced on January 21, 2011, and Dunn was found guilty as charged. Dunn now appeals.

Discussion and Decision

Dunn argues that the State presented insufficient evidence to support his murder conviction. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). Considering only the evidence and the reasonable inferences supporting the verdict, our task is to determine whether there is substantial evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. Moore v. State, 652 N.E.2d 53, 55 (Ind. 1995). Further,

> [a] conviction for Murder may be based purely on circumstantial evidence. We will not disturb a verdict if the jury could reasonably infer that the defendant is guilty beyond a reasonable doubt from the circumstantial evidence presented. On appeal, the circumstantial evidence need not overcome every reasonable hypothesis of innocence. It is enough if an inference reasonably tending to support the verdict can be drawn from the circumstantial evidence.

Id. (citations omitted).

To establish that Dunn committed murder, the State was required to prove that Clark knowingly or intentionally killed Torres. See Ind. Code § 35-42-1-1 (2004). Dunn appears to argue that the State failed to prove that Torres was in fact murdered, and that the death was instead caused by a fall down the stairs. However, Dr. Scott Wagner testified that "the deep injuries to the skull . . . and the chest would not be consistent with a simple fall down the steps." Tr. p. 954. Additionally, Dean Marks, a crime scene investigator with the Indiana State Police, testified that the blood spatter evidence at the scene was not consistent with someone falling down the stairs, and instead indicated that

an "event" occurred at the bottom of the stairs. Tr. p. 920. Dunn's argument to the contrary is an invitation to reweigh the evidence, judge the credibility of witnesses, and consider evidence unfavorable to verdict, none of which we will do on appeal.

Dunn also correctly notes that mere presence near the scene of a crime is insufficient to support a conviction. See Brink v. State, 837 N.E.2d 192, 194 (Ind. Ct. App. 2005), trans. denied. But here, the State presented evidence of much more than Dunn's mere presence. The evidence and inferences favorable to the verdict established that (1) Dunn and the victim were in a physical altercation minutes before the victim sustained the injuries that ultimately led to his death; (2) very shortly after the altercation, Dunn kicked in the door to the victim's apartment; (3) when police arrived, Dunn was found standing next to the victim at the bottom of the steps; (4) at that time, Dunn appeared to be very agitated and was shouting that he "didn't do anything"; (5) the victim's blood was found on Dunn's shoes; (6) Dunn left a shoeprint in the victim's blood on the second step, near the bottom of the staircase; (7) blood spatter evidence indicated that an "event" occurred at the bottom of the staircase between the building and the parked vehicle; (8) "cast-off blood stains" in the same area indicated that someone had swung a bloody instrument; and (9) the victim's cause of death was massive blunt force trauma to the head.

On appeal, Dunn addresses this evidence in a piecemeal fashion, essentially asking us to view each piece of evidence in isolation. But, as our supreme court has noted, "[c]ircumstantial evidence by its nature is a web of facts in which no single strand may be

dispositive. In a prosecution based on circumstantial proof, the evidence in the aggregate may point to guilt where individual elements of the State's case might not." Kriner v. State, 699 N.E.2d 659, 664 (Ind. 1998).

In this case, when the evidence is viewed as a whole and most favorably to the verdict, an inference reasonably tending to support the verdict may be drawn. Accordingly, we conclude that the State presented sufficient evidence to support Dunn's murder conviction.

Affirmed.

BAILEY, J., and CRONE, J., concur.