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**IN THE
COURT OF APPEALS OF INDIANA**

KAREY SLEDGE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0610-CR-600

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia Gifford, Judge
Cause No. 49G04-0509-MR-155347

November 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Following a jury trial, Karey Sledge appeals his conviction of murder, a felony. On appeal, Sledge raises two issues: 1) whether the jury had sufficient evidence to convict him of murder; and 2) whether the trial court abused its discretion by declining to replay the testimony of a single witness to the jury. Concluding that the jury had sufficient evidence to convict Sledge of murder and that the trial court acted within its discretion in declining to replay the testimony of a single witness, we affirm.

Facts and Procedural History

On October 22, 2004, Sledge's brother, Muata Tchiguka, attempted to contact his father, Earnest, with whom Sledge had been living for approximately two months. After several failed attempts to reach his father, Tchiguka went to his father's house and discovered that his father had been murdered.

On October 23, 2004, the State charged Sledge with Earnest's murder. During Sledge's trial, police and investigators testified that Earnest died from blunt force trauma to the head and neck. The police also found several pieces of broken ceramic vases with Sledge's fingerprints scattered throughout the house. The police determined these vases were used to strike the lethal blows to Earnest.

Also during the trial, Tchiguka testified he discovered his father's body and found a pair of black gloves which, as later testimony revealed, contained Sledge and Earnest's blood. Tchiguka also testified about a series of short, strange conversations he had with Sledge. In these conversations, Sledge told Tchiguka, "Dad is not here." Tr. at 29.

Additionally, Earnest's vehicle was in the garage the night before Earnest's body was discovered, but on the day that Earnest's body was discovered, the vehicle was missing from the garage and discovered at one of Earnest's rental properties. Sledge was found in possession of the keys to the vehicle. Finally, Sledge's brother, Earnest Sledge III, testified that during a conversation between the two, Sledge admitted he killed his father.

After jury deliberations began, the jury requested to hear Tchiguka's testimony again. After notifying and allowing arguments from counsel, the court decided not to allow the testimony to be replayed. The jury found Sledge guilty of one count of murder. The trial court subsequently entered a judgment of conviction and sentenced Sledge to fifty-five years of imprisonment. Sledge now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

When reviewing a challenge to the sufficiency of the evidence, we “neither reweigh the evidence nor judge the credibility of the witnesses, and we affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.” Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005) (quoting Davis v. State, 815 N.E.2d 1176, 1178 (Ind. 2004)). We consider conflicting evidence most favorably to the verdict. Id.

“A person who . . . knowingly or intentionally kills another human being . . . commits murder, a felony.” Ind. Code § 35-42-1-1. In this case, there were no eyewitnesses to Earnest's murder. Therefore, the evidence used to convict Sledge was circumstantial. A

conviction may be supported by circumstantial evidence alone. Gambill v. State, 675 N.E.2d 668, 675 (Ind. 1996).

Pieces of ceramic vases were removed from Earnest's head during his autopsy. The State introduced evidence indicating that Sledge's fingerprints were on the broken pieces of ceramic vases and that the fingerprints were likely placed on the vases at the time of the murder. Sledge's blood was mixed with Earnest's blood in the gloves recovered from Sledge's bedroom. Further, when Muata and Earnest III went to the house to check on Earnest, all the doors were locked and there was no sign of a break-in. In fact, they had to break a window in order to gain access to the house. Thus, the State provided sufficient evidence from which the jury could conclude that Sledge was at the scene when Earnest was killed.

Additionally, there was testimony that Sledge believed Earnest was responsible for or involved in his mother's death several years before. Tchiguka testified about a series of phone calls he made to his father's home during the hours and days following Earnest's death. During each of these phone calls, Sledge was uncharacteristically short and nondescript with Tchiguka. Finally, Earnest III testified that when he and Sledge's ex-wife, Sandra Pennington, were visiting Sledge in jail, Sledge told him that he killed their father. This statement was contradicted by Pennington during her testimony; however, the jury has the responsibility of resolving conflicts in testimony. See Brown v. State, 830 N.E.2d 956, 968 (Ind. Ct. App. 2005) (“[W]here contradictory or inconsistent testimony is presented at trial, it is up to the jury to resolve such conflicting testimony.”). We conclude sufficient

evidence existed from which the jury could draw the reasonable inference that Sledge knowingly or intentionally killed Earnest.

II. Replay of Testimony

During jury deliberations, the jury requested to hear Tchiguka's testimony again.

