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IN THE COURT OF APPEALS OF INDIANA

ADRIAN EDWARDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0705-CR-383
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49G01-0408-MR-145104

November 15, 2007

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Adrian Edwards appeals his convictions for two counts of Murder,[1] a felony, and three counts of Conspiracy to Commit Murder,[2] a class A felony. Edwards argues that the trial court erroneously admitted recorded telephone conversations into evidence and that there is insufficient evidence to support the murder conviction. Finding no error, we affirm the judgment of the trial court.

FACTS

On May 29, 2004, Djuan Edwards (Djuan), Adrian's cousin, shot Jermaine Foster and Michael Solomon, injuring Foster and killing Solomon. Foster called 911 for help and identified Djuan as the shooter. April Adkisson had seen the shooting and also called 911, describing the suspected shooter, the direction in which he fled, and his vehicle. At that time, Adkisson was dating Michael Moss, who knew Djuan. Foster, Moss, and Adkisson identified Edwards as the shooter.

At some point following the shooting, Djuan spoke to Adrian about the witnesses, explained that he was planning to turn himself into the authorities, and said, "[n]o witnesses, no case . . . ." Tr. p. 490, 597, 601, 679. On June 1, 2004, Djuan turned himself into the authorities, and on June 3, he learned that Foster, Moss, and Adkisson were listed as witnesses for the State.

Djuan instructed Adrian, Brandon Hardiman, and Chris Ealy to notify him if they saw Moss or Foster. On June 10, 2004, officers discovered Moss, dead, in his front yard. He had

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[1] Ind. Code § 35-42-1-1.

[2] Id.; Ind. Code § 35-41-5-2.

been shot multiple times. Upon entering Moss's residence, the officers discovered Adkisson, who was also dead and had sustained multiple gunshot wounds. That same morning, Hardiman was awoken by Adrian, who stated that he had entered Moss's home and "shot the bitch in the face . . . ." Id. at 504, 590-91, 632, 653.

On August 11, 2004, the State charged Adrian with two counts of murder and three counts of class A felony conspiracy to commit murder. On January 13, 2006, the State filed a notice of intent to offer recordings of Djuan's telephone calls made from jail into evidence. Adrian objected, but on March 22, 2006, the trial court granted the State's motion. At trial, Hardiman identified the voices of the individuals speaking on the recordings. Among other things, the recordings reveal that on June 2, 2004, Djuan asked Hardiman, "what y'all been doing—huntin' and sh*t[?]" Id. at 529-30. Adrian told Djuan, "the only thing they got is no witness[es]." Id. at 531. Adrian also informed Djuan, "I'm tryin' to have your back . . . ." Id. On June 10, 2004, after officers discovered the bodies of Moss and Adkisson, Djuan told Ealy, "Well, you got to buy that one for me, too, man . . . for real cause that's the last car I need . . . ." Id. at 568, 570-71. Djuan went on to say, "but please man, make sure you do that for me," and Ealy responded, "Yeah—I'm gonna buy it." Id. at 571. Later that day, Djuan told Ealy that he needed to buy a blue car, which Ealy understood to mean that Foster was to be killed. Id. at 647-48.

A three-day jury trial began on March 27, 2006, and on March 30, the jury found Adrian guilty as charged. On April 21, 2006, the trial court found that Adrian's convictions for conspiracy to commit the murders of Moss and Adkisson merged, respectively, into his

convictions for murdering those individuals. The trial court sentenced him to fifty-five years imprisonment for each murder conviction and to thirty years for the conspiracy conviction relating to Foster, to be served consecutively, for a total of 140 years imprisonment. Adrian now appeals.

DISCUSSION AND DECISION

I. Admission of the Recordings

Adrian first argues that the trial court erred by admitting the recordings of Djuan's telephone calls made from jail. The trial court has broad discretion in ruling on the admissibility of evidence. Tate v. State, 835 N.E.2d 499, 508 (Ind. Ct. App. 2005), trans. denied. We will reverse only if the trial court abuses its discretion, which occurs if its decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

More specifically, the trial court has wide discretion in ruling on the admissibility of audio recordings. Lahr v. State, 640 N.E.2d 756, 761 (Ind. Ct. App. 1994). To admit an audio recording made in a noncustodial setting,[3]

> the following foundational requirements must be established: (1) the recording must be authentic and correct; (2) the testimony elicited must have been freely and voluntarily made; (3) the recording must not contain matter otherwise not admissible into evidence; and (4) the recording must be of such clarity as to be intelligible and enlightening to the jury.

Coleman v. State, 750 N.E.2d 370, 372-73 (Ind. 2001).

[3] "Noncustodial setting" means "circumstances other than the questioning of a witness or a criminal suspect while detained and with the advantages inherent in a custodial situation." Lahr, 640 N.E.2d at 761 n.4.

A. Authenticity

Indiana Rule of Evidence 901(a) provides that the requirement of authentication "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Voice identification may be established "by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker." Evid. R. 901(b)(5). In particular, identity of a voice on an audio recording may be established where the listener is familiar with the caller's voice. Angleton v. State, 686 N.E.2d 803, 808 (Ind. 1997).

Here, Hardiman, a cousin of Djuan and Adrian, and Ealy, a close friend, identified the caller as Djuan and identified the voices of Adrian and the other participants of the various recorded telephone conversations. Hardiman and Ealy were able to make the respective identifications based on their long acquaintances with Adrian and the other participants. The authentication was corroborated by Marion County Sheriff's Department employees charged with running the jail telephone system and the Indianapolis Police Detectives who obtained and reviewed the calls. We find these identifications to provide ample foundation for the trial court's conclusion that the recordings were authentic and correct.

