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**IN THE  
COURT OF APPEALS OF INDIANA**

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PHILLIP L. WHITE, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 18A02-0607-CR-604  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable Wayne J. Lenington, Judge  
Cause No. 18C05-0506-MR-2

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**August 2, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Phillip L. White (“White”) appeals his conviction for Murder, a felony.<sup>1</sup> We affirm.

### **Issues**

White presents two issues for review:

- I. Whether his confession was inadmissible because it was procured with deceit and false promises; and
- II. Whether the State failed to present sufficient evidence to support his murder conviction, because the victim died after being taken off life support.

### **Facts and Procedural History**

The following are the facts most favorable to the verdict. During the evening of July 31, 2004, White was driving a pickup truck in which Shon Starks (“Starks”) and Lionel McElroy (“McElroy”) were passengers. As they traveled on Hackley Street in Muncie, two men flagged down the truck. One of the men, later identified as Ryan Ylovchan (“Ylovchan”), approached the truck and indicated that he “wanted to buy a half.” (Tr. 542.) Ylovchan took out his wallet and held it at the windowsill of the driver’s side of the truck.

White made some movements as if he were breaking off a piece of crack cocaine. He then grabbed Ylovchan’s wallet and began to drive away slowly. Ylovchan held onto the truck, but soon fell off. The truck “bounced” and Starks looked back to see Ylovchan lying in the street. Starks told White, “you hit that guy.” (Tr. 545.) White did not stop the truck.

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<sup>1</sup> Ind. Code § 35-42-1-1.

Bystanders who saw the truck tire run over Ylovchan summoned 9-1-1 assistance and Ylovchan was transported to Ball Memorial Hospital in Muncie. He had severe brain injuries and a skull fracture. Ylovchan underwent surgery, but never regained consciousness. On August 8, 2004, Ylovchan was taken off life support and died.

On June 6, 2005, White was charged with Murder and Robbery. He was brought to trial on April 28, 2006 and convicted as charged. On July 17, 2006, the trial court sentenced White to fifty-five years imprisonment on the Murder conviction.<sup>2</sup> He now appeals.

## **Discussion and Decision**

### **I. Confession**

White argues that his confession was involuntary because of the misleading tactics of the interviewer. Muncie Police Officer Melissa Pease and a second officer told White that McElroy had identified him as the driver, when McElroy had not done so.<sup>3</sup> Also, Officer Pease repeatedly referred to the incident as an accident and, after reading the Indiana statute defining Murder, attempted to reassure White that it was inapplicable to his circumstances.

Under the United States Constitution, the State must prove by a preponderance of the evidence that a defendant's confession was voluntary. Clark v. State, 808 N.E.2d 1183, 1191 (Ind. 2004). Under the Indiana Constitution, the burden is to show voluntariness beyond a reasonable doubt. Id.

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<sup>2</sup> The trial court did not enter a judgment of conviction and sentence for Robbery, apparently due to Double Jeopardy concerns.

<sup>3</sup> McElroy did not implicate White in Ylovchan's murder. At trial, Starks testified against White. However, when McElroy was called to testify, he maintained that he lacked memory of any of the events at issue.

The decision to admit a defendant's inculpatory statement to police is a matter of discretion of the trial court after considering the totality of the circumstances. Kahlenbeck v. State, 719 N.E.2d 1213, 1216 (Ind. 1999). When reviewing a challenge to that decision, we examine the record for substantial, probative evidence of voluntariness, but do not reweigh the evidence. Id. A confession is voluntary if, under the totality of the circumstances, it was free and voluntary, and not induced by any violence, threats, promises or improper influences. Williams v. State, 715 N.E.2d 843, 846 (Ind. 1999).

White's statement was given after he signed a waiver of rights form. This is some evidence that he was aware of and understood his rights, and chose to speak voluntarily. See Ringo v. State, 736 N.E.2d 1209, 1212 (Ind. 2000). Too, just prior to giving the inculpatory statement, White had taken a lie detector test and had learned that he failed it. It was after learning the results that White proclaimed that he was "tired of lying" and admitted he was the driver. (Ex. 16, pg. 74).

