

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

David A. Neanover,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

January 19, 2024

Court of Appeals Case No.  
23A-CR-603

Appeal from the Franklin Circuit  
Court

The Honorable Clay Matthew  
Kellerman, Judge

Trial Court Cause No.  
24C02-2107-CM-673

**Memorandum Decision by Chief Judge Altice**  
Judges Weissmann and Kenworthy concur.

**Altice, Chief Judge.**

## Case Summary

- [1] David A. Neanover appeals his conviction for unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor. He presents three issues for review of which we find the following restated issue dispositive: Did the trial court abuse its discretion by admitting into evidence Neanover’s confession without independent evidence of the *corpus delicti*?
- [2] We reverse and vacate Neanover’s conviction.

## Facts & Procedural History

- [3] On July 27, 2021, in rural Mount Carmel, Indiana, Arlene Rader heard loud gunshots coming from the property directly next to hers, which was owned by her sister, Neanover’s mother. Rader knew that Neanover was staying either at her sister’s residence or in a camper on the property. Within a half hour of hearing the shots, Rader walked about two hundred yards to the fence line between the properties and saw Neanover and another individual, a male whom she did not know. She did not see either of them holding or shooting a firearm. In fact, Rader did not testify to ever actually seeing either of them with a firearm. Rader then returned to her home where either she or her husband called the Franklin County Sheriff’s Office.
- [4] Thereafter, Officer Jason Lovins responded to the dispatch of “possible shots being fired.” *Transcript* at 11. When Officer Lovins arrived at the residence, Neanover was outside working on a motorcycle. Officer Lovins explained why he was there, and Neanover then stated that he had just purchased and attached

a “red dot scope” to “his AR-15 rifle” and was “siting it in prior to [Officer Lovins’s] arrival.” *Id.* at 25. Neanover showed Officer Lovins “the directions in which he was shooting” where “[t]here was an earth embankment.” *Id.* Officer Lovins then left the property believing, based on what Neanover said, that he had been shooting in a responsible manner.

[5] Officer Lovins called Rader afterwards, and she informed him that Neanover had a prior domestic violence conviction. Rader later – it is unclear when – sent an email to Officer Lovins with an attachment that was purportedly a copy of a May 2020 judgment of conviction and sentence for domestic violence issued out of a court in Butler County, Ohio. Officer Lovins could not recall whether he ever contacted the Ohio court during his investigation.

[6] On February 23, 2023, Neanover’s bench trial for unlawful possession of a firearm by a domestic batterer was held. The State called Rader and Officer Lovins as its only witnesses. Over Neanover’s objection that the State had failed to establish the *corpus delicti*, the trial court permitted Officer Lovins to testify regarding Neanover’s statements to him about shooting a rifle. During Officer Lovins’s testimony, Neanover also objected, unsuccessfully, to the admission into evidence of the copy of the Ohio judgment, arguing that the State had obtained it through an email from Rader rather than directly from the Ohio court with proper certification.

[7] The trial court found Neanover guilty as charged and sentenced him to 365 days in the Franklin County Security Center with 305 days suspended to probation. Neanover now appeals.

## **Standard of Review**

[8] A trial court's ruling on the admissibility of evidence is afforded wide discretion on appeal. *Shinnock v. State*, 76 N.E.3d 841, 842 (Ind. 2017). Accordingly, we will review only for an abuse of discretion, which occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Seal v. State*, 105 N.E.3d 201, 206 (Ind. Ct. App. 2018), *trans. denied*.

## **Discussion & Decision**

[9] Neanover argues that the trial court abused its discretion by admitting into evidence his statements to Officer Lovins, which established that Neanover had been shooting an AR-15 rifle. Relying on the *corpus delicti* rule, Neanover contends that this evidence was improperly admitted without any independent evidence indicating that possession of a firearm by a domestic batterer had been committed.

[10] In Indiana, it is well established that “a person may not be convicted of a crime based solely on a nonjudicial confession of guilt.” *Shinnock*, 76 N.E.3d at 843.

Rather, independent proof of the *corpus delicti* is required before the defendant may be convicted upon a nonjudicial confession. Proof of the *corpus delicti* means proof that the specific crime charged has actually been committed by someone. Thus, admission of a confession requires some independent evidence of

commission of the crime charged. The independent evidence need not prove that a crime was committed beyond a reasonable doubt, but merely provide an inference that the crime charged was committed. This inference may be created by circumstantial evidence.

*Id.* (citations and quotation marks omitted).

[11] The purpose of the *corpus delicti* rule is to prevent the admission into evidence of a confession to a crime that never occurred. *Id.* Thus, so long as the totality of independent evidence presented at trial establishes the *corpus delicti*, a defendant's nonjudicial confession is admissible at trial. *Id.* That is, there must be independent evidence, circumstantial or otherwise, that provides an inference that the crime charged was committed by someone. *Id.*

[12] Here, the evidence independent from Neanover's statement was sparse. Rader heard what she believed to be gunshots coming from the neighboring property about two hundred yards away. When she went to the fence line between the properties within the next thirty minutes, she saw Neanover and another male individual, but she did not see a firearm. Then when Officer Lovins came to investigate, he found Neanover outside working on a motorcycle. Officer Lovins did not testify to seeing a firearm.

[13] The totality of the independent evidence does not lead to a reasonable inference that Neanover had been in possession of a firearm that day. And, of course, evidence that someone had been shooting a firearm on or near the property, especially when another individual was clearly present with Neanover around

this time, is not itself evidence that a crime occurred. That is, the crime hinged on the person in possession of the firearm being a convicted domestic batterer. Leaving aside the separate issue of whether the State properly established the domestic battery conviction out of Ohio, an issue we need not reach, there is no evidence connecting Neanover to possession or use of the AR-15 rifle aside from his own statements to Officer Lovins. *Cf. Johnson v. State*, 150 N.E.3d 647, 652-53 (Ind. Ct. App. 2020) (holding that defendant's out-of-court statements regarding battery with a deadly weapon were inadmissible because independent evidence failed to connect him to ownership or use of the alleged weapon and failed to connect photographs of his girlfriend's bruises to a battery).

[14] Accordingly, the trial court abused its discretion in admitting into evidence Neanover's statements to Officer Lovins. Without this evidence, the State clearly cannot establish its case against Neanover, and thus we vacate his conviction.

[15] Judgment reversed and conviction vacated.

Weissmann, J. and Kenworthy, J., concur.