B. Voluntariness

The record reveals that every call from the inmate telephones in the Marion County Jail begins with an advisory message that the call will be recorded; moreover, the same message periodically interrupts the call. Tr. p. 268. This message is heard by the caller and the recipient, who must listen to the message before accepting the inmate's collect call. Id. at

263, 268, 273. All inmates are also given a handbook informing them that outgoing calls will be recorded. Id. at 268, 271. Thus, all participants to telephone calls made by an inmate in the Marion County Jail must agree to the monitoring and recording of their conversations. We find this evidence to establish that the participants in Djuan's phone calls, including Adrian, acted freely and voluntarily agreed that their conversations would be recorded.

C. Other, Inadmissible Matters

To the extent that the audiotapes contained irrelevant material that was not otherwise admissible into evidence, the material was redacted. To the extent that such material could not be redacted, Adrian asked that the jury be instructed to ignore the inadmissible material. The judge agreed and instructed the jury accordingly. Tr. p. 520, 522, 529, 543, 564-65, 568. Thus, we find that the trial court properly handled the presence of irrelevant, inadmissible material on the audiotapes.

D. Clarity

To be admissible, a recording must be intelligible and enlightening to the jury. Lahr, 640 N.E.2d at 761. Every word need not be intelligible; instead, the recording, taken as a whole, "must be of such clarity and completeness to preempt speculation in the minds of the jurors as to its content." Dearman v. State, 743 N.E.2d 757, 762 (Ind. 2001).

Unfortunately, the recording is not included in the record for our review. The exhibit binder prepared by the court reporter contains a photocopy of the CD, but not the CD itself. State's Ex. 94. It is Adrian's responsibility to provide us with a complete record that enables

us to review his claims.[4] Given that the recordings were properly authenticated and voluntarily made, that the jury was properly instructed regarding irrelevant, inadmissible material on the recordings, and that we are unable to review the clarity of the recordings because Adrian failed to ensure that they were included in the record, we find that the trial court did not abuse its discretion in admitting the recordings into evidence.

II. Sufficiency of the Evidence

Adrian next argues that the evidence is insufficient to support his convictions. In assessing the sufficiency of the evidence, we will neither reweigh the evidence nor judge the credibility of witnesses. Sisson v. State, 710 N.E.2d 203, 205 (Ind. Ct. App. 1999). Instead, we will consider only the evidence most favorable to the verdict and the reasonable inferences that may be drawn therefrom and will affirm unless no rational factfinder could have found, based on the evidence and inferences, that the defendant was guilty beyond a reasonable doubt. Id.

To convict Adrian of murder, the State was required to prove beyond a reasonable doubt that he knowingly and intentionally killed another human being, specifically, Moss and Adkisson. I.C. § 35-42-1-1. To convict Adrian of conspiracy to murder Foster, the State was required to prove beyond a reasonable doubt that he agreed with another person to commit that murder. Id.; I.C. § 35-41-5-2.

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[4] We acknowledge Appellate Rule 29(B), which provides that nondocumentary exhibits shall not be sent to this court as a part of the record on appeal. Notwithstanding that rule, however, if a party challenges the admission of evidence, be it nondocumentary or otherwise, we must be able to review that evidence to answer definitively whether it should have been admitted. Thus, it is incumbent on an appellant in such a situation to

A murder conviction may be based entirely on circumstantial evidence. Franklin v. State, 715 N.E.2d 1237, 1241 (Ind. 1999). Circumstantial evidence is sufficient if inferences may reasonably be drawn therefrom to enable the factfinder to find the defendant guilty beyond a reasonable doubt. Id. The uncorroborated testimony of one witness, including an accomplice, may be sufficient, by itself, to sustain a conviction on appeal. Toney v. State, 715 N.E.2d 367, 369 (Ind. 1999).

Here, although there was no forensic evidence linking Adrian to the crimes, Hardiman and Ealy testified at length regarding their knowledge of the plan to hunt down and kill Moss, Adkisson, and Foster at Djuan's request. Both men also testified that Adrian actively participated in the crimes. And Adrian testified that he did, in fact, state "no witnesses, no case [against Djuan]," tr. p. 735, on at least one occasion. Hardiman and Ealy both recalled Adrian making the statement at other times as well. Adrian admitted that he owned two shotguns, a type of weapon used in the murders. Hardiman and Ealy both testified that Adrian told them that he kicked in the door to Moss's residence—which was, in fact, kicked in—and then shot Adkisson. Indeed, Adrian still had a gun in his hand when he relayed the story to Hardiman. Id. at 503. Moreover, the recordings of telephone conversations between Djuan, Adrian, and others include coded instructions from Djuan to kill Moss, Adkisson, and Foster, and the other participants' agreement to commit the murders.

As a whole, we find that this is sufficient circumstantial evidence to support Adrian's

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request that the exhibit be made a part of the record on appeal because absent that evidence, we can only err on the side of the trial court's decision, as required by our standard of review.

convictions. Adrian emphasizes the lack of forensic evidence and directs our attention to alleged inconsistencies in the testimony of Hardiman and Ealy, but these amount to requests that we reweigh the evidence and judge the credibility of witnesses—practices in which we do not engage when evaluating the sufficiency of the evidence supporting a conviction.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.