There is no evidence that he was subjected to threats or given specific promises for his cooperation. "Statements by police expressing a desire that a suspect cooperate and explaining the crimes and penalties that are possible results are not specific enough to constitute either promise or threats." Kahlenbeck, 719 N.E.2d at 1217. Although it is troubling that Officer Pease advised White that his conduct fell outside the purview of the Murder statute, she made no explicit promise in this regard nor did White capitulate upon receiving the advice. White appeared to remain un-persuaded and responded, "it's still going to be a murder. I'll still be doing years." (Ex. 16, pg. 32.)

Moreover, the record does not support White's contention that police deception rendered his confession involuntary. Police deception does not automatically render a confession inadmissible, but is one factor to consider in the totality of the circumstances. Clark, 808 N.E.2d at 1191. It is clear that White's free will was not overcome by the claim that McElroy incriminated him. Rather, it was immediately after White failed the lie detector test that he changed his previous story. The totality of the circumstances does not render White's confession involuntary.

## II. Sufficiency of the Evidence

White next claims that there is insufficient evidence to support his conviction of Murder. Specifically, he claims that the State failed to prove he caused Ylovchan's death because Ylovchan did not suffer "an irreversible cessation of circulatory and respirator functions or irreversible cessation of total brain functions"<sup>4</sup> until he was removed from life support. Appellant's Brief at 9.

When reviewing a claim of insufficiency of the evidence, we consider only the evidence most favorable to the verdict and the reasonable inferences that can be drawn therefrom. Dillard v. State, 755 N.E.2d 1085, 1089 (Ind. 2001). We do not reweigh evidence or assess witness credibility. Id. The conviction will be affirmed unless we conclude that no reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000), trans. denied.

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<sup>4</sup> The Uniform Determination of Death Act, Indiana Code Section 1-1-4-3 provides that a person is dead when he or she has sustained "either (1) irreversible cessation of circulatory and respiratory functions; or (2) irreversible cessation of all functions of the entire brain, including the brain stem."

To convict White of murder, as charged, the State was required to prove that he knowingly killed Ryan Ylovchan while committing the felony of robbery. Ind. Code § 35-42-1-1.

An intervening cause is an independent force that breaks the causal connection between the actions of the accused and the injury. Spencer v. State, 660 N.E.2d 359, 362 (Ind. Ct. App. 1996). An individual who inflicts injury upon another is deemed by law to be guilty of homicide if the injury contributed mediately or immediately to the death of the other person. Id. In order for an intervening cause to break the chain of criminal responsibility, it must be so extraordinary that it would be unfair to hold the defendant responsible for the actual result. Id. A defendant is said to have contributed mediately or immediately to a death when he has put in motion a series of events ultimately ending in the victim's death. See id. (citing Thomas v. State, 436 N.E.2d 1109 (Ind. 1982) (victim died of heart attack following robbery and being placed in handcuffs); Pittman v. State, 528 N.E.2d 67 (Ind. 1988) (victim died of complications following exploratory surgery necessitated by abdominal stab wounds); Wilson v. State, 537 N.E.2d 1185 (Ind. 1989) (physician's insertion of tubes into beating victim's throat and stomach was not an intervening cause sufficient to break the chain of criminal responsibility so as to excuse defendant from responsibility for victim's death); Gibson v. State, 515 N.E.2d 492 (Ind. 1987) (victim died after contracting staph infection during brain surgery necessitated by a beating she suffered)).

Here, the State presented testimony that White ran over Ylovchan with his truck and Ylovchan suffered severe swelling and a shift of the brain as a consequence. Emergency

brain surgery was performed on the same day, but Ylovchan remained in a deep coma. He exhibited “no purposeful motor activity” and his “brain remained extremely swollen.” (Tr. 361-62.) His only reflex was “sluggish pupillary response” and he was considered by his attending physician to be “very close” to brain death. (Tr. 362.) He was removed from life support eight days after sustaining his injuries. Neurosurgeon Dr. Gautam Phookan testified that Ylovchan’s “cause of death” was determined to be a “severe closed head injury.” (Tr. 364.) The State presented evidence that White contributed mediately or immediately to Ylovchan’s death. Thus, the State did not fail to present sufficient evidence of causation.

### **Conclusion**

The trial court did not err in admitting White’s confession into evidence, because there is sufficient evidence that it was voluntary. White’s conviction is supported by sufficient evidence.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.