Under the Indiana statute:

If, after the jury retires for deliberation:

- (1) there is a disagreement among the jurors as to any part of the testimony; or
- (2) the jury desires to be informed as to any point of law arising in the case;

the jury may request the officer to conduct them into court, where the information required shall be given in the presence of, or after notice to, the parties or the attorneys representing the parties.

Ind. Code § 34-36-1-6. Absent an explicit indication of disagreement, Indiana Code section 34-36-1-6 is not implicated. Bouye v. State, 699 N.E.2d 620, 627-28 (Ind. 1998). Therefore, when there is no explicit indication of a disagreement among the jurors, the trial court has the discretion to allow the jury to re-hear testimony or re-examine evidence. Stokes v. State, 801 N.E.2d 1263, 1269 (Ind. Ct. App. 2003), trans. denied.

The trial court in this case determined that because the jury's request exhibited no explicit disagreement about Tchiguka's testimony, the statutory provision was not triggered. We agree. The record does not contain the language used in the jury's request. However, the trial court stated: "In this instance the jury question did not indicate that there is an explicit disagreement as to the evidence. The jury simply requested to rehear the testimony of a single witness." Tr. at 415. The court properly allowed arguments before ruling on whether to permit the replaying of the testimony. The court told the jury: "The Court cannot allow

the jury to hear a recording of one witness's testimony. The jury is instructed to rely on their individual notes and recollection of the testimony of this witness." Id. at 412. Under these circumstances, where the jury's request did not explicitly indicate disagreement, the trial court did not violate Indiana Code section 34-36-1-6 when it refused to replay Tchiguka's testimony.

When the trial court concludes that the statute is not applicable, it has discretion to replay the requested testimony. See Stokes, 801 N.E.2d at 1269. When the statute is not implicated, there are common law protections that apply when jurors request additional guidance. Bouye, 699 N.E.2d at 628. First, before communicating with the jury, the trial court must notify the parties so they may be present in court and informed of the trial court's proposed response. Id. Then, in deciding whether the jury's request – in this case to replay testimony – should be granted, the trial court may consider: “(1) whether the material will aid the jury in a proper consideration of the case; (2) whether any party will be unduly prejudiced by submission of the material; and (3) whether the material may be subjected to improper use by the jury.” Thacker v. State, 709 N.E.2d 3, 7 (Ind. 1999). In this case, the trial court carefully considered those factors before deciding to deny the jury's request to hear Tchiguka's testimony again.

After the jury requested to hear Tchiguka's testimony again, the trial court determined that the jury did not have an express disagreement about Tchiguka's testimony. Tr. at 415. Therefore, the trial court determined it was not statutorily bound to replay Tchiguka's testimony. The court also discussed the three-part test from Thacker. Tr. at 416. The court

concluded that by replaying Tchiguka's testimony, it would be unfairly representing the trial testimony. Id. The trial court concluded that the State would be unduly prejudiced by replaying the testimony of a single witness. Id. The trial court offered to allow the jury to re-hear all of the testimony from the case. However, this request was declined by counsel and jury deliberations continued. Based on these circumstances, the trial court acted within its discretion in denying the jury's request to hear the testimony again.

Even if we concluded that the trial court did err in making this conclusion, the error would be harmless. Cf. Smith v. State, 270 Ind. 574, 580, 388 N.E.2d 484, 485 (1979) (indicating that the failure to answer jury questions is not reversible error per se). We will conclude an error is harmless if we can say with confidence that the error had no effect on the jury's verdict. See Smith v. State, 872 N.E.2d 169, 175 (Ind. Ct. App. 2007) (considering erroneous admission of defendant's criminal history harmless error where there was not a substantial likelihood that such evidence contributed to defendant's conviction), trans. denied; Marks v. State, 864 N.E.2d 408, 412 (Ind. Ct. App. 2007) (holding that improperly giving or refusing to give a jury instruction is harmless error where the error had no impact on the jury's verdict).

The jury heard Tchiguka's testimony once, and when the jury was deliberating, they did not express any major disagreement about the testimony to the court. A replay of the testimony most likely would not have resulted in a different outcome for Sledge because there was significant evidence of his guilt presented at trial, including physical evidence

placing him at the murder scene and testimony indicating that Sledge admitted committing the murder.

Conclusion

We conclude that there was sufficient evidence for a reasonable fact-finder to conclude that Sledge committed murder. Also, the trial court acted within its discretion in declining to replay a single witness's testimony. The judgment of the trial court is therefore affirmed.

Affirmed.

KIRSCH, J., and BARNES, J., concur.