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IN THE
COURT OF APPEALS OF INDIANA

LEE GUZMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0609-CR-831
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0506-MR-91888

August 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Lee Guzman ("Guzman") appeals his conviction of Murder, a felony.[1] We affirm.

Issues

Guzman presents two issues for review:

I. Whether the State failed to present sufficient evidence of probative value to support his conviction, because the testimony of the primary witness against him was incredibly dubious; and

II. Whether his sixty-year sentence is inappropriate.

Facts and Procedural History

On May 16, 2005, Ronald Cannon ("Cannon") drove into the parking lot of a Sunoco gas station located at 2910 Martin Luther King Street in Indianapolis, opened his truck door, and collapsed onto the pavement. Sunoco employees summoned police and medical assistance, but Cannon had already died after suffering multiple gunshot wounds. Forensic testing disclosed that the gunshots were from two different guns.

On May 31, 2005, Brandon Rider ("Rider") met with Indianapolis police officers and implicated Guzman and David Owens ("Owens") in Cannon's death. On June 3, 2005, the State of Indiana charged Guzman with murder.[2] On August 14, 2006, Guzman's jury trial commenced.[3] On August 16, 2006, Guzman was convicted as charged. On August 30, 2006, Guzman was sentenced to sixty years imprisonment. He now appeals.

Discussion and Decision

[1] Ind. Code § 35-42-1-1.

[2] Guzman was charged with additional unrelated offenses, which were later severed for a separate trial.

I. Sufficiency of the Evidence

In order to convict Guzman of murder, as charged, the State was required to establish that he knowingly killed Cannon by shooting him. See Ind. Code § 35-42-1-1.

In reviewing a claim of insufficient evidence, we look only to the evidence most favorable to the judgment and all reasonable inferences that support the judgment. Hubbard v. State, 719 N.E.2d 1219, 1220 (Ind. 1999.) We neither reweigh the evidence nor judge the credibility of the witnesses and will affirm the conviction unless, based on this evidence, we conclude that no reasonable jury could find the defendant guilty beyond a reasonable doubt. Id. Testimony from a single eyewitness is sufficient to sustain a conviction. Id.

In rare cases, the "incredible dubiosity rule" will permit an appellate tribunal to impinge upon the jury's responsibility to judge the credibility of witnesses. Berry v. State, 703 N.E.2d 154, 160 (Ind. 1998). Application of the rule is limited to cases where a sole witness provides inherently contradictory testimony that is equivocal or coerced, and no circumstantial evidence supports the defendant's guilt. Id.

Rider testified as follows. In 2005, he was a heroin addict who purchased heroin from Owens on two or three occasions. He also purchased crack cocaine from Guzman, who is Owens' cousin. Rider would pay with cash or by agreeing to "give them a ride." (Tr. 418.) During the early morning of May 16, 2005, Rider was driving in Indianapolis near the Sunoco station, with Guzman riding in the front passenger seat and Owens riding in the back seat. Rider's vehicle was stopped at a stop sign when a white truck approached them from the opposite direction. Guzman stated, "There's that mother------- that owes us money." (Tr.

[3] He was jointly tried with Owens.

440.) Owens and Guzman began shooting in the direction of the white truck. Rider heard one of the men say, "that's what happens when you owe us money." (Tr. 444.) Rider drove the two men to their nearby home, then returned to the Sunoco station and saw Cannon lying on the pavement about ten feet from his white truck.

Nevertheless, Guzman argues that Rider's testimony must be excluded in its entirety because Rider is a drug addict who failed at trial to remember specific details before having his memory refreshed, and because Rider's description of the victim's and shooters' relative positions during the shooting was inconsistent with the physical evidence. More specifically, Guzman claims that the fatal shot came through the side window of Cannon's vehicle and that this could not have happened if Guzman and Owens were hanging out their windows, facing backwards, aiming north, and shooting as Rider turned his vehicle south.

Guzman presents no basis for applying the incredible dubiosity rule. We are not confronted with a situation in which a single witness provides inherently contradictory and uncorroborated testimony. While not purporting to explain the exact trajectory of the bullets fired, Rider consistently maintained that Guzman and Owens fired shots at a man in a white truck that they encountered on Martin Luther King Street in Indianapolis around 2:00 a.m. on May 16, 2005. Other witnesses corroborated details of that testimony, revealing that, in the same time frame, Cannon pulled his white truck into the Sunoco parking lot on Martin Luther King Street and collapsed, having been fatally shot.

Guzman simply asks this Court to negatively assess Rider's credibility because of drug use and to resolve in Guzman's favor perceived conflicts arising from the testimony of

multiple witnesses. However, the trier of fact, rather than this Court, is in the best position to weigh the evidence presented and to resolve conflicts arising from the testimony of multiple witnesses. Graham v. State, 713 N.E.2d 309, 311 (Ind. Ct. App. 1999), trans. denied.

Furthermore, the incredible dubiosity rule is not implicated because Rider gave a pretrial deposition stating that he had purchased drugs from Owens thirty to fifty times but testified at trial that he had purchased drugs from Owens two or three times. The incredible dubiosity rule has application only when the factfinder is presented with equivocal in-court testimony. See Corbett v. State, 764 N.E.2d 622, 626 (Ind. 2002) (holding that inconsistencies between a witness's statement to police and his trial testimony did not render his testimony inherently contradictory as a result of coercion); Love v. State, 761 N.E.2d 806, 810 (Ind. 2002) (holding that the victim's testimony was not incredibly dubious or coerced although she initially denied, in out-of-court conversation with her mother, that the defendant had molested her); Holeton v. State, 853 N.E.2d 539, 541 (Ind. Ct. App. 2006) (holding that discrepancies between statements made to police and trial testimony goes only to the weight of that testimony and witness credibility and doesn't render the testimony inherently contradictory). Rider's trial testimony was not equivocal; inconsistencies between his prior statement and his trial testimony go to the weight and credibility of the testimony but do not render it incredibly dubious.

Here, the State presented sufficient evidence from which the factfinder could conclude that Guzman, acting in concert with Owens, murdered Cannon.

II. Sentence

Next, Guzman requests that we conduct our independent review of the nature of the offense and character of the offender pursuant to Indiana Appellate Rule 7(B) and revise his sixty-year sentence to the advisory sentence of fifty-five years.[4] Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Nevertheless, our review under Appellate Rule 7(B) is deferential to the trial court, and "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The nature of the offense is that Guzman and Owens fatally shot Cannon because of a debt. The character of the offender is such that he maintained employment and contact with his children. However, he also supported himself by dealing drugs. At the age of twenty-six, Guzman had accumulated ten adult convictions and three juvenile adjudications. He had three Class D felony convictions for auto theft, a Class D felony, resisting law enforcement conviction, and several misdemeanor convictions. In light of the nature of the offense and the character of the offender, we do not find Guzman's sentence, which exceeds the advisory sentence by five years, to be inappropriate.

Conclusion

Sufficient evidence supports Guzman's murder conviction. His sixty-year sentence is not inappropriate.

Affirmed.

[4] Ind. Code § 35-50-2-3